Neutral Citation No: [2020] NIQB 14 ***Judgment: approved by the Court for handing down*** ***(subject to editorial corrections)****	***Ref:*** **McC11192** ***Delivered:*** **12/02/2020**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY JOHN McEVOY

FOR JUDICIAL REVIEW

v

CHIEF CONSTABLE OF PSNI

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McCLOSKEY LJ

Preface

[1] The gravamen of the case made by John McEvoy (the Applicant) is that the Chief Constable of PSNI (the sole Respondent) has infringed the Applicant's rights under Article 2 ECHR by failing to conduct a prompt, effective and independent investigation into his attempted murder at the Thierafurth Inn, Co Down, on 19 November 1992 when it is alleged that two UVF gunmen shot at the Applicant, wounded two other people and killed one person. The Order 53 Statement recites *inter alia*:

> "*Recent information and evidence that has come to light … suggest that collusion between the security services, including the* [UDR and RUC] *and the UVF was a 'significant feature', as it was found to have been by the Police Ombudsman of Northern Ireland in relation to the linked Loughinisland Bar shooting and murders. In particular, key intelligence was not passed on, seemingly to protect police sources. Despite the new information and evidence, including the evidence of collusion and the identification of three suspects said to have been involved in the shooting, there has to date been no effective investigation into the shooting and nobody has been charged, prosecuted or convicted in relation thereto.*"

It is contended *inter alia* –

> *"…. the required investigation must be undertaken by an independent and impartial investigatory body, independent of the PSNI and its chief constable."*

[2] The affidavit evidence on behalf of the Chief Constable indicates *inter alia* that the Legacy Investigation Branch (LIB) of PSNI has a workload of hundreds of historical cases. Mr McEvoy's case is number 524 and "*… it will likely be many years before these cases are reviewed in sequence given the present level of resourcing within LIB*". The Chief Constable's affidavit also defends the previous police investigation, including the averment that the RUC "*… conducted a good investigation and …. no further lines of inquiry were outstanding or had been identified*", a quotation from the draft Historical Enquiries Team (HET) report of 04 October 2011.

Litigation History

[3] On 20 October 2017, following an initial case management order dated 8 September 2017, this court ordered:

> *"UPON APPLICATION ex parte by KRW LAW-LLP, acting on behalf of John McEvoy, (hereinafter referred to as "the Applicant") pursuant to Order 53 Rule 3(2) of the Rules of the Court of Judicature (Northern Ireland) 1980 for leave to apply for Judicial Review,*
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> *AND UPON READING the affidavit and the statement lodged on behalf of the Applicant,*
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> *AND UPON the applicant by his Solicitor and Counsel appearing before the Honourable Mr Justice McCloskey having been adjourned on 8 September 2017, pursuant to a direction of the said Judge under Order 53 Rule 3 (10),*
>
> *AND UPON Counsel on behalf of the Chief Constable of the Police Service of Northern Ireland, the first named proposed Respondent and Counsel on behalf of the Secretary of State for Northern Ireland, the second named proposed Respondent and Counsel on behalf of the Department of Justice, the third named proposed Respondent attending on the invitation of the Court,*
>
> *IT IS ORDERED that:*
>
> 1. *the Applicant do have leave to apply to a single Judge of the Queen's Bench Division for Judicial Review,*

2. *the Applicant shall file the Notice of Motion on or before the close of business on Friday 3 November 2017,*

3. *the Applicant is hereby granted leave to file a further affidavit on behalf of the Applicant filed this day,*

4. *the parties have liberty to apply and;*

5. *the costs of this application be reserved to the Judge hearing the application for Judicial Review.*

AND IT IS FURTHER ORDERED that:

[1] The Applicant's solicitors shall, by 17 November 2017, complete the Schedule attached consisting of:

(a) Part 1: Proposed agreed material facts.

(b) Part 2: Any contentious material facts.

[2] The Respondent's representatives shall, by 15 December 2017, reply to the Applicant's foregoing schedule in an electronic format, with suitably coloured and highlighted insertions, identifying clearly all items of agreement and disagreement.

