

<b>Neutral Citation No: [2024] NICoroner 7</b>	<b>Ref: SCO12405</b>
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	<b>ICOS No:</b>
	<b>Delivered: 29/01/2024</b>

IN THE CORONER’S COURT IN NORTHERN IRELAND

IN THE MATTER OF AN INQUEST INTO THE DEATHS OF  
JOHN DOUGAL, PATRICK BUTLER, NOEL FITZPATRICK,  
DAVID McCAFFERTY AND MARGARET GARGAN  
(‘THE SPRINGHILL INQUEST’)

RULING (NUMBER 4)  
ON ADDITIONAL APPLICATIONS FOR PIP STATUS  
FROM FORMER MILITARY WITNESSES

**SCOFFIELD J (sitting as a coroner)**

*Introduction*

[1] This is an inquest into five deaths which occurred on 9 July 1972 in the Springhill and Westrock areas of Belfast. A brief summary of the factual background is contained in my ruling of 27 February 2023 (‘Ruling No 1’): [2023] NICoroner 24.

[2] This ruling deals with an application for ‘properly interested person’ (PIP) status on behalf of three former military witnesses (FMWs), i.e. persons whom it is proposed to call as witnesses who were soldiers at the time of the events in question although are now retired from that role. The relevant FMWs are known as ‘SM100’, ‘SM79’ and ‘SM233.’ I recently informed the existing PIPs that I had decided to grant this application. My reasons are set out briefly below.

[3] The application was made on behalf of the three identified FMWs by their instructed solicitors, Devonshires, by way of correspondence dated 23 November 2023. The next of kin (NOK) for most of the deceased, save for those of Fr Fitzpatrick, opposed the applications as they are presently constituted. The MOD and PSNI were neutral on the applications.

*The court’s approach*

[4] I previously gave a ruling in the course of this inquest on 12 October 2023 (Ruling No 2: [2023] NICoroner 25) in which I briefly discussed the law in relation to the grant of PIP status in inquests in this jurisdiction, including in particular the

recent decision of the Court of Appeal in *Re Cummings' Application* [2023] NICA 44. I adopt the summary of the legal position set out in that ruling at paras [7]-[10].

[5] Two features of the coronial power to confer PIP status which are recognised in the *Cummings* judgment are, first, that it is fact sensitive and context sensitive (see paras [25] and [45]); and, second, that it involves a discretionary power on the part of the coroner (see paras [43] and [50](i)-(ii)). There is accordingly a certain degree of leeway for a strict or generous approach depending upon the facts and circumstances, provided always that the coroner can rationally reach a view that the particular candidate for PIP status is a properly interested person.

[6] In the present instance, the key question in relation to each of the FMWs is whether they are at risk of a finding of wrongdoing, in particular where that wrongdoing itself may have caused or materially contributed to the death or deaths under investigation.

[7] In the previous ruling I granted PIP status to another FMW who will give evidence in this inquest, SM16. In relation to SM16's application, the NOK contended (as they do in respect of these applications) that this was premature. I made the point in Ruling No 2 (at paras [13]-[14]) that such determinations will often have to be made towards the start of an inquest process or hearing, when there will necessarily be limited information, such that an element of (informed) speculation about where the evidence may lead is often required. A balance has to be struck between determining such an application too early and potentially determining it too late. In the latter case, the belated conferral of PIP status may cause delay to the progress of the inquest or be of limited assistance to the party on whom the status is conferred. This risk is particularly acute where there is an additional element of time pressure in this case as a result of the provisions of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023. I consider it to be within the bounds of my discretion to take this factor into account in considering the conferral of PIP status at this point.

[8] The case made by the NOK is essentially that the Army was responsible for the deaths in circumstances where there was no warrant whatsoever for the firing of live rounds at any of the deceased. Ms Quinlivan KC, making submissions for the NOK, has accepted that it is entirely appropriate for PIP status to be conferred where a soldier admits discharging a live round that night. However, in light of the fact that the key to the cipher list from the original inquest (which identified the 'shooters' who were ciphered as Soldiers A to G) has been lost, she pointed to the limited amount of evidence at this point identifying any particular soldier as one who discharged their weapon. Her submissions stopped short of insisting that a soldier must admit having fired their weapon before being accorded PIP status; but suggested that it was appropriate for statements to be provided before the application was determined.

[9] It is inconceivable in my view that, if a soldier was one who fired at a civilian or civilians that night, whether or not they considered them to be armed, they would not at least be at risk of significant criticism in relation to the events. I have also proceeded on the basis that there will or may be soldiers who did discharge their weapons at civilians that night who are unable, unprepared or unwilling to provide evidence to that effect, perhaps for a variety of reasons. I must therefore seek to assess the risk that someone may be found to have been a soldier who did discharge their weapon, putting them in jeopardy of significant criticism. I also considered it appropriate, in the particular circumstances of this inquest, to adopt a reasonably generous approach to this issue in favour of the applicants for PIP status. This is largely because I accepted the thrust of Mr Skelt's submission that there is a greater risk of delay or unfairness if PIP status is not conferred upon a FMW now but it later becomes clear that it ought to be (or ought to have been) conferred, as compared with the risk of delay or unfairness arising from granting the application now applying a relatively liberal approach.

