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IN THE CORONER'S COURT IN NORTHERN IRELAND

**IN THE MATTER OF AN INQUEST INTO THE DEATHS OF
LAWRENCE JOSEPH McNALLY, ANTHONY PATRICK DORIS
AND MICHAEL JAMES RYAN**

**FINDINGS OF MR JUSTICE HUMPHREYS
SITTING AS A CORONER**

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Michael James Ryan**

**Mark Robinson KC, John Rafferty & Leona Gillen (instructed by the Crown Solicitor's
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for the FMWs**

Mark McEvoy (instructed by John J Rice & Co, Solicitors) for Soldier AA

Michael Chambers KC (instructed by Edwards & Co, Solicitors) for Witness XX

Glossary

AKM	Avtomat Kalashnikova Modernizirovanny
ASU	Active Service Unit
CID	Criminal Investigation Department
CLF	Commander of Land Forces
CO	Commanding Officer
DPP	Director of Public Prosecutions
FMWs	Former Military Witnesses
FSNI	Forensic Science Northern Ireland
GOC	General Officer Commanding
HMSU	Headquarters Mobile Support Unit
LO	Liaison Officer
MOD	Ministry of Defence
NOK	Next of Kin
OC	Officer Commanding
OTR	On The Run
PII	Public Interest Immunity
PIP	Properly Interested Person
PIRA	Provisional Irish Republican Army
PSNI	Police Service of Northern Ireland
QRF	Quick Reaction Force
RACC	Regional Assistant Chief Constable
RHSB	Regional Head of Special Branch
RUC	Royal Ulster Constabulary
SB	Special Branch
SMU	Specialist Military Unit
SOCO	Scenes of Crime Officer
TCG	Tasking and Co-ordination Group
UDR	Ulster Defence Regiment

Coroner's Rulings

Public Interest Immunity	[2022] NICoroner 4
Engagement with CSNI and witness evidence	[2022] NICoroner 5
Application by XX to revoke s17A Notice	[2022] NICoroner 6
Anonymity and Screening of police witnesses	[2022] NICoroner 7
Livelihood, anonymity and screening of FMWs	[2022] NICoroner 8
Admission of Similar Fact Evidence	[2022] NICoroner 10
Disclosure and Privilege	[2023] NICoroner 8
Soldier F Special Measures	[2023] NICoroner 9
Soldier F Medical Excusal	[2023] NICoroner 10

<u>Chapters</u>	<u>Para Numbers</u>
[1] Introduction and Scope	[1] - [3]
[2] The Legal Principles	[4] - [20]
[3] The Security Forces in Northern Ireland in 1991	[21] - [29]
[4] Training and the Yellow Card	[30] - [39]
[5] The Scene	[40] - [45]
[6] The Deceased	[46] - [49]
[7] The Intelligence and Planning of the Operation	[50] - [83]
[8] The Events of 31 May 1991	[84] - [97]
[9] The Events of 3 June 1991	[98] - [162]
[10] The Aftermath	[163] - [198]
[11] The Destruction of the Video and Other Evidence	[199] - [215]
[12] The RUC Investigation	[216] - [236]
[13] Publications and Media Sources	[237] - [261]
[14] Expert Evidence (1) - Ballistics	[262] - [272]
[15] Expert Evidence (2) - Pathology	[273] - [279]
[16] Findings of Fact	[280] - [290]
[17] Conclusions (1) - The Use of Lethal Force	[291] - [315]
[18] Conclusions (2) - The Planning of the Operation	[316] - [329]
[19] Verdict	[330] - [339]

Chapter 1

Introduction and Scope

[1] This inquest arises out of and concerns the deaths of Lawrence Joseph McNally, Anthony Patrick Doris and Michael James Ryan which occurred on 3 June 1991 at Coagh, County Tyrone. No inquest has previously been held into these deaths.

[2] Each of the deceased met their death following engagement with members of a Specialist Military Unit ('SMU'), a unit within the British Army. All the Properly Interested Parties ('PIPs'), including the Ministry of Defence ('MOD') and the Former Military Witnesses ('FMWs') agreed that the procedural requirements of article 2 of the European Convention on Human Rights ('ECHR') applied to the inquest.

[3] The scope of the inquest as agreed by all PIPs was finalised in writing as follows:

- (i) The purpose of an inquest is to allow the coroner to answer the statutory questions as outlined in rules 15 and 22(1) of Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 ('the 1963 Rules'). This requires the coroner to ascertain:
 - (1) Who is the deceased?
 - (2) How, when and where did the deceased come by their death?
- (ii) The deceased have each been identified by dental records as Lawrence Joseph McNally, Anthony Patrick Doris and Michael James Ryan respectively and there is no dispute about this identification. The inquest will therefore focus on identifying how, when and where the deceased came by their deaths.
- (iii) The purpose of an inquest is not to attribute criminal or civil liability to any individual or body.
- (iv) In relation to the question of how the deceased came by their deaths, the Coroner will examine the military operation which culminated in the deaths with reference in particular to the following matters:
 - (a) The purpose of the operation;
 - (b) The planning and control of the operation on the part of the relevant authorities including the management and deployment of intelligence available to those authorities at the relevant time;
 - (c) The actions of those involved in the operation, at all stages of the operation;

- (d) The state of knowledge of those involved, at all stages of the operation;
 - (e) The training and experience of those involved;
 - (f) The nature and degree of force used.
- (v) The inquest will consider specifically whether the operation was planned and controlled in such a way as to minimise to the greatest extent possible the need for recourse to lethal force and will consider whether the actual use of force was justified in the circumstances.
- (vi) In addressing the above matters the inquest under article 2 ECHR will also examine, insofar as is necessary and relevant, such evidence as exists concerning:
- (a) The circumstances in which the deceased came to be at the precise location of their death at the relevant time;
 - (b) The actions of and the threat posed by the deceased during this incident;
 - (c) The actions of the soldiers involved in the planning, control and carrying out of this incident in other similar operations;
 - (d) The actions of the members of the RUC involved in the planning, control and carrying out of this incident;
 - (e) Insofar as relevant to the issues outlined above, the RUC investigation.

Chapter 2

The Legal Principles

[4] Article 2 ECHR states:

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;

- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

[5] Article 2 ECHR imposes three discrete duties on states:

- (i) A positive duty to protect life;
- (ii) A negative duty to refrain from taking life; and
- (iii) An investigative duty to inquire into the circumstances of death which is enhanced in certain circumstances, some of which arise automatically and others where there is reason to believe there may have been a breach of the state’s substantive article 2 obligations.

[6] In cases involving the use of lethal force by state agents, where article 2 is in play, Lord Bingham held in *R (Middleton) -v- West Somerset Coroner* [2004] 2 AC 182:

“Only one change is in our opinion needed: to interpret "how"... in the broader sense previously rejected, namely as meaning not simply "by what means" but "by what means and in what circumstances.” [para 35]

[7] Colton J stated in *Re Deery* [2017] NICoroner 1:

“The abundance of case law on this point makes it clear that in considering “the broad circumstances in which the death occurred” an inquest must be capable of leading to a determination of whether the use of lethal force was justified. This should also lead to the further consideration of whether the use of such force and the operation in which it was used were regulated, planned or controlled in such a way as to minimise to the greatest extent possible any risk to life.” [para 9]

[8] In *R (Smith) v Oxfordshire Assistant Deputy Coroner* [2011] 1 AC 1, Lord Phillips set out the requirements of an article 2 ECHR compliant investigation:

- (i) It must have a sufficient element of public scrutiny of the investigation or its results.
- (ii) It must be conducted by a tribunal that is independent of the state agents who may bear some responsibility for the death.

