

Neutral Citation No: [2024] NICoroner 19

Ref: SCO12458

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Delivered: 04/03/2024

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 10)
ON AN APPLICATION BY MARTIN DUDLEY FOR MEDICAL EXCUSAL

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 concerns an application on the part of a civilian witness and properly interested person (PIP) in the inquest, Martin Dudley, to be excused from giving evidence.

Mr Dudley's position

[3] There is a witness statement provided to me on behalf of Mr Dudley. However, it is signed on his behalf by his wife. The draft statement was produced following an interview with the coroner's investigator on 13 January 2023. During the course of the interview, however, the investigator (Ms Robson) became concerned about Mr Dudley's focus, recall and ability to provide an accurate and independent account. Mr Dudley's wife also raised concerns with Ms Robson about her husband's ability to provide his own independent account. Mr Dudley, however, was anxious to provide a statement. The statement itself notes that Mr Dudley's memory is now poor and that there are some details he does not recall; although it purports to set out some details of 9 July 1972.

[4] After the interview, Ms Robson contacted the solicitor within the Legacy Inquest Unit with responsibility for this inquest, Ms Mallon, to express her concerns

and relay those of Mrs Dudley. Ms Mallon therefore requested a signed form of authority and, upon receipt of same, wrote to Mr Dudley's General Practitioner on 27 January 2023 requesting a medical report dealing with his capacity to provide evidence. A report was received from Dr Salters dated 16 February 2023. This indicated that the doctor had been Mr Dudley's GP for over 30 years and, following a recent review of him, expressed the following view:

"I can confirm Mr Dudley suffers from significant cognitive impairment along with significant physical disability. He would not have the ability to assist the inquest with recall of event, to understand the questioning or recall his answers correctly. I would therefore not consider him able to attend court to give oral evidence."

[5] Mr Dudley was subsequently granted properly interested person (PIP) status on a similar basis to that which applied in the case of Brian Pettigrew: see Ruling No 2 in the inquest ([2023] NICoroner 25).

[6] It is not in dispute that Mr Dudley was shot and injured during the events of 9 July 1972 at or about the time and location when some of the deceased whose deaths are the subject of these proceedings were shot and killed. Mr Dudley was shot in the head, sustaining a brain injury. His application notes that he had a titanium plate inserted in his head; that he is paralysed down the right side of his body; that he wears a permanent brace on his right leg, has no balance and uses a wheelchair; that he is blind in his right eye and partially sighted in his left eye; and that he has profound memory loss. He also has epilepsy, which I am told results in seizures, diabetes, heart issues and depression.

[7] Mr Dudley's legal representatives have indicated that, following consultation with him in November 2023, it became apparent that he was suffering from profound memory loss and other significant cognitive issues which (in their view) required an expert assessment of his capacity to instruct his lawyers and his ability to give oral evidence to the inquest. As a result, a report was obtained from Dr East MBBCh MRCPsych, Consultant Forensic Psychiatrist, dated 1 December 2023. I discuss the content of this report below. Mr Dudley's GP notes and records, hospital notes and neurology notes were also obtained and have been provided.

Dr East's report

[8] Inter alia, Dr East carried out a review of Mr Dudley's medical notes from which he highlighted a number of salient points. In particular, in early May 2023 there was an attendance at Mental Health Services for Older People, at which Mr Dudley's family reported a "gradual decline in cognition over past two to three years" with his "short-term memory extremely poor" and Mr Dudley experiencing "word-finding difficulties" as well as other communication issues. There was a diagnosis of "probable Alzheimer's dementia." Mr Dudley scored 15/27 on a

mini-mental state examination (“MMSE”) at that review. The consultant psychiatrist who performed it advised that Mr Dudley’s previous head injury and epilepsy had increased his risk of developing dementia. The diagnosis was not discussed with Mr Dudley himself “due to lack of insight.”

[9] At a later review by a psychiatrist in September 2023, the diagnosis of Alzheimer’s dementia was firmed up, with a MMSE score recorded of 13/27. This is viewed as significant since a score of less than 23 is taken as representing the presence of a significant cognitive defect; with a score of 13 being a marker of severe dementia.

[10] Dr East then examined Mr Dudley in person in early December 2023. At this stage his cognitive functioning had declined even further, and Dr East was not able to perform a MMSE. At para 11.3 of his report Dr East described his findings upon this examination as follows:

“There were marked deficits in attention and memory. Both long and short term memory were poor. Immediate recall was non-existent. Mister Dudley was not orientated to either time or place. He had no concept of why we were meeting. I attempted to carry out the Mini Mental State Examination but abandoned this as it was apparent that Mister Dudley did not have the cognitive function to engage in this.”