[3] The Applicant's solicitors shall, within three weeks of receipt of the aforementioned response [05 January 2018], formulate in writing their proposals, procedural and/or otherwise, to the Court for the mechanism/s for resolving disputed material facts, to include any appropriate interlocutory application.

[4] The Respondent's representatives shall, within a further period of three weeks [26 January 2018], reply, including any appropriate interlocutory application.

[5] Backstop date: the backstop date for any final application to the Court on any procedural or other issue is 09 February 2018.

[6] The target month for the substantive hearing of this case is March 2018. The Applicant's legal representatives shall, by 06 November 2017 at latest, have proactively liaised with the

representatives of all other parties and the Judicial Review Office for the purpose of finalising the substantive hearing date/s, which the court will communicate within a further seven days.

[8] The final date for communicating to the Court Office the parties' agreed proposed hearing date/s is 06 November 2017.

[9] The Applicant's representatives will forward to the Judicial Review Office an agreed core bundle, indexed and paginated, not to exceed one lever arch file, 14 days in advance of the substantive hearing date at latest.

[10] Subject to (a) the above and (b) any special judicial case management directions, the Judicial Review Practice Direction applies fully.

[11] The Applicant's representations on the viability of an earlier substantive hearing date will be provided by 27 October 2017. The Respondent's reply will be made by 03 November 2017. The court's provisional view is that the Applicant's proposed trial date of 20 December 2017 is not viable. Further, this date has been held in reserve for urgent cases in any event."

[4] This Order was made on the same date upon which the court promulgated the following general order:

"McCLOSKEY J

1. Some will be aware of the communication published by the Lord Chief Justice's Office today, which conveys to everyone concerned a review of all judicial review files concerning "legacy" matters in order to ensure that the cases are case-managed in an efficient, effective, and expeditious manner.

2. Form LC1, which has been circulated to you, is an integral part of the general case management plan. As this document makes clear, there will be a heavy emphasis on paper case management. Keegan J and I are of the view that this shift of emphasis from intermittent, and not infrequently vague and unproductive, review and directions hearings will further the goals of efficiency and expedition, not

least because this will enable lawyers to concentrate their resources where, in the opinion of the Court, they are most needed, namely in case preparation activities which should require little judicial oversight.

3. *The litigation events which have given rise to the creation of a cohort of in excess of 40 so-called "legacy" cases have unfolded organically. This has resulted in case management which was not being conducted according to a specific, concrete plan thus far. At this remove, the formulation of such a plan is possible. This was the aim, and has been the outcome, of the comprehensive judicial and administrative review of all of these cases described in today's statement from the Office of the Lord Chief Justice.*

4. *As an inevitable consequence of case management practices to date, coupled with the simple reality that all members of this cohort have come before the Court on different dates, the broad panorama is that a small number of cases has progressed through the High Court to the level of the Court of Appeal; some cases in the High Court have been the subject of leave to apply for judicial review, without any substantive progress subsequently; others are still awaiting a decision on leave; there is another significant category consisting of cases which have been stayed pending developments in the Court of Appeal; and, finally, at first instance and there is a self-evidently important case, Boyle, in which a hearing in the High Court is imminent and upon which certain cases are dependent.*

5. *Returning momentarily to Form LC1, as you will note this was utilized for the first time in the case of Kirkpatrick (yesterday). You will see from the terms of the Order in that case how this new case management tool works in practice. Broadly, form LC1 prescribes a timetable for the completion of important pre-trial steps and measures and allows the parties a period of approximately five months for this purpose. The trial date is determined at the beginning of this period and, thereafter, everything is geared to ensuring, so far as reasonably possible, that the trial date is met. Provision is made for a "back stop" date for any necessary interlocutory*

applications. Subject to that possibility, in the paradigm case intervening review and directions hearings should be capable of being avoided.