- (iii) The relatives of the deceased must be able to play an appropriate part in it.
- (iv) It must be prompt and effective. [para 64]

[9] In a case involving the use of lethal force by the state, it is for the state to justify the use of force to the civil standard, namely on the balance of probabilities – see *Re Jordan* [2016] NICoroner 1 per Horner J:

“However, the ECtHR has made it clear that in circumstances such as the ones presently under consideration the onus of proving that Article 2 has been complied with lies on the State. In *Hugh Jordan v UK* Appl No 24746/94 the court said at paragraph [103]:

“In the light of the importance of the protection afforded by Article 2, the court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of the State agents but also all the surrounding circumstances where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities ..., strong presumptions of fact will arise in respect of injuries and death which occur. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.” [para 58]

[10] In the leading case of *McCann v UK* [1995] ECHR 31 the Grand Chamber considered whether there was a violation of article 2 in relation to the killings of three IRA members engaged in a plan to explode a bomb in Gibraltar. The court recognised:

“In carrying out its examination under Article 2 (art. 2) of the Convention, the court must bear in mind that the information that the United Kingdom authorities received that there would be a terrorist attack in Gibraltar presented them with a fundamental dilemma. On the one hand, they were required to have regard to their duty to protect the lives of the people in Gibraltar including their own military personnel and, on the other, to have minimum resort to the use of lethal force against those suspected of posing this threat in the light of the obligations flowing from both domestic and international law.” [para 192]

“... in determining whether the force used was compatible with Article 2 (art. 2), the court must carefully scrutinise, as noted above, not only whether the force used by the soldiers was strictly proportionate to the aim of protecting

persons against unlawful violence but also whether the anti-terrorist operation was planned and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal force.” [para 194]

“[T]he use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others.” [para 244]

[11] In the event, the court held that the decision by the soldiers to open fire and use lethal force was justified on the basis of an honest belief that it was necessary in order to prevent loss of life. However, it found that there was a breach of the article 2 obligation as a result of the planning and control of the military operation.

[12] In *Bubbins v UK* [2005] 41 EHRR 24 the ECHR said:

“In carrying out its assessment of the planning and control phase of the operation from the standpoint of Art.2 of the Convention, the Court must have particular regard to the context in which the incident occurred as well as the way in which the situation developed. Its sole concern must be to evaluate whether in the circumstances planning control of the operation outside Michael Fitzgerald’s flat showed that the authorities had taken appropriate care to ensure that any risk to his life had been minimised ...” [para 141]

[13] The law on self defence is uncontroversial and is set out in *R v Beckford* [1988] AC 130:

- (i) Did the person who fired the shot that caused the death do so with the honest belief that he needed to use force to defend himself or others from unlawful violence?
- (ii) Was the force used reasonable for the purpose of defending himself or others from unlawful violence, having regard to the circumstances which he believed existed at the time?

[14] Section 3(1) of the Criminal Law Act (Northern Ireland) 1967, which was in force in 1991, provided as follows:

“A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.”

[15] In *Da Silva v UK* [2016] ECHR 314, a decision arising out of the killing of Jean Charles de Menezes by the Metropolitan Police in 2005, the applicant alleged that the failure to prosecute any of those responsible was a breach of the procedural aspect of article 2. In particular, it was argued that the authorities ought to have been able to consider whether the mistaken belief of those who fired shots that the use of force was necessary was itself reasonable. The Grand Chamber of the European Court of Human Rights stated:

“In a number of cases the Court has expressly stated that, as it is detached from the events in issue, it cannot substitute its own assessment of the situation for that of an officer who was required to react in the heat of the moment to avert an honestly perceived danger to his life or the lives of others; rather, it must consider the events from the viewpoint of the person(s) acting in self-defence at the time of those events ... Consequently, in those Article 2 cases in which the Court specifically addressed the question of whether a belief was perceived, for good reasons, to be valid at the time, it did not adopt the standpoint of a detached observer; instead, it attempted to put itself into the position of the person who used lethal force, both in determining whether that person had the requisite belief and in assessing the necessity of the degree of force used.” [para 245]

“It can therefore be elicited from the court’s case-law that in applying the *McCann and Others* test the principal question to be addressed is whether the person had an honest and genuine belief that the use of force was necessary. In addressing this question, the Court will have to consider whether the belief was subjectively reasonable, having full regard to the circumstances that pertained at the relevant time. If the belief was not subjectively reasonable (that is, it was not based on subjective good reasons), it is likely that the Court would have difficulty accepting that it was honestly and genuinely held.” [para 248]

[16] Rule 16 of the 1963 Rules provides:

“Neither the coroner nor the jury shall express any opinion on questions of criminal or civil liability or on any matters other than those referred to in the last foregoing Rule.”

[17] However, this restriction does not prevent findings of fact that, by inference, point strongly to such liability. In *Re Jordan* [2014] NIQB 11 Stephens J adopted the analysis of Lord Bingham in *Jordan v Lord Chancellor* [2007] UKHL 14:

- “(a) A jury in Northern Ireland may not return a verdict of unlawful or lawful killing: see Rule 16 of the Coroner’s (Practice and Procedure) Rules (Northern Ireland) 1963. This is in contrast to the position in England and Wales where such a verdict is permissible provided no person is named.
- (b) A jury may find facts, either as primary facts or as inferences from primary facts, directly relevant to the cause of death which may point very strongly towards a conclusion that criminal liability exists or does not exist.”

[18] In any inquest concerning the infliction of lethal force by state actors there are therefore three distinct questions arising:

- (i) Did the person opening fire have an honest and genuine belief that it was necessary to use lethal force?
- (ii) Was the force used reasonable for the purpose of defending himself or others from unlawful violence, having regard to the circumstances which he believed existed at the time?
- (iii) Was the military operation planned and controlled so as to minimise, to the greatest extent possible, the need to have recourse to lethal force?

[19] In a number of legacy inquests, including *Jordan* and *Ballymurphy*, the coroner has addressed the difficulties presented by the passage of time and its impact on the quality of the evidence available to the finder of fact.

[20] In this inquest, I have generally found that the recollection of witnesses has been good, aided no doubt by the interview notes which were made contemporaneously, and the photographs taken in the aftermath. Inevitably, some witnesses were uncertain around details and, in any event, identifying the precise order of events in fast moving scenarios is often problematic. I have borne in mind the fact that these matters occurred over 30 years ago when assessing the credibility of witnesses in areas of disputed fact, but I have not found it to be an impossible task to arrive at the answers to the questions which this inquest is obliged to consider.

Chapter 3

The Security Forces in Northern Ireland in 1991

[21] In order to understand the background to the events leading up to the deaths at Coagh on 3 June 1991, it was necessary for the inquest to consider the threat posed by terrorist organisations at that time and how this was addressed by the security forces.