[10] In light of the above general comments, I turn to consider briefly the facts of each application.

**SM100**

[11] The application states as follows:

“There is good reason to suspect that SM100 will be alleged to have fired rounds on the 9<sup>th</sup> July 1972. It follows that it may also be alleged he shot at one or more of the deceased. It is clear that any soldier against whom that allegation is made is likely to be accused of having committed serious criminal offences including murder/attempted murder.

Whatever the precise allegations made against any soldier said to have fired a round, that soldier's conduct will be subject to detailed scrutiny and they are liable to be criticised.

If it is SM100's evidence that he fired his weapon at the material time he has a proper and legitimate interest in defending his own actions and decisions. He cannot adequately do that without PIP status.

In light of the above it is submitted SM100 qualifies as a PIP. He is at risk of a finding of wrongdoing linked to a death or deaths. He has a legitimate interest in these proceedings of a nature and extent that justifies PIP status.”

[12] The NOK have observed that, in the experience of their representatives in other inquests, “soldiers who maintain they have not fired shots are not always truthful.” In those circumstances, they consider it a matter for me to determine whether it is appropriate to confer PIP status.

[13] In this instance, there are a number of strands of evidence which it is appropriate for me to consider. SM100 was interviewed by the Historical Enquiries Team (HET) in 2013. He had at that time confirmed being stationed in Northern Ireland at the relevant time with 9 Platoon, C Company, 1 King’s Regiment; and said that he believed he was on duty in Corry’s Yard on the evening Fr Fitzpatrick had been killed. He recalled hearing a lot of shooting. He described being positioned behind the wall at the extreme left corner of the yard (“bottom right corner of Corry’s if looking from Westrock”). He stated that he had been interviewed by the Special Investigations Branch (SIB) of the Royal Military Police (RMP), he believed two days after the shooting, although could not recall whether he made a statement.

[14] SM100 later returned a tracing questionnaire to the Legacy Inquest Unit (LIU) in 2022 in which he had confirmed that he was stationed in Northern Ireland with the above platoon and company in July 1972. In the questionnaire he stated that he was “on the left flank with orders to cover a hole in the left wall”; and that the SIB questioned him about his not being sent to the inquest. He indicated to them that a senior officer had read “all our statements” and then decided who would go to the inquest.

[15] SM100 provided a later, more detailed account to the coroner’s investigator at interview. In an interview with my investigator on 10 October 2023, he confirmed that he was part of the above platoon and company on 9 July 1972 and that he was on guard duty in Corry’s Yard. He recalled the yard coming under fire. He indicated that he was tasked to the Westrock Gardens end of the yard to prevent people from getting through a hole in the perimeter wall (which he marked on a map provided to him by the investigator). He indicated that he was on the ground at the foot of the wall, inside the perimeter. As it was getting dark, possibly around 10:00 pm, a gunman came through the hole in the wall and SM100 indicated that he fired two shots. He did not know if the bullets struck the gunman, who went back through the hole in the wall. The position of the gunman was also marked on the map. He further indicated that the RMP came to speak to him about four days later and he provided a statement, although he does not recall signing it. He was shown the seven ciphered statements used at the original inquest and stated that none of them were him.

[16] The other PIPs are unlikely to have been aware of the content of the interview referred to above. I am aware from SM100’s statement furnished very recently through Devonshires (unsigned, although approved by him), that he has now provided a different account. The admissibility of, and weight to be given to, the

account provided to my investigator (in the absence of a signed statement confirming it) may have to be addressed in submissions and/or evidence. Nonetheless, it seems to me to be a proper matter to take into account at least for the purpose of determining SM100's application for PIP status.

[17] In light of the content of the previous accounts, I am satisfied that it is appropriate to confer PIP status upon SM100.

### **SM79**

[18] In relation to SM79, the application for PIP status refers to the witness debrief document and states that it "gives reason to believe the same matters relevant to the PIP status set out above in relation to SM100." The application also suggests that "an element of the need for SM79 to be a PIP is reflected in the need to discuss documents with him which touch upon his actual involvement, if any, of the relevant events of 9 July 1972." I do not accept that this second basis for the conferral of PIP status advances matters. A desire to see documents in the inquest for the purpose of providing a statement or taking instructions is not sufficient for the conferral of the status. As has occurred, a witness (or their representatives) can apply for the release of certain documents if it is proper for these to be seen by them before, or at the time of, providing an account or statement.