6. *The other direction which the parties in some cases are likely to receive from the Court as soon as we are in a position to complete the review is a direction (probably in Form LC2) to the effect that the Court has provisionally formed the view that the instant case is so linked to case "X" already in the High Court system and coming on for hearing, or case "Y" in the Court of Appeal with a reasonably imminent hearing date, that the Court's tentative view is that the instant case should progress no further in the meantime. In such cases the applicant's legal representatives will be invited to make written representations on the issue of stay. The respondent's legal representatives will then have the opportunity of replying. Duly armed with both parties' representatives the Court will then rule on whether the case in question should be stayed and, if so, on what terms. This simple process will ensure full procedural fairness to both parties.*

7. *The Court is of the view that some cases are ready to progress in accordance with Form LC1. The present case is an evident candidate and there are others which will be identified by the Court as quickly as possible. Cases in which it is appropriate to proceed to deciding the question of leave will also be identified.*

8. *The Court trusts that, in principle, it will be possible to list approximately ten "legacy" cases during the period late March to end of June 2018. There is reason to expect that there will be sufficient judicial resource available for this purpose. Whether this proves to be achievable will be heavily dependent upon full assistance and co-operation from the parties and their representatives.*

9. *In this context, it is appropriate to make the observation that the reality of limited resources is of an all-pervasive kind, in the sense that it applies to the judiciary; the administrative support for the judiciary; the various public authorities involved in defending the legal challenges in these cases; and*

the legal representatives of the challenging parties. This broader resources panorama should not be overlooked.

10. *Particular mention of the case of McQuillan is appropriate. This case is under appeal from the High Court and will be heard by the Court of Appeal on 06/07 December 2017. I am conscious from the review of this cohort of cases that a not insignificant number has been assessed as linked to McQuillan and, in consequence, stayed in consequence, whether formally or informally. Having acknowledged this, a small number of cases of this particular kind may nonetheless emerge as persuasive candidates for progressing to a substantive hearing date during the period already noted, given that the earliest realistic listing date will be some four months after the hearing of the McQuillan appeal.*

[Having heard the submissions of Mr Southey QC and Mr McGleenan QC]

11. *The present case is indeed such a candidate. I am satisfied that there is an arguable case with a reasonable prospect of success and, further, that this is a case to which Form LC1 can be applied fully. Leave to apply for judicial review is granted accordingly."*

[5] Thus leave to apply for judicial review was granted within two months of the initiation of these proceedings. Since then multiple further orders have unfolded in the midst of the court's attempts to progress this case to a substantive hearing and judgment. *Inter alia*:

(a) Substantive hearing dates of 08 and 09 May 2018 were allocated. These were vacated by order of the court dated 20 April 2018.

(b) Further substantive hearing dates of 01 and 02 October 2018 were allocated. These were vacated by order dated 21 September 2018.

(c) On 25 September 2018 permission to challenge the foregoing order by appeal to the Court of Appeal, under section 35(1)(g) of the Judicature (NI) Act 1978, was requested. This application adverted to the core difficulty in progressing this case and others, namely the outstanding COA judgments in ***McQuillan, McGuigan*** and ***Bernard.*** At this stage

there was a recognition of the possibility of onward appeal in one or more of those cases. The application was refused.

(d) By its order of 09 April 2019 the court gave the Applicant the facility of applying to remove or modify the stay of proceedings.

(e) The Applicant made such an application on 13 April 2019. This noted *inter alia*:

> "*Appeals in the three cases of **Re McQuillan, Re McGuigan** and **Re Bernard** were heard in the Court of Appeal in April and May 2018. On 27 February 2019, the Supreme Court handed down its judgment in the case of **In Re Finucane**. The judgment of the Court of Appeal in **Re McQuillan** was handed down on 19 March 2019 …. in favour of the Appellant. The Respondents in that case have indicated that they will be seeking leave to appeal to the Supreme Court. The judgments in **Re Bernard** and **Re McGuigan** remain outstanding. The Applicant's application to the Court of Appeal for leave to appeal McCloskey J's order of 12 October 2018, staying the current proceedings behind the above three cases, is listed before the Court of Appeal for mention on 03 May 2019 ….*"

(f) The Respondent's replying submission of 17 April 2019 stated *inter alia*:

> "*The delay in the progress of legacy litigation arises from the awaited appellate judgments and not from any act or omission of the Respondents.*"

(g) By its order of 03 May 2019, following an *inter-partes* listing, the court adjourned the stay removal application for a period of three weeks and directed the parties to agree a September 2019 hearing date, on a provisional basis.