[22] Whilst there had been some progress through political talks, the armed conflict in Northern Ireland continued unabated in 1991. In the late 1980s and early 1990s there had been a surge of activity involving the East Tyrone Brigade of PIRA. In May 1987 eight members lost their lives at Loughgall when SMU soldiers opened fire during an attack at the police station. In August 1988 eight soldiers were killed by PIRA at Ballygawley, with those allegedly responsible killed just days later by SMU soldiers at Drumnakilly. On 7 March 1989 Leslie Dallas, Austin Nelson and Ernest Rankin were shot dead by East Tyrone PIRA at garage premises in Coagh. Later that year, in November, Liam Ryan was shot dead by loyalists at his bar in Ardboe near Coagh. In October 1990 two PIRA members were shot dead by the SMU near Loughgall. A former member of the UDR, Derek Ferguson, was murdered by East Tyrone PIRA on 9 April 1991 in Coagh. An attack launched by PIRA at Glenanne Army Barracks on 31 May 1991 left three soldiers dead. This bloody recent history provides the backdrop to the events at Coagh.

[23] From the mid-1970s a policy had been adopted of 'policing primacy' whereby the RUC played the lead role in security operations, with the ability to call for army support when necessary. In operational terms, the RUC was divided into three regions - Belfast, North and South - with each having a corresponding Special Branch ('SB') region. The role of SB was to collect, assess and exploit intelligence in anti-terrorist operations. Each of the SB regions was headed by a Detective Chief Superintendent known as the Regional Head of Special Branch ('RHSB'). The South region was based at Mahon Road, Portadown and the RHSB was the late Frank Murray.

[24] Each RHSB had a Tasking and Co-ordination Group ('TCG') to help manage the process of exploiting intelligence. The TCG was made up of senior police and military personnel but the deployment or otherwise of the military to aid the civil power was a matter for the Detective Superintendent and Detective Chief Inspector in the TCG. TCG South was also based at Mahon Road.

[25] Within the RUC was a specially trained group of officers, the Headquarters Mobile Support Unit ('HMSU'), who were able to take part in rapid reaction and anti terrorist operations.

[26] HMSU was often the lead unit used in TCG operations but the option was also open of SMU involvement. If the SMU were involved, then HMSU would provide support and also act as a point of liaison. If arrests were made by the SMU, those detained would be handed over to HMSU.

[27] If intelligence became available which TCG determined could be exploited, it would discuss potential operations with Liaison Officers (LO's) within both the HMSU and SMU. These units would then put forward proposals to the TCG which could either be accepted or rejected. It was the units therefore rather than the TCG which would be responsible for the actual tactics to be employed on the ground. It was also open to a unit to decline a task if it was perceived that it could not be carried out effectively or safely.

[28] If a proposal were accepted, TCG would seek permission from RHSB and the Regional Assistant Chief Constable ('RACC') to carry out the operation. When the relevant permissions were in place, a written Tasking Sheet would issue containing the details of the operation including its name, the location, aim and objectives, time frame, the units involved and the necessary intelligence. If the operation engaged the SMU, then internal permissions also had to be obtained.

[29] The operations themselves were run from the TCG Operations Room at Mahon Road but the tactics and activities on the ground remained a matter for the unit carrying out the operation.

Chapter 4

Training and the Yellow Card

[30] All the FMWs gave evidence that they had received training prior to deployment in Northern Ireland, including training on the "Yellow Card", the document setting out the rules of engagement that soldiers were obliged to comply with.

[31] The Yellow Card in force at the time of the Coagh incident stated as follows:

"INSTRUCTIONS FOR OPENING FIRE IN NORTHERN IRELAND

General Rules

1. In all situations you are to use only the minimum force necessary. FIREARMS MUST ONLY BE USED AS A LAST RESORT.
2. Your weapon must always be made safe that is NO live round is to be carried in the breech and in the case of

automatic weapons the working parts are to be forward, unless you are ordered to carry a live round in the breech or you are about to fire.

Challenging

3. A challenge **MUST** be given before opening fire unless:
 - a. To do so would increase the risk of death or grave injury to you or any other person
 - b. You or others in the immediate vicinity are being engaged by terrorists.
4. You are to challenge by shouting:

“ARMY: STOP OR I FIRE” or words to that effect.

Opening Fire

5. You may only open fire against a person:
 - a. If he* is committing or about to commit an act **LIKELY TO ENDANGER LIFE AND THERE IS NO OTHER WAY TO PREVENT THE DANGER**. The following are some examples of acts where life could be endangered, dependent always upon the circumstances:
 - (1) Firing or being about to fire a weapon;
 - (2) Planting, detonating or throwing an explosive device (including a petrol bomb)
 - (3) Deliberately driving a vehicle at a person and there is no other way of stopping him*
 - b. If you know that he* has just killed or injured any person by such means and he* does not surrender if challenged and **THERE IS NO OTHER WAY TO MAKE AN ARREST**

*“She” can be read instead of “he” if applicable.

6. If you have to open fire you should:

- a. Fire only aimed shots.
- b. Fire no more rounds than are necessary.
- c. Take all reasonable precautions not to injure anyone other than your target."

[32] The Yellow Card was not a statement of the law in Northern Ireland but was a relevant matter to take into account in determining whether, on any given occasion, the actions of soldiers engaging in lethal force were justified.

[33] It is noteworthy that in *Re Bradley* [2019] NICoroner 15, HHJ Kinney recorded the position in Derry in July 1972:

"An operational order for Operation Carcan (the aspect of Operation Motorman being carried out in Derry) was issued and signed by a Major Mullins. Under the heading "Use of Force" the order provided; (a) IRA armed attacks and other forms of violence are to be defeated by resolute armed action in accordance with the rules of engagement contained in the Yellow Card (revised November 1971). Soldiers may also fire without warning under paragraph 12 of the Yellow Card. (b)... (c) Suppressive fire is not to be used. (d) ... (e) Minimum force must be used at all times to achieve the immediate aim."

[34] Soldier T gave evidence in relation to the nature of training provided to SMU soldiers selected for service in Northern Ireland, having been in command of that training for the reactive sub-unit between 1994 and 1996. Whilst this post-dated the events at Coagh, his evidence was that the training provided in 1991 was similar.

[35] To be selected for SMU service in Northern Ireland, a soldier had to be experienced and mature enough to deal with the particularly challenging environment. Training would have included briefings on Northern Ireland, specialist driving skills, helicopter operations, range packages, vehicle drills, patrolling, photography and search skills. It also extended to intelligence gathering and the preservation of evidence. SMU soldiers also received extensive firearms training. Scenario-based role play was used to ensure operational performance criteria were met.

[36] The SMU training for permanent deployment in Northern Ireland lasted some three months and covered all the types of operation which might be expected to be undertaken. There was also a reinforcement group, based in Great Britain, which underwent three weeks' training, albeit many of these soldiers would already have had experience in Northern Ireland. Specific training was provided in relation to the Yellow Card and this would have been reinforced in every operation briefing

[37] One of the tactics addressed by the training was the use of suppressing fire on a vehicle from which there is an identified threat. The purpose of such fire is to prevent the occupants from firing and killing soldiers and others.

[38] Soldier T gave evidence about the use of hard arrest tactics. He stated:

“Soldiers conducting a hard arrest are trained to use extreme voice and aggressive action to affect a hard arrest. You need surprise and numbers of SMU soldiers at the hard arrest point extremely quickly to secure the terrorists and their weapons. The further the soldiers are away from the terrorists the more difficult the hard arrest operation will be.”