[11] There were a variety of personal details which, it appears from Dr East’s report, Mr Dudley was not able to provide accurately or at all (including his date of birth, an account of his working life and the names of his children).

[12] Dr East’s report confirms that Mr Dudley has an established diagnosis of Alzheimer’s disease and that it should be described as “severe”, given his “complete inability to retain new information and that only fragments of previously learned information remain.” He further confirms that “longer term memory is now grossly affected.”

[13] The most relevant conclusions in Dr East’s report are those set out at paras 13.3 to 13.6, in the following terms:

“13.3 This dementia is dominated by Mister Dudley being poorly orientated in time and place. He has no ability to retain new information and longer term memory is now grossly affected.

13.4 I do not believe that Mister Dudley is able to understand, retain or appreciate any new information.

13.5 I do not believe that there is any prospect that Mister Dudley could understand questions put to him by lawyers, apply his mind to the questions and give the answers which he wishes. This is based on his inability to retain new information. He will simply not be able to understand the questions. Given the deficits in his longer term memory he would not be able to accurately recall events from the past.

13.5 There are no measure [sic] that would assist Mr Dudley in being able to participate in proceedings.

13.6 Given the level of cognitive impairment present as a result of this Alzheimer's disease Mr Dudley will not be able to participate in an inquest."

[14] Dr East further explains that the diagnosis of severe Alzheimer's is irreversible and will progressively worsen over time. He concludes by again emphasising that Mr Dudley is not able to understand, retain or appreciate any new information, such as questions from counsel; that his longer term memory is profoundly affected; and that he (Dr East) does not believe that Mr Dudley would have the cognitive ability to engage in an inquest.

The suggestion of a neurologist's report

[15] In the course of the written application for excusal, it was noted that, given the complexity of Mr Dudley's condition as a result of his traumatic brain injury, further proofs which may assist me in ruling on the application, including a report from a consultant neurologist, had been commissioned. A letter of instruction and papers had been sent to a consultant neurologist for this purpose and confirmation was awaited that a report could be provided within appropriate timescales. Notwithstanding this, since Mr Dudley's legal term were keen to avoid delay and considered that there was a sufficient basis to ground the application for medical excusal on the findings of Dr East, it was advanced in the absence of a neurology report.

[16] In his submissions, Mr Aiken KC for the Ministry of Defence suggested that it would be prudent for the anticipated neurology report to be obtained before this application was determined.

[17] However, the consultant neurologist instructed on Mr Dudley's behalf to examine him and provide a report (Mr Cooke) replied to his instructions indicating that, although he could provide comment on the severity of the head injury Mr Dudley had sustained, "the capacity of an individual to give evidence at any point in time is more appropriately determined by a consultant psychiatrist." Mr Cooke indicated that he could not deal with this issue (ie Mr Dudley's capacity to

give evidence in these proceedings) even if the underlying cause of any incapacity may be due to trauma. He therefore asked Mr Dudley’s representatives how they wished to proceed. As noted above, in the first instance they proceeded to make the present application without pursuing a report from Mr Cooke.

[18] It remains possible for Mr Cooke to examine Mr Dudley and prepare a neurology report within the next four weeks or so. However, I consider that little, if anything, is to be gained by seeking a neurology report. That is because, as noted above, Mr Cooke has himself identified that he is not qualified to address the key issue in the present application, namely Mr Dudley’s capacity to assist the inquest. That is properly to be dealt with by a consultant psychiatrist, such as Dr East. Moreover, it is also clear to me that the application is grounded not upon the effects of Mr Dudley’s head injury but, rather, upon his dementia which has separately developed. This may be as a result of family history of dementia or other factors, independently of his head injury. It may also be related in some way to Mr Dudley’s head injury; but it is not the case that the incapacity arose directly from the gunshot wound to Mr Dudley’s head. In any event, it seems clear that a report from a neurologist will not take the matter much further as far as the key issue of capacity is concerned.