(h) In the court's general legacy cases CMD order of 20 June 2019 this case was identified as one of the cohort of 20 in which a stay was extant.

(i) Next the parties exchanged correspondence on contentious discovery issues.

(j) The parties were then ordered to agree a case management order to include provision for a substantive hearing date. The parties having responded the court, by its order of 08 October 2019, directed *inter alia* a substantive listing on 16 to 17 January 2020.

(k) A review listing on 10 January 2020 was vacated to accommodate Applicants' counsel. Such a listing followed on 13 January. Before that hearing took place both the review and the substantive hearing were adjourned on account of the pending appeal to UKSC in ***McQuillan***. This was preceded by the parties exchanging correspondence and written submissions relating to the propriety of maintaining the listing. The court invited the provision of proposed alternative hearing dates and the parties complied.

The McQuillan Case Factor

[6] The fundamental reason for the delay in progressing this case and others to substantive hearing and judgment is the link with the uncompleted case of ***McQuillan***, which has been the subject of a completed appeal to the COA and an uncompleted appeal to the UKSC.

[7] By order dated 21 November 2019 the Court of Appeal granted leave to appeal to UKSC in the case of ***McQuillan*** in which the public authority respondents are PSNI, SOSNI and DOJ. The court's preceding substantive order had entailed two declarations whereby the Chief Constable of the PSNI (a) is obliged to conduct further investigations into a 1972 death in a manner which satisfies the State's procedural obligation under Article 2 ECHR and (b) is required to take prompt steps to secure the practical independence of the investigators in a manner compliant with Article 2 ECHR. The grant of leave on the Article 2 ECHR ground in ***McQuillan*** is unconstrained.

[8] On the same date, leave to appeal to UKSC in ***McGuigan and McKenna*** [2019] NICA 46 was refused. Petitions for leave to appeal have subsequently been submitted to UKSC.

[9] It was common case in *McQuillan* that there was fresh evidence (certain military communication logs) satisfying the ***Brecknell*** principles. The question was whether the "*genuine connection*" test, with its twin elements of "*temporal connection*" and "*procedural acts and omissions*" was satisfied. The COA determined this issue in the affirmative, differing from the trial judge. Its reasoning prayed in aid the UKSC decision in *Re Finucane*, the COA considering that the passage of time should attract very little weight only.

[10] In summary there are two central issues in ***McQuillan***, namely (a) the independence of PSNI and (b) the Article 2 ECHR investigative obligation in the context of a death preceding the effective date of HRA 1998 by some 30 years.

[11] The link between the present case and ***McQuillan*** has been repeatedly acknowledged at earlier stages of these proceedings in the orders of the court: see the extensive litigation history rehearsed above.

Order

[12] I have deemed it appropriate to proactively revisit the application for judicial review. This is driven mainly by the delay factor which, in juridical terms, is linked in the main to the several procedural duties imposed on the State via the procedural dimension of Article 2 ECHR and section 6 HRA 1998. It is essential to be mindful that the court is a public authority to which section 6 applies.

[13] As the litigation history rehearsed above demonstrates, the court has been active and energetic at all stages in its attempt to perform what I consider to be a fundamental judicial duty namely the expeditious adjudication and completion of every type of litigation.