[39] Soldier M also gave evidence about Northern Ireland training, and he stressed that much scenario training focussed on how to carry out hard arrest operations. The purpose of this was to enable SMU soldiers to make split-second decisions in order to safely make arrests and to protect lives, whilst operating within the law.

Chapter 5

The Scene

[40] Coagh is a village in Co Tyrone, situated some five miles east of Cookstown and five miles west of the shores of Lough Neagh. As one approaches Coagh from the north, a bridge crosses the Ballinderry River which forms the border between counties Derry/Londonderry and Tyrone. On crossing the bridge, one comes to Hanover Square which leads to a junction with Urbal Road and from then onto Main Street.

[41] The first property on the right hand side, when crossing the bridge from this direction, was the Hanover House Hotel, now closed but operational at the time of the subject events, which is 22-24 Hanover Square. Just across the road from the hotel is a public toilet block with a parking area to the front and side. To the rear and side of the public toilets is a wall, over which leads down to the river. The property next to the toilets is number 27 Hanover Square and the numbers on both sides ascend up to the Urbal Road junction.

[42] If one travels into the village from the bridge and turns right onto Urbal Road, Coagh Primary School is located a short distance away.

[43] The inquest had the benefit of expert evidence from Brian Murphy, Consulting Engineer, who inspected the locus, provided reports, took photographs and drew scale plans. The layout of the village has changed somewhat over the course of over 30 years, but the fundamental features remain. The bridge is at low level and the road

rises towards the centre of Coagh from the car park at the public toilets, at a gradient of some 5.65%.

[44] The distance from the rear of the hotel to the front is measured at some 50 metres. The width of the vehicular access to the car park at the toilets was some 10 metres and this was located 12.2 metres across the road from the hotel. The distance from the parapet of the bridge to the car park was 17 metres, or 58 metres from the centre of the bridge.

[45] A person located on the first floor of the hotel above the central door would have had a clear view across the road to the car park at the public toilets and a somewhat restricted view to the left back across the bridge.

Chapter 6

The Deceased

[46] Lawrence Joseph McNally was born on 20 November 1951 and lived in Tyholland, Co Monaghan. He never married but lived with his long term partner, Dympna McNally, and had a daughter, Ciara, aged seven at the time of his death. He was aged 39 when he died. In 1973 he was convicted of explosives and firearms offences and sentenced to seven years' imprisonment.

[47] Anthony Patrick ('Tony') Doris was born on 4 January 1969 and was aged 22 at the time of his death. He lived at 45 Meenagh Park, Coalisland, Co Tyrone and was in a relationship with Brigid Quinn. They had a daughter aged just three months at the time of his death. He had no criminal record of any significance.

[48] Michael James Ryan was known as Pete and was born on 6 July 1955. He lived at 91 Glaslough Road, Monaghan and was married. On 23 December 1981 he was convicted at Dublin Criminal Court after a trial of offences relating to an escape from the Crumlin Road Prison, Belfast on 10 June 1981. The offences were escape from lawful custody, shooting with intent to prevent lawful apprehension, production and use of firearms in the course of an escape and possession of firearms with intent to endanger life. He was sentenced to 10 years' imprisonment. He was released from prison on 22 June 1989.

[49] All three deceased were members of the East Tyrone Brigade of PIRA and were on active service in Coagh on 3 June 1991.

Chapter 7

The Intelligence and Planning of the Operation

[50] SB received intelligence to the effect that East Tyrone PIRA intended to murder a former member of the UDR in Coagh village. The TCG approached the surveillance

sub-unit of the SMU, headed by Soldier X, in order to attempt to develop this intelligence.

[51] In the weeks prior to the events which unfolded on 3 June 1991, Soldier AB was tasked to find out more about the potential target and his movements. It was identified that this individual parked his private vehicle in the car park at the public toilets in Coagh each morning around 7.30 am. Information relating to the routine and the vehicle was fed back to the TCG.

[52] In the days before, specific information was received that the attack would be mounted during the weekend 31 May to 3 June 1991. On 29 May 1991 the military sub-unit of the SMU, led by Soldier M, was briefed for the first time by the TCG. It was he who assumed responsibility for the planning of the operation.

[53] The intelligence did not identify the potential assailants, nor did it specify the manner in which the attack was to be carried out.

[54] As a result of the intelligence, a TCG operation was mounted for the morning of Friday 31 May 1991. No PIRA unit appeared that morning and the operation was aborted.

[55] Subsequently, intelligence was received that the attack on the former UDR member would take place on Monday 3 June 1991. A further TCG operation was therefore put in place for that date.

[56] The inquest heard evidence from several key witnesses who were engaged in the process of the exploitation of the intelligence received and the planning of the operation which ultimately took place on 3 June 1991.

[57] P19 was a Detective Inspector in the TCG South in 1991. He recalled that intelligence indicated East Tyrone PIRA would carry out an attack in Coagh against an identified former UDR member. This came to the attention of the TCG some days before the attack was planned. The intelligence itself was limited in the sense that the identities of those who were to carry out the attack were not known nor was the location from where they would come or the means of transport. The type of weapons to be used or the mode of attack were also pieces of information not contained in the intelligence received.

[58] P19 did accept that it was likely to have been considered in advance that Ryan and McNally may be involved in any attack as they were on the run (OTR) in Monaghan and may be able to carry out such activity and flee back across the border. It was known that both individuals had been involved in recent attacks. Had the actual identities of the attackers been known, SB would have provided information and photographs to those who were to carry out the operation.

[59] Above P19 in rank were a Chief Inspector and Superintendent who were likely to have had conversations with the SMU LO to which P19 was not privy.

[60] It was P19's evidence that the purpose of any operation was to protect life by preventing the attack occurring and to protect the public generally by arresting the assailants. One feature of any plan would be to protect the origin of the information received by SB.

[61] A number of options were open to those who sought to respond to the intelligence received. One was to engage in 'policing out', ie to employ a heavy police and/or army presence in the area which may cause the intended attackers to decide not to proceed with their plan. This, of course, would achieve the aim of the immediate protection of the life of the target but would not result in the arrest of the assailants and may only cause the attack to be postponed. The risk of such postponement might be that no intelligence would be received in relation to a future attack.

[62] Another option was the 'pre-emptive lift' whereby suspects would be arrested and questioned over the course of a number of days in an effort to prevent activity from occurring. This was of dubious legality and was of little assistance if the identities of the individuals likely to be involved in the attack were not known.

[63] A third option was to plan for a 'hard arrest', which would entail arresting terrorist suspects caught in the act of committing serious crimes. This obviously carried a risk of the use of force, including lethal force.

[64] At that time the members of TCG were well aware of the weapons capability of East Tyrone PIRA. They were in possession of fully automatic AKM 7.62 mm assault rifles and General Purpose Machine Guns, both capable of firing ten rounds per second. Rounds fired from AKM rifles would tear through unarmoured vehicles. It was evident that this was beyond the power or capability available to any RUC unit, including the HMSU. It was for this reason that a decision was made to involve the SMU in the operation in question.

[65] In May 1991 Soldier N was the Officer Commanding ('OC') of an SMU which had a presence in Northern Ireland. He reported to a Commanding Officer ('CO') who was responsible for the long term planning and policy of the SMU.