Legal framework

[19] Section 17A of the Coroners Act (Northern Ireland) 1959 provides (insofar as material) as follows:

- “(1) A coroner who proceeds to hold an inquest may by notice require a person to attend at a time and place stated in the notice and –
 - (a) to give evidence at the inquest,
...
- (2) A coroner who is making any investigation to determine whether or not an inquest is necessary, or who proceeds to hold an inquest, may by notice require a person, within such period as the coroner thinks reasonable –
 - (a) to provide evidence to the coroner, about any matters specified in the notice, in the form of a written statement,
...
- (3) A notice under subsection (1) or (2) shall –

- (a) explain the possible consequences, under subsection (6), of not complying with the notice;
 - (b) indicate what the recipient of the notice should do if he wishes to make a claim under subsection (4).
- (4) A claim by a person that—
- (a) he is unable to comply with a notice under this section, or
 - (b) it is not reasonable in all the circumstances to require him to comply with such a notice,
- is to be determined by the coroner, who may revoke or vary the notice on that ground.
- (5) In deciding whether to revoke or vary a notice on the ground mentioned in subsection (4)(b), the coroner shall consider the public interest in the information in question being obtained for the purposes of the inquest, having regard to the likely importance of the information.”

[20] In short, a coroner has power to compel the provision of evidence – including by way of attendance to give oral evidence in the course of inquest proceedings – by a person within Northern Ireland. Other facilities to compel the provision of evidence from those outside the jurisdiction exist but are not relevant for present purposes. Coroners will generally require the attendance of persons to provide evidence at an inquest where they have relevant evidence to give touching upon the circumstances of the death or deaths under investigation. However, a coroner may revoke or vary a requirement to provide evidence on one or both of two grounds set out in section 17A, namely where the individual is unable to comply with the requirement or it is not reasonable in all the circumstances to require him to do so.

[21] Frequently, as here, the issue will be raised in advance of the service of a formal section 17A notice. Such notices are usually issued only where the potential witness is not engaging with the coroner or their staff or there is some other good reason to impose a formal requirement upon the witness to attend.

Consideration

[22] In the present case, it is submitted on Mr Dudley's behalf that his medical condition and consequent impaired cognitive functioning render him *unable* to comply with any requirement to give evidence at the inquest.

[23] Mr McGrory KC accepted that, if Mr Dudley were able to provide a reliable account of the events of 9 July 1972, it is likely that his evidence would be important evidence for the inquest and that there is a public interest in his giving evidence to the inquest. However, it was submitted that it is nonetheless clear on the basis of the report of Dr East that the reliability of any account Mr Dudley could give, given his current level of cognitive functioning, is "so impaired as to render it useless to the Coroner" so that, as a result, there was no public interest in the receipt of this evidence at the inquest. In short, it was submitted that there was and is "no utility" in calling Mr Dudley as a witness.

[24] The conclusions reached by Dr East, after examining Mr Dudley, are quite striking. The two central themes are that he would not be able to understand questions from lawyers (and, indeed, would be unable to give the answers that he wishes); and that, in any event, even if these difficulties could be overcome, Mr Dudley's long-term memory is so grossly affected by his condition that his recall would not be accurate and his answers would therefore be unreliable. In light of this, I accept the submission that it has been established, by expert medical evidence, that Mr Dudley would be unable to comply with a requirement to give evidence in person at this inquest. In the alternative, at the very least it would be unreasonable in all the circumstances to require him to do so.

[25] In addition, this analysis is supported by the following matters. First, Mr Dudley's GP, who has known and treated him for many years, was of a similar opinion. He considers that Mr Dudley would not have the ability to assist the inquest, including because he could not understand the questioning. Second, the concerns are also consistent with those expressed by Mr Dudley's wife to my investigator. Third, they are also consistent with the concerns which my investigator independently formed at the time of taking Mr Dudley's statement, which resulted in Ms Mallon seeking a GP report to provide further information in relation to his capacity and cognitive functioning. Since Dr East has further explained that there are no measures which, in his view, would assist Mr Dudley in being able to participate in proceedings, I see no alternative to acceding to the application on his behalf.

Conclusion

[26] I therefore excuse Mr Dudley from providing oral evidence to this inquest on medical grounds. I will not issue a notice requiring his attendance since it is inevitable that an application under section 17A(4) of the 1959 Act to have the notice revoked would be successful.

[27] I will hear further submissions in due course as to whether, and to what extent, I should take into account the draft statement compiled by Ms Robson following her interview with Mr Dudley and later signed on his behalf by his wife. My provisional view is that, given that the strict rules of evidence do not apply in coronial proceedings, this statement could be admitted as a form of hearsay evidence; but that it should be afforded little (if any) weight, given the circumstances pertaining at the time of the information being provided which formed the basis of the written statement. It is clear that Mr Dudley has previously provided some accounts about 9 July 1972 at a time when he was not experiencing the cognitive difficulties which have arisen from his more recent dementia. It may therefore be possible to take these into account but bearing in mind, when it comes to the weight to be ascribed to them, that they will not be subject to testing by way of examination.