[14] There are multiple judicial discretions exercisable in civil proceedings. Many of these are of the procedural variety. The exercise of the discretion to stay proceedings probably belongs to the outer limits of the notional spectrum. This has been recognised by the UKSC in *Prince Abdulaziz Bin* [2014] UKSC 64 at [13]:

> *"… Accordingly, at least as at present advised, I consider that the view taken by Vos J and the Court of Appeal, namely that a direction requiring personal signing of disclosure statements reflected the normal practice, was correct. However, that is not, in my view, the essential question when it comes to challenging paras 14 and 15 of the Order. The essential question is whether it was a direction which Vos J could properly have given. Given that it was a case management decision, it would be inappropriate for an appellate court to reverse or otherwise interfere with it, unless it was "plainly wrong in the sense of being outside the generous ambit where reasonable decision makers may disagree" as Lewison LJ expressed it in Broughton v Kop Football (Cayman) Ltd [2012] EWCA Civ 1743, para 51."*

The UKSC approved the approach of Lewison LJ in *Broughton v Kop Football (Cayman) Limited* [2012] EWCA Civ 1743 at [51]:

> *"**Case management decisions***
>
> *Case management decisions are discretionary decisions. They often involve an attempt to find the least worst solution where parties have diametrically opposed interests. The discretion involved is entrusted to the first instance judge. An appellate court does not exercise the discretion for itself. It can interfere with the exercise of the discretion by a first instance judge where he has misdirected himself in law, has failed to take relevant factors into account, has*

taken into account irrelevant factors or has come to a decision that is plainly wrong in the sense of being outside the generous ambit where reasonable decision makers may disagree. So the question is not whether we would have made the same decisions as the judge. The question is whether the judge's decision was wrong in the sense that I have explained. ."

[15] It is instructive to formulate certain guiding principles:

(i) Every litigant has a right to adjudication of his claim within a reasonable period. Moreover, judicial review proceedings and remedies have traditionally been regarded as requiring expedition.

(ii) It falls to the court to allocate to every case an appropriate share of the court's resources, while taking into account that resources must be invested in every case in the system.

(iii) It is incumbent on the court to conduct its business both in individual cases and generally with a view to saving expense.

Each of these principles is enshrined in the overriding objective. Certain more specific principles can also be formulated:

(a) The fact that this case has consistently been linked to ***McQuillan*** is not determinative of whether this link should continue in the form of perpetuating the stay.

(b) Neither party is bound by the stance which it previously adopted in relation to staying the proceedings.

(c) Where a party proposes to revise its previous stance in the manner just explained, the court will scrutinise with care the reasons proffered for so doing.

(d) The court will take into account its approach in other comparable cases.

(e) The court will also be mindful of the overall period of delay, extending beyond the boundaries of the duration of the litigation.

(f) The court will also take into account any case specific facts or factors brought to its attention by any party.

A judicial balancing exercise of a familiar kind falls to be performed.

[16] The decision of the UKSC will determine certain issues of law which arise directly in the present case. This court will be bound by the decision. Pending the decision of the UKSC this court is bound by the decision of the COA in the same case. There can be no guarantee that the UKSC will endorse, fully or partly, the reasoning and conclusions of the COA. The issues of law in play have not been comprehensively determined by the UKSC in any previous case.

[17] This court's general legacy cases CMD order of 20 June 2019 is undergoing the process of being updated with a view to issuing a new order. The current draft of the new order indicates that there are approximately 30 "legacy" judicial review cases pending in the High Court. The oldest of these cases date from 2014. There are some 30 extant cases in the cohort. Of these approximately one quarter raises ***McQuillan*** type issues of law. The present case belongs to this discrete cohort of eight cases. Of this group two cases are now the subject of renewed judicial case management pursuant to the Presiding Coroner's public statement of 20 November 2019 [appended to this judgment]. To provide further context, there are some active cases in the Judicial Review Court at present.

[18] The choice lies between perpetuating the extant stay and removing it. There is no other alternative in the mix. It would be open to this court to remove the stay, proceed to a substantive hearing and promulgate its judgment. Were this court to do so it would not have the benefit of the binding guidance which will be provided by the UKSC when it determines ***McQuillan***. Second, it is in the highest degree likely that the judgment of this court will be challenged by appeal to the COA. Third, it is equally likely that the COA would not attempt to determine the appeal until the UKSC decision in ***McQuillan*** becomes available. Fourth, there is a clear possibility that following the latter event the COA would remit the appeal to this court under section 36 of the Judicature (NI) Act 1978 for further consideration and adjudication. That would give rise to a second judgment of this court. Fifth, it is highly probable that the latter judgment would also be challenged on appeal.