[66] On a daily basis Soldier N met and briefed the Commander of Land Forces ('CLF') on SMU operations and once a week formally briefed the General Officer Commanding ('GOC') in the company of the CO.

[67] The SMU had several sub-units, including:

- (i) Covert surveillance;
- (ii) Reactive - arrest and detention;

- (iii) Air support; and
- (iv) Technical support.

[68] Each sub-unit had its own OC and, depending on which was leading the operation, that particular OC would have tactical and operational control over the operation.

[69] Soldier N did not therefore plan or control the operation at Coagh but was informed by the OCs of the sub-units involved and assisted in providing resources. In this case, a flatbed Bedford lorry was required for the planned operation, and this was sourced and provided by Soldier N.

[70] Soldier N left Northern Ireland on 2 June 1991, the day before the shootings at Coagh occurred.

[71] Soldier M was the OC of the reactive sub-unit with responsibility for arrest and detention and took charge of the planning and control of this particular operation. Soldier X held the equivalent position in relation to the surveillance sub-unit, which also played a role at Coagh.

[72] Reactive operations often involved the hard arrest option – the interception and detention of terrorist suspects as they were in the course of committing serious crimes.

[73] On the morning of 29 May 1991 Soldier M received a call to attend an urgent meeting at TCG South in Portadown. He attended this meeting with Soldier F, and they met with senior officers including the RHSB. He was made aware of the intelligence information, namely that an unknown group of East Tyrone PIRA intended to kill a named individual in the car park opposite the Hanover House Hotel in Coagh at around 7:30am on Friday 31 May 1991. The proposed route to be taken by the assailants or their method of attack were not identified.

[74] The TCG tasked the SMU sub-unit to mount a hard arrest operation at this location. It was always recognised that such an operation may involve the use of lethal force but, in Soldier M's analysis, this was dependent on the actions of the terrorists concerned.

[75] Soldier M was conscious of the limitations of the intelligence. In particular, there was no knowledge as to whether the PIRA ASU would arrive on foot or in a vehicle; what weapons they would have; whether there would be a getaway vehicle; whether there would be a drive-by shooting or whether they would be in disguise.

[76] The initial planning for the operation commenced with the instruction of Soldier F from the reactive sub-unit to conduct reconnaissance on the evening of 29 May in Coagh. He identified the car park adjacent to the public toilet block and opposite the hotel as the proposed location of the attack. Soldier F's concern was to identify a suitable location where a reaction, or arrest, group of soldiers could conceal

themselves. The toilet block was rejected as a 'dicker', a scout engaged by PIRA, could easily locate a group concealed there and blow the cover of the operation. Soldier F identified that finding a suitable location for the arrest group was a difficult exercise. He settled on the rear of the hotel as, in his words:

"there simply was nowhere nearer to put them ... This meant a possible time gap for the arrest group to react and get to the car park leaving the target substitute exposed."

[77] As a result of this time gap and exposure, it was necessary to put a cover group in place. A decision was made to place such a group in an improvised lorry outside the hotel.

[78] On the basis of the information received, Soldier M formulated a plan as follows:

- (i) Two Observation Posts (OPs) would be deployed to provide observation of the approach road in either direction;
- (ii) Another OP would be deployed in the hotel from where the target could be observed;
- (iii) A number of cut-offs would be deployed around the car park who could challenge anyone arriving or leaving the scene;
- (iv) A reaction group would be in place to effect the arrests. They would be located at the rear of the hotel and as soon as the order was given they would move in on foot and in uniform;
- (v) A cover group would provide some immediate protection for the target in the brief period between the identification of the suspects and the arrival of the reaction group. This group of soldiers were not tasked with arrest but with opening fire in the event of the need for the use of force;
- (vi) The cover group would be located in a flatbed truck disguised as a builders' lorry. The vehicle was modified internally so four soldiers could be concealed within its body. It would be driven to its location shortly before the likely time of the attack;
- (vii) The intended target would be substituted by a soldier dressed to resemble him. He would arrive in the target's car, a gold Austin Maestro, and park in the car park by 7.30 am;
- (viii) A uniformed military Quick Reaction Force (QRF) would be available nearby with access to helicopters to respond as necessary;

(ix) Uniformed HMSU would be located nearby to provide assistance as required.

[79] Soldier M recalled giving specific directions that both the reaction group and the cut-offs were to be in uniform in order that they would be readily identified as members of the security forces once they deployed in plain sight.

[80] This plan was concluded on Thursday 30 May and briefings took place late into that evening, including within the SMU and with the TCG. The CLF was briefed personally by Soldier M and the Chief Constable of the RUC by RHSB. The plan was duly authorised by both police and military.

[81] Soldier N expressed his complete confidence in Soldier M and he was satisfied, from the briefings received, that the SMU possessed the capability both of protecting the life of the substitute target and effecting arrests.

[82] Command of the operation remained with Soldier M who was based in the Operations Room at TCG South in Portadown whilst Soldier F was the team commander and leader on the ground.

[83] Soldier M was questioned by counsel for the NOK in relation to the decision to place the reaction group behind the hotel. He stated that the reaction group was able to arrive on the scene within a few seconds. However, he was challenged on the basis that if the PIRA ASU arrived by car, at speed, the reaction group would not be able to travel the 50 metres to the scene in order to effect arrests. Instead, it was suggested, such a scenario would inevitably mean the cover group having to engage in the use of force. Soldier M expressed the view that this was an exercise in hindsight and that, in fact, the PIRA ASU could have arrived on foot or in a slower moving vehicle. He also asserted that the plan had been approved at all levels of the police and military chains of command and that it was the members of PIRA and their actions which dictated the outcome of the operation.

Chapter 8

The Events of 31 May 1991

[84] On the evening of 30 May Soldier M briefed all the military personnel who were to take part in the operation the following morning. He did this with the assistance of notes, sketches, plans and photographs, none of which were available to the inquest.

[85] Soldier M gave evidence that he instructed each of the groups as to their respective roles and the purpose of the operation, namely to arrest those who intended to kill the former UDR member.

[86] The reaction group and cut-offs deployed during the hours of darkness, prior to 4 am, and the cover group reached its location in the lorry, driven by Soldier K, outside the hotel around 7 am.

[87] Soldier L was a member of the SMU and he volunteered for the role of the substitute target. In order to look more like the actual intended target, he dyed his hair and wore padding. On the evening of 30 May he received the gold Maestro, the target's car, and familiarised himself with it. Attempts to fit armour to the vehicle were unsuccessful. He recalls that there would have been a briefing in relation to the operation and that he was aware of the various roles of the reaction group, the cover group and the cut-offs. Soldier L insisted on being armed and took a Browning pistol with him.

[88] Soldier L drove the vehicle from the SMU base to Coagh, arriving around 7:15am on 31 May. He parked in the car park with the rear of the vehicle towards the toilet block and the front facing the road. He was wearing heavy and bulky body armour, so much so that he was unable to exit the vehicle. As a result, he remained seated inside the vehicle waiting for the assailants to arrive.

[89] He observed a man arriving from the centre of Coagh village, which was to his left, who made his way to the bridge. He sat there and behaved suspiciously. Soldier L thought at the time that he may be a PIRA 'dicker.' Since he did not appear to be armed, and posed no threat, the reaction group did not deploy.