[19] The NOK indicate that they have been advised that SM79 did not commence duty until 00:30 hours on 10 July 1972. If that is correct, and any relevant firing on the part of SM79 took place after that time on 10 July 1972, the NOK say that it follows that these actions could not have had anything to do with the five deaths with which this inquest is concerned. A key issue therefore is whether the time of SM79 commencing duty is or may be incorrect.

[20] SM79 completed a tracing questionnaire and returned this to LIU in 2022. This confirmed that he was in 7 Platoon, C Company, 1 King's Regiment in Northern Ireland in July 1972. There is some evidence to suggest that 7 Platoon provided the Quick Reaction Force (QRF) in Corry's Yard on 9 July 1972. In the questionnaire SM79 provided a positive answer to the question, "Were you involved directly or indirectly in, or did you witness, or did you hear at any time, details of any events surrounding any military operation at Corry's Timber Yard on 9<sup>th</sup> July 1972" on the basis that he was stationed at the yard at most times. He goes on to provide details of what appears to be an earlier incident and states that, at the time of Fr Fitzpatrick's death, he was on leave.

[21] The MOD witness debrief form referred to in the application for PIP status is timed and dated 15:35 on 10 July 1972 and is found at Folder 16, pp 454-455. It records that SM79 was at the "centre of Corry's Yard" on "fighting patrol." It notes that he commenced duty at 00:30 on 10 July 1972 and was given orders to "clear woodyard of gunmen, protect stationary APC." In that debrief form SM79 describes

discharging one round, using a starlight scope, after a gunman (of whom a description is given) had fired upon soldiers.

[22] It is perhaps of significance that there is evidence to suggest that SM79 had a starlight scope and was part of a "fighting patrol." From the statements to the original inquest, Ciphred Soldier A was part of the QRF and had a starlight scope (before passing it to Soldier E when he changed positions); Soldier B appears to have been in the QRF and had a sniper scope; Soldier E was in the QRF, had a starlight scope and describes himself as a member of a "fighting patrol."

[23] There are enough features set out in the witness debrief form that it is plausible that SM79 might be - or might credibly be suggested to be - one of the ciphred soldiers. In light of this, I am prepared to confer PIP status upon him for the purposes of this inquest.

### **SM233**

[24] The application on behalf of SM233 also focused on the contents of an MOD witness debrief completed at the time (15:25 on 10 July 1972; found at Folder 16, pp 448-449). This records SM233 as having fired four rounds at street lights. The application also says that it may be alleged that SM233 was in possession of a sniper rifle at the material time. It continues: "In the circumstances, it may be suggested that SM233 in fact shot at persons rather than street lights and that those persons included one or more of the deceased. Similar points relevant to PIP status thus arise for SM233 as in the cases of SM79 and SM100."

[25] In relation to SM233, the NOK, in common with their submissions in relation to SM79, highlight that the alleged firing appears to have occurred long after the five deceased with whose deaths this inquest is concerned occurred.

[26] On this occasion, however, the debrief form notes that SM233 came on duty at 10:00 pm on 9 July 1972 - which might potentially place him on duty at a time when some of the shooting relevant to the deceased's deaths occurred. (The time of the incident referenced in the debrief form is recorded as 00:30 on 10 July 1972.) The debrief form suggests that, using a telescope, SM233 fired four rounds at street lights. His location is recorded as "SPD Springfield Road."

[27] Ciphred Soldier A's statement records him stating as follows: "about 23:45 hrs, while North of the Wood Yard, in the SPD factory, north of the Springfield Road, I had occasion to fire 1 x 7.62 round at a light located high up on the wall of the factory building." Soldier E, who also had a starlight scope, also stated that the street light between 41 and 32 Westrock Drive was hampering his vision with the starlight scope and so he fired one shot to shatter the light.

[28] The witness debriefs are taken from an RMP investigation file which apparently relates to a shooting incident whereby soldiers from 1 King's Regiment

fired 12 rounds, between 00:30 and 01:00 on 10 July 1972, in the vicinity of the SPD Factory and/or Corry's Yard. It records that there were no hits or casualties. The soldiers involved were SM16, SM79, SM233 and Sgt Whitworth (now deceased).

[29] There are enough features set out in the witness debrief form that it is plausible that SM233 might be – or might credibly be suggested to be – one of the ciphered soldiers, on a similar basis to SM79. The time of his coming on duty and the manner of his deployment mean that he might have been a member of the QRF with other members of 7 Platoon. (Indeed, if he was deployed in the evening or early night of 9 July 1972, this may cast doubt on the question of whether SM79 was only deployed in the early hours of the next morning.) In light of this, I am prepared to confer PIP status upon him for the purposes of this inquest.

### *Conclusion*

[30] For the reasons summarised above, the applications for PIP status in relation to SM100, SM79 and SM233 are granted.