[19] Having regard to the foregoing, my evaluative assessment is that the overriding objective would not be furthered if this court were to remove the extant stay. This conclusion is fortified by the heavy volumes of other business in the Judicial Review Court and the serious limitations on judicial manpower arising out of ongoing recruitment difficulties. Furthermore, this court has been assured that both parties in the ***McQuillan*** appeal will urge the UKSC to process it with expedition.

[20] Mr McEvoy has the sympathies of the court. The incident giving rise to his legal challenge occurred some 27 years ago and his case is now of around two and half years vintage. Thus the delay factor is one of obvious substance. However, I consider this to be out-balanced by the analysis in the preceding paragraph. Furthermore, if this court were to remove the stay in any member of this discrete group of cases it would be difficult to resist doing likewise in the others. This would simply magnify and multiple the expenditure of judicial, court administration and other public

resources in a manner which I consider could not be justified. I conclude that the balance swings decisively in favour of perpetuating the extant stay in the present case.

[21] The order of the court is in the following terms:

> ***The stay of these proceedings shall be continued until (a) the UKSC has given judgment in the appeal of Margaret McQuillan and (b) the parties have, within 28 days thereafter, formulated a draft case management order for consideration by this court, whereupon expedition and further directions will issue.***

APPENDIX

PRESIDING CORONER FOR NORTHERN IRELAND

STATEMENT IN RELATION TO LEGACY INQUESTS 20th NOVEMBER 2019

Good morning.

Thank you for coming today. I am grateful for the attendance of families, some of whom will have travelled quite a distance. I recognise that this will be a difficult day for many people and I want to thank the legal representatives for assisting with this process.

As the Presiding Coroner for Northern Ireland, it falls to me to decide the sequence in which legacy inquests will be heard during the period of the five year plan. The purpose of today is to announce those inquests which I hope will be heard during Year 1 of the Lord Chief Justice's five year plan for legacy inquests. I will also provide information regarding how the remaining inquests will be brought to the point where they are ready for listing.

These are very important decisions. In taking them, I have listened to all views expressed to me. There are no easy options when it comes to determining the sequencing of these inquests and there is no single correct way to approach the sequencing task. I assure you I have given the matter very anxious consideration to ensure that the approach I have taken is the best in this difficult context.

Before I proceed, I would like to emphasise that, within the coronial system, no legacy inquest is more important or of greater priority than any other. I am conscious that each inquest concerns somebody's loved one and that families have to live every day with their loss no matter when or how it occurred.

I recognise that inevitably some people will be disappointed with what I am going to say today. I want to offer you the reassurance that I have not undertaken this task lightly. I give you the commitment that my judicial colleagues and I will do everything in our power to complete legacy inquests within the five year timeframe. This is not something we can achieve in isolation. We will be relying on the cooperation of everyone involved – families, legal representatives and government bodies. I do not underestimate the enormity of the task, however, I have been heartened by the positive and forward-looking approach taken to the recent preliminary hearings. I strongly urge that you all strive to maintain this spirit of constructive and collaborative working as we move forward.

In my statement on 7th June, I said that I would engage with families during the process of determining the sequencing of inquests for hearing within the five year plan. I also said that I would take all views into account when reaching sequencing decisions. In order to do this, I held individual preliminary hearings into each pending legacy inquest over a three week period during September and October of

this year. The total number of preliminary hearings was 41, with the 4 inquests known collectively as the 'Stalker & Sampson' inquests being listed for 1 preliminary hearing.