[90] Soldier H was a member of the surveillance sub-unit and he was assigned the role at the OP in the hotel. Soldier X selected him for this on the basis of his particular ability to recognise faces. He was in place on Thursday night together with Soldier Y. They had with them a radio, binoculars, a shooting stick, two assault rifles, ammunition and a video camera. He made it clear that it was standard procedure for the surveillance sub-unit to video record operations. They occupied a bedroom above the central door of the hotel and had a clear view of the car park.

[91] Around 7:30am, Soldier H observed the man arriving from the direction of Coagh village and acting strangely. He formed the view that he was carrying out a 'recce' of the area and was probably a PIRA dicker. Soldier Y used the video camera to record his movements.

[92] After a period of time had elapsed, and no one else arrived, the operation was aborted around 8am and the soldiers withdrawn. Soldier L drove the Maestro back to base.

[93] A review was carried out of the operation and the view was expressed by the RHSB in TCG that the attack had been aborted because the terrorist had become aware of the presence of the Bedford lorry and had been scared off. Soldier M disagreed on the basis of the accounts given to him by soldiers at the scene who said the dicker had paid little or no attention to the lorry.

[94] The video which had been taken by Soldier Y then emerged and this was taken to the TCG. It showed that the dicker had paid no attention to the lorry, and this was accepted by the members of the TCG.

[95] Over the course of the weekend, Soldier M attended a further meeting at TCG during which the fresh intelligence was discussed which indicated the attack would take place on Monday 3 June. Save for that, the intelligence did not contain any additional information.

[96] A decision was made to proceed with the military operation on 3 June and reinforcements were called who arrived from Great Britain on 2 June. Soldier E assumed the role of ground commander from Soldier F. He gave evidence that he conducted his own recce and effectively the plan was his, including the decision to place the arrest group behind the hotel. This bizarre claim of responsibility rather ignored the fact that the plan was to proceed in the same manner as the previous Friday.

[97] Soldier M stated that a specific instruction was given that no video recordings of the operation on 3 June were to be made. It is noteworthy that Soldier X, the OC of the surveillance sub-unit, recalled no such instruction, nor did Soldier H or V who would have been directly impacted by such an order. Equally, such an order would have been counterintuitive as the evidence made it clear that the video which was taken on 31 May was of significant value in persuading the members of the TCG to continue with the operation as planned.

Chapter 9

The Events of 3 June 1991

[98] Soldiers were again deployed in Coagh in the early hours of 3 June. The arrest or reaction group was made up of Soldiers E, F, G, I, J and K. Soldier L was again the target substitute and Soldiers H and Y located at the OP in the hotel. Soldiers O, P, Q, S and AC acted as cut-offs. The last soldiers to be deployed were A, B, C and D who made up the cover group in the Bedford lorry. They were again driven to the locus by Soldier K who was in plain clothes before changing into uniform and joining the reaction group at the rear of the hotel.

[99] On this occasion, in order to minimise the possibility that the lorry would attract the attention of the attackers, it was driven to its position close to 7:30am and just before the arrival of Soldier L.

[100] HMSU officers were deployed to form a cordon around the village. P1, P2, P5 and P13 before the bridge in a laneway. P6, P14 and P15 were also located close to the bridge. Three cars were in position on Urbal Road near the primary school - P4, P12 and P17; P3, P8, P9 and P10, P7, P16 and P18.

[101] On 2 June 1991 at around 10 to midnight four masked men arrived at the home of William Donnelly in the village of Loup, near Moneymore (just under 5 miles from Coagh). Mr and Mrs Donnelly were in bed and their daughter answered the door. One of the males asked for petrol for his vehicle, then the masked men, two armed with rifles, pushed past her into the house. The family was held captive until around 7:30am when the men left taking the family's red Vauxhall Cavalier, registration number IJI 3533, with them. The Donnellys were warned not to report the matter until an hour later. The family reported the incident at around 8.40am.

[102] Vincent McKenna gave evidence that he was a member of PIRA based in Monaghan in 1991. He claimed to have known all three of the deceased and that they were all members of the same Active Service Unit. He asserted that he had some knowledge of the Coagh operation and that, in particular, Lawrence McNally's wife was to drive McNally and Ryan to meet Doris. Dympna McNally, who was not married to Lawrence McNally but was his long term partner, gave evidence that this was completely incorrect. She did not drive McNally and Ryan over the border to meet Doris. Having heard both witnesses, I am quite satisfied that Ms McNally was telling the truth. I formed an adverse view of the credibility of Mr McKenna, an admitted member of an illegal organisation who denied ever having taken part in any 'active service' and who was convicted in 2000 of serious sexual abuse of his daughter.

[103] The red Cavalier was driven from the Donnelly family home along the Rogully Road, Ballygillan Road and Ruskey Road, to Bridgend Road and from there across the bridge into Hanover Square, arriving shortly after 7:30am.

[104] Soldier H had returned, in the company of Soldier Y, to the OP at the hotel late on Sunday night. Despite the fact that it had been referred to as 'standard procedure' for the surveillance sub-unit to record events, no video was set up on the Monday morning. It was also apparent to Soldier H that the video taken on Friday had been of some utility since it showed a potential PIRA 'dicker' and was used to persuade TCG to proceed with the Monday operation. If an order was given not to set up a video on 3 June, that would have come from either Soldier M or Soldier X.

[105] Soldier H gave evidence that the Bedford lorry and the gold Maestro arrived in front of the hotel and in the car park respectively before 7.30 am. Soldier L was seen exiting the car and standing near the vehicle against the toilet block wall reading a newspaper. This movement of the substitute target, who had remained seated in the car on 31 May, was effectively the only difference between the two operations. A minute or two later, Soldier H saw the Cavalier coming over the bridge. Initially, he could see only one person in the car but as it approached two others "popped up." At this stage he said over the radio "red car three up." This, together with the speed of the car and its low gear, made Soldier H suspicious and he transmitted "standby standby" on the radio. This instruction meant radio silence - only Soldier H could then speak.

[106] The Cavalier then attempted to turn left into the car park but was unable to do so. It came to a halt at the car park entrance with its wheels fully locked to the right. The rear passenger door opened, and a man armed with a rifle started to get out. Soldier H recognised this as an AK-type. The butt of the rifle was to his shoulder and the gun was pointed in the direction of Soldier L. At this time Soldier H gave the order “go go go” which was an instruction to the cover group and the reaction group to move immediately as Soldier L’s life was in danger.

[107] The Cavalier began to move forward and the man with the rifle fell back into the car. Soldier H then recalls hearing the side of the lorry come down and a volley of shots being fired. The car was struck by several rounds, and it began to move towards the centre of Coagh and out of Soldier H’s field of vision. He heard a loud bang, heard more shots and saw smoke but could not see what had happened to the vehicle or its occupants. His role having been completed, Soldier H made his way back to base.

[108] Soldier L describes arriving at the car park on the Monday morning, reverse parking and getting out of the car. He stood with his back to the wall on the driver’s side of the vehicle and opened a newspaper. Moments later a vehicle came screeching to a halt immediately in front of the car park. A man, wearing a balaclava rolled up to the top of his head, in the rear of the car was bringing an AK rifle into the aim position. Soldier L was his intended target. As a result, Soldier L threw himself over the wall at the rear of the car park and fell 14 feet to the grass bank below.

[109] He remained in this position and could hear shooting from the road above. After it finished, a soldier came to his assistance, and he left the scene by helicopter.

[110] Soldier A was the team leader of the cover group secreted inside the Bedford lorry. Their role was to protect the life of Soldier L and, ideally, they would not be required and could remain concealed in the lorry. He was armed with a G3 rifle, set to semi-automatic, and had 60 rounds of armour piercing ammunition.

[111] The cover group had a limited view of the car park through slits in the side of the lorry. Soldier D was closest to the cab of the lorry, with A, C and B to his right in that order.

[112] Soldier A could see Soldier L in position reading the newspaper to the rear of the Maestro. He then heard “standby standby” on the radio followed quickly by “go go go.” On this command, Soldiers D and B pulled ropes which lowered the side of the lorry. He could see a red car no more than 10 feet away and could see a man in the rear of the vehicle with an AKM assault rifle. It was held pointed towards the car park where Soldier L was located. Soldier A made the decision to open fire on the basis of a perceived immediate threat to the life of his colleague. He fired aimed shots from a prone position inside the lorry at the man holding the rifle. 13 rounds were fired by him from this position. The red car then began to move towards Coagh village and Soldier A stopped firing when it went out of his view.

[113] Soldier A exited the lorry and took up a position at the lorry's off side rear corner. By this stage the car had crashed into a parked Volkswagen Golf some 20 to 30 metres away on the right hand side of the road as one looked up towards the village. Soldier A fired a further three shots into the rear of the vehicle, directed at the same man holding the AKM rifle. Other soldiers then moved ahead, and Soldier A ceased firing.

[114] The Cavalier became engulfed in flames and the sound of rounds 'cooking off' could be heard. Soldier A returned to base by helicopter.

[115] Under questioning by counsel for the NOK, Soldier A maintained that Soldier L's life was in danger when he opened fire, albeit he had not ascertained L's response to the arrival of the Cavalier and the gun being pointed at him. The vehicle was at 2 o'clock to him and his focus was on the gunman in the rear of it.

[116] It was put to Soldier A that a verbal warning ought to have been shouted at the occupants of the Cavalier in accordance with the Yellow Card but he responded that such was the immediate threat to life that there was no time for such a warning to issue. He made a decision that he had to open fire in order to protect the life of Soldier L.

[117] It was suggested to Soldier A that there was always going to be insufficient time for the reaction group at the rear of the hotel to arrive on the scene and effect an arrest. He replied that no one actually knew how the PIRA would arrive on the scene.

[118] Counsel also challenged Soldier A about his decision to continue firing aimed shots after the Cavalier had begun to move away and that these shots were not justified. On his evidence, the gunman in the rear of the Cavalier continued to point his rifle in the direction of the car park where L had been standing.

[119] Soldier A also maintained that there was still a threat after the Cavalier had crashed and he fired the further three aimed shots. He disagreed with the assertion that these shots were unjustified or in breach of the guidance in the Yellow Card.

[120] Soldier B was also a member of the cover group, located at the rear of the lorry by the tailgate. On hearing the command "go go go" he released the side of the lorry and could see the red car with a man armed with a rifle in the rear. As the vehicle started to move forward, Soldier B opened fire on the driver who was wearing a dark coloured hat. One of his rounds shattered the offside front window. He continued firing, a total of eight rounds, until the vehicle went out of view. He was the last to dismount the lorry but did not fire any further shots.

[121] Soldier B saw the members of the arrest group come from his left and move up the road in the direction of the red car which had by then crashed. These soldiers were using suppressing fire, in order to prevent fire being returned, and moving towards the crashed vehicle.

[122] When questioned by counsel for the NOK, he did not accept that the vehicle moving away was indicative of an intention to escape. His belief was that the occupants of the car were intent on killing Soldier L. Specifically he was asked why the unarmed driver, moving away, posed a threat. His answer was that he was part of a terrorist team, intent on taking life, and his task was to prevent that occurring. On that basis, he asserted, there was a legitimate reason to shoot at the driver.

[123] It was put to Soldier B that he shot and killed Tony Doris, but he responded that he did not know whether any of the rounds he fired struck the driver.

[124] Soldier C is now deceased but was interviewed by the RUC on 12 June 1991 and the notes are available. He also fired shots from the prone position in the bed of the lorry towards the red car and then, once it had gone out of view, exited the lorry. After the car had crashed, Soldier C describes a "fire fight" as "still going on." He then further engaged the rear of the crashed vehicle. He moved towards the vehicle in the company of Soldier G. Once he was in position he could see two men on the ground, on the passenger side of the vehicle, with weapons in their hands. Both Soldier C and G fired at these individuals then moved away as the car was becoming engulfed in flames. Soldier C fired a total of 24 shots, some eight to ten of which were from the prone position in the lorry.

[125] Soldier D was the fourth member of the cover group. He also pulled the rope causing the side of the lorry to come down on hearing the order "go go go." He could see a man in the rear of the red car holding an AK rifle and facing in the direction of the toilets and the Maestro. He was not aware of the whereabouts of Soldier L. He fired nine aimed shots at the man in the rear then the car sped off out of view.

[126] In his evidence to the inquest, Soldier D stated:

"I recall now that I saw an object flying out of the car on the passenger side which I remember thinking at the time looked like a balaclava."

[127] Soldier D was interviewed by the RUC on 6 June 1991, three days after the incident, and made no mention of any object flying out of the car. He was unable to offer any explanation as to why he would have omitted this from his police interview despite the fact he was specifically asked if the men were masked, and was told a mask was found at the scene.

[128] On leaving the lorry Soldier D took up a position at the front driver's side, facing the bridge. As a result, he did not engage any further.

[129] Under examination by counsel, Soldier D could not be any more precise about the location of the gunman in the rear of the Cavalier. He fired aimed shots at the target whilst he was holding a rifle aimed in the direction of the car park and Soldier

L. He did not agree that the Cavalier was intending to escape and believed that its occupants continued to pose a threat as it moved away.

[130] Soldier E was the patrol commander of the arrest group on 3 June. He gave a briefing on Sunday evening to each of the teams involved. Despite the fact that he adopted the plan formulated by Soldiers M and F, he had an elevated view of his own role in the conception of the operation. The arrest group took up its position behind the hotel around 4am. Soldier K drove the lorry into place just before 7:30am and then he joined the arrest group, making its number up to six.

[131] Soldier E was aware that Soldier L had arrived as it was reported on the radio. Shortly thereafter he heard the calls of “standby standby” followed by “go go go” on the radio. On the latter, the arrest group ran down the side of the hotel. As he was running, Soldier E could hear loud bursts of gunfire and by the time he arrived on the road, at the front of the group, the red car had already crashed some 50 metres up the road towards Coagh. He could see people in the front and rear of the car and believed there was a threat to him and others. He fired shots into the front and rear and believed that gunfire was being returned.

[132] Together with others, Soldier E engaged in suppressing fire, firing and moving towards the target in a manner intended to prevent fire being returned by the target. He fired a total of 20 rounds. He was able to see Soldier G get into position at the rear of the vehicle to engage the individuals. When he got close to G, he could see two bodies lying on the ground with AK rifles nearby. He could also see the driver of the vehicle lying across the front seat. It was Soldier E who gave the order to stop firing once he realised the men were no longer a threat.

[133] Soldier E’s belief that he and other soldiers were being fired upon by the occupants of the Cavalier was challenged and he accepted that there was no evidential basis for this belief.