The purpose of the preliminary hearings was to obtain information about factors which might impact on the state of readiness of each pending legacy inquest. This included information regarding inquest disclosure, ongoing civil and judicial review proceedings, on-going criminal investigations and Police Ombudsman's investigations. I heard about particular issues such as elderly or ill relatives and witnesses or potential issues in tracing military witnesses. I heard views regarding how ongoing or pending Police Ombudsman's investigations or ongoing civil litigation should, or should not, impact on sequencing and on where sequencing of particular inquests should sit within the five year plan. In some cases, where sufficient information was not available at the preliminary hearing, I directed that it be provided to me within a short timeframe.

Submissions were made in a number of preliminary hearings that effective case management would assist in getting inquests on for hearing. Additionally, I heard submissions which acknowledged that particular inquests were not ready for listing but that neither should they be put into 'cold storage'.

I welcome an openness to different approaches because I am acutely aware that many of the pending inquests have been awaited for many years, exacerbating the distress of families and the anxieties of all those affected. Wherever possible, I wish to avoid that distress being compounded by the inquest process and so I am receptive to exploring any options which might make that less difficult. I do so confident that the experienced lawyers involved in the inquests will assist the process.

Also on 7th June, I stated that I would consider the merits of a thematic approach as part of the process of sequencing the pending legacy inquests. This arose due to concerns expressed by the international human rights community that the wider picture might be missed if we focused solely on a series of individual inquests.

The potential benefits of linking particular deaths into one inquest or group of inquests are well recognised. A number of the pending inquests, such as the inquests known as the Stalker & Sampson series, have already been linked. Additionally, there are a number of inquests which, as a result of information which emerged during Lord Justice Weir's review in 2016, I consider it appropriate to now treat as linked.

Against this background, I have considered the merits of linking pending legacy inquests where there appear to be common themes. However, I am conscious that linking cases might not be right for all inquests and so I intend to apply a flexible approach. That is because it was submitted during some preliminary hearings that individual deaths which, on the face of it, might appear to fit into a themed series should be treated as discrete incidents for inquest purposes. I appreciate that there are may be a number of reasons why this view might be taken, including because of

concerns that inclusion in a themed series might lead to an inquest being held later than would otherwise be the case.

More generally, I recognise that the number of deaths in which there is a pending legacy inquest is a very small proportion of the overall number of Troubles-related deaths. Additionally, a Coroner has no control over which deaths are reported or referred for coronial investigation. Once an inquest is within the Coroner's jurisdiction, the Coroner is under an obligation to deal with it in accordance with the relevant legal principles. It follows that, while themes or linkages between inquests may be identified, it is possible that the incidents with which the inquests are concerned may not include all deaths or incidents relevant to the theme. I am mindful therefore that it may not be possible for the inquest process to provide the full context or to properly reflect the wider picture.

Against that background of caution, I do consider that there is merit in provisionally grouping some inquests for case management purposes. This would allow for focused review and structured consideration of potential cross-referencing of information. Accordingly, I propose that there should be a provisional group comprising inquests into deaths in the Mid-Ulster area between 1990 and 2000 which were claimed by loyalist paramilitaries. I propose also that there should be a provisional grouping of inquests into deaths where it appears undercover soldiers may have been in situ prior to the fatal incident occurring.

This provisional grouping approach will be kept under review and revisited if necessary. I emphasise that groupings are for case management purposes. Inclusion within a grouping is not intended to be a factor in determining appropriate sequencing.

I turn now to those inquests which are to be listed in Year 1, that is between April 2020 and April 2021. Having given the matter much careful consideration, I have come to the view that, for practical reasons, state of readiness has to be the main factor in determining which inquests can be listed in the first year. With that in mind, I have identified the following inquests as suitable for listing during Year 1:

Year 1, Quarter 1:

1. Thomas Friel
2. Stephen Geddis
3. Neil McConville

Year 1, Quarter 2:

4. Patrick McElhone
5. Sean Brown

Year 1, Quarter 3:

6. Gareth Paul O'Connor
7. Leo Norney

Year 1, Quarter 4:

8. Daniel Doherty & William Fleming
9. Thomas Mills
10. Patrick Crawford.

These inquests will now be case managed to hearing. Case Management Protocol disclosure request letters in respect of the first five inquests will issue shortly and I will hold case management hearings in those cases in January 2020. Disclosure request letters will issue in the second five cases in early 2020.

I emphasise that the approach that I have taken to listing in Year 1 will not necessarily determine how inquests will be sequenced in later years. As other issues arise, they will be considered and taken into account throughout the five year plan.

I turn now to the remaining inquests.

Inquests not listed for hearing in Year 1 fall into two categories. The first category comprises inquests which require active judicial case management to be brought to the point where they are ready to be sequenced for hearing. The second category comprises inquests where there are other on-going investigations and the next of kin wish to await the outcome before the inquest proceeds.

Inquests falling within the first category will be subject to twice yearly case management reviews at the discretion of the Presiding Coroner. The aim of the reviews will be to ensure that there is informed forward planning and preparation throughout the five year plan. This means that inquests not listed in Year 1 will be looked at and timetabled for the following years on an on-going basis. The first of these reviews will take place in April 2020 at which point I hope that we will be in a position to consider provisional Year 2 listings. That exercise will continue each year thereafter.

There are some particularly complex inquests which would benefit from on-going active judicial case management. I intend to assign a dedicated member of the judiciary to such cases.

Inquests falling within the second category will be subject to periodic administrative review at the discretion of the Presiding Coroner. While I understand that other investigations are on-going at present, there may come a time when these inquests simply have to be heard. These decisions will be taken in liaison with all interested

persons, including the next of kin. This process of review will ensure that, if and when these cases require active case management to be ready for listing, this occurs in a timely manner. The first administrative reviews will take place in April 2020.

In presenting this plan to you all, I have been greatly assisted by all submissions made. I have had a difficult decision to make. I am confident that the approach I have taken is the best in the circumstances. Once again, I emphasise that there is no hierarchy of inquests and that listing is not a task which I have undertaken lightly. I assure you again that my judicial colleagues and I, supported by the staff in the Legacy Inquest Unit, will do everything we can to ensure that all pending legacy inquests are completed within the five year timeframe. I ask for your patience and forbearance during this process.

I will now adjourn until a case management review to be fixed in January. There are some legal issues on which I may give a decision at a convenient time.

Thank you for coming.

The Hon. Mrs Justice Keegan

20th November 2019

ANNEX

INQUESTS SUBJECT TO ACTIVE JUDICIAL CASE MANAGEMENT

Mid Ulster Inquests:

1. Samuel Marshall
2. Kevin McKearney & John McKearney
3. Charles Fox & Teresa Fox
4. Seamus Dillon
5. Fergal McCusker
6. Richard Jameson[1]

Potential Military Operations Inquests:

7. Patrick Duffy
8. Francis Bradley
9. Loughgall inquest – Hughes, Arthurs, Donnelly, Gormley, Kelly, Kelly, Lynach, McKearney & O'Callaghan
10. Alexander Patterson
11. Coagh incident – Ryan, Doris & McNally
12. Clonoe incident – Vincent, O'Farrell, Clancy & O'Donnell

Other inquests

13 & 14. 2 x inquests of Slane & McDaid

15 - 18. Stalker & Sampson Inquests x 4: Quinn, McCloy & Hamilton; McKerr, Toman & Burns; Michael Tighe; and Carroll & Grew

19. Springhill Inquest: Dougal, Gargan, Fr. Fitzpatrick, Butler & McCaffrey

[1] This inquest is in the active case management category due to its inclusion in the Mid Ulster group but may fall to be dealt with by administrative review.

20. McDonald & McGleenan

21. Gerard Lawlor

22. Joseph Campbell

23. Raymond McCord

24. Liam Thompson

25. Kevin McAlorum

26. John Moran

27. Desmond Healey

28. Hugh Coney

INQUESTS SUBJECT TO ADMINISTRATIVE REVIEW

1. 3 x inquests of Craig McCausland; Mahood & Coulter; and Robert Moffett

2. 2 x inquests of Daniel Rooney & Patrick McVeigh

3. 1 x inquest of Gerard Casey.