[134] Soldier F made a statement to the inquest but subsequently sought medical excusal from giving evidence. This was refused but various special measures put in place to accommodate the witness. He then refused to attend and failed to answer a subpoena. He was found guilty of contempt of court by the Outer House of the Court of Session on 9 February 2024.

[135] His evidence was not therefore tested by cross-examination and must be treated with some caution. As well as conducting the initial recce, Soldier F was a member of the arrest or reaction group. In his statement, he recalls running down the lane at the side of the hotel and hearing shots being fired. By the time he came to the road, the red car was already crashed into the wall at the side some 50 metres away. He saw two people inside the vehicle, one pointing a rifle. He fired aimed shots at that individual but did not move from his original firing position.

[136] Soldier G was also a member of the reaction group, having come over as part of the reinforcements from England during the weekend. In his interview with the police three days after the event, he described his role as:

“We were in support of other soldiers, operating in the area of the car park and the public toilets.”

[137] Soldier G ran up the laneway in response to the “go go go” radio command. As he did so, he could recall automatic gunfire, which would not normally be military fire, and therefore believed that fire was incoming. When he arrived at the road, the cover group was exiting the lorry and the red car had crashed on the right hand side of the road. He believed he and his colleagues were being fired upon from the red car and he fired six aimed shots at the individuals in the rear of the vehicle. He ran forward to a distance of some six to eight feet from the rear offside of the car. At this stage he could see two men in the car, one holding a rifle in a position from where it could be fired. Soldier G fired a further six aimed shots at him. He proceeded to exit the vehicle from the rear passenger side and, as he was doing so, a further four or five shots were aimed at him by Soldier G. When the man had gotten out of the car, Soldier G went round to the passenger side and observed the man crouched on the ground, holding the rifle. He fired a further three shots at him from close range.

[138] Soldier G then observed another man emerging from the vehicle holding a rifle. As he was partly out of the door, he fired two aimed shots at him but then had a stoppage as the magazine was empty. Soldier G changed his magazine and then, believing the second man to still represent a threat, fired seven rounds at him. He stopped firing once he was no longer a threat.

[139] Within seconds, the red car and the parked vehicle were both ablaze and ammunition was ‘cooking off.’ The soldiers moved away. In total Soldier G fired 27 shots. He stated:

“I am certain that had I not fired at both gunmen, I would have been killed.”

[140] In his original police interview on 6 June 1991, Soldier G said that both gunmen emerged from the rear passenger door of the car. In his September 2022 statement prepared for the inquest, this version of events changed in that the second gunman emerged from the front passenger door. It was put to him that this change must have come about because he saw the photographs of the vehicle after the event with its front passenger door open, but he denied that this was the case. He also emphasised that the two gunmen exiting the vehicle showed no intention of throwing away their weapons.

[141] Soldier G was questioned in detail about the use of suppressing fire. He stated that this was part of the SMU training with the object of putting fire down on a location to stop the enemy being able to open fire on you. His assertion that there was no

attempt by the PIRA unit to surrender was challenged on the basis that this would be impossible whilst subjected to suppressing fire.

[142] Soldier I could not be located and did not give evidence to the inquest. However, there was available a copy of the notes of an interview conducted by the RUC on 12 June 1991. In these, he states that he followed the rest of the arrest group out onto the road and moved to the left of the Bedford lorry where he engaged with individuals in the crashed vehicle. He also states that he believed fire was "coming down on the patrol from the Cavalier." He moved forward to a secondary firing position where he could see two men outside the car in crouched positions holding weapons. In his words he then "engaged the terrorists until the threat had ceased." He fired a total of 20 rounds.

[143] Soldier J deployed as a reinforcement on 2 June and was also a member of the arrest group on the morning of 3 June. He could recall radio transmissions relating to the approaching red car which included the words "one up" and "three up", which referred to the number of occupants in the vehicle. Following the "go go go" command he ran up the side of the hotel, believing there was a fire fight in the road ahead. He saw the crashed vehicle on arrival and took up a position to the nearside of the lorry. He believed that terrorists in or near the red car were firing weapons at the soldiers although he accepted that there was no objective evidence to support this conclusion. He fired suppressing shots from a kneeling position at the car, then moved forward and fired further suppressing shots. This was in accordance with his training. He states that he ceased firing once the threat to life no longer existed. In total he fired some 15 rounds.

[144] In his interview, Soldier J told the RUC that he was part of an army patrol which was there "in support of other military in the area" and no mention was made of any arrest function. Soldier J was unable to offer any reason why he would have described his group's role in this fashion nor why he did not tell the RUC that the role of his group was to arrest the PIRA suspects.

[145] In his evidence to the inquest, Soldier J stated:

"I recall that before I left the location I was shown the tubular frame of the lorry's wing mirror on the passenger side, near where I fired my first shots, which had a strike mark (bullet damage). The photograph at exhibit 1 shows the strike mark I recall seeing. I do not recall who showed the strike mark to me."

[146] When interviewed by the RUC on 6 June 1991, three days after the incident, Soldier J made no reference to any strike mark or bullet damage to the Bedford lorry. He offered no rational explanation for the omission from his police interview of this important information but was able to say that the reference in his statement to the inquest came about as a result of a consultation with his legal advisers.

[147] Soldier K, the lorry driver, walked around the rear of the hotel on arrival and changed into his military uniform. He was still putting on his jacket when the “go go go” command was heard, and he was therefore at the rear of the reaction group as they proceeded along the lane at the side of the hotel. He went to the nearside of the lorry and observed the crashed red car. He heard a lot of gunfire and believed there was a fire fight, although he agreed there was no factual or evidential basis for this belief.

[148] Soldier K moved forward and fired two shots at the crashed vehicle in the belief there were gunmen in the car and the lives of soldiers were under threat. He had not seen any gunmen but was acting in response to the reaction of his colleague. He could see that Soldier G was in a good position to fire at any target on the far side of the car. The vehicle went on fire and Soldier K went back to the car park to check on Soldier L. He made contact with him on the ground below the wall at the rear of the car park.

[149] He then stated that he returned to the lorry and that:

“I walked around the lorry to check it and I saw a strike mark at about head height on the arm of the nearside wing mirror. This would have been from an incoming round. This is shown in the photograph at exhibit 2.”

[150] Soldier K made no mention of the strike mark or any evidence of an incoming round when interviewed by the RUC on 5 June 1991, two days after the event. He was unable to say why he would have omitted this detail in his police interview or why, in the 31 years since it occurred, he had failed to rectify the omission. Both Soldiers J and K were asked if they had colluded to introduce this evidence of a strike mark or incoming round in advance of the inquest proceedings but denied that this was the case.

[151] Soldier K was also questioned about the role which he outlined to the RUC in interview as being “to give immediate protection to other soldiers who I was aware were in the area.” Again, there was no mention at that time to the police of carrying out an arrest function.

[152] The inquest received the evidence of a number of other soldiers pursuant to Rule 17 of the 1963 Rules. Soldiers O, P, Q and S acted as cut-offs in the vicinity of Coagh and were not directly involved in the events which unfolded in Hanover Square. Soldier AC was also a cut-off, located down the steps from the car park towards the river. He moved to the area of the bridge following the shooting.

[153] Soldier W was at an OP and recalls the “one up” radio message but was unable to say which OP relayed this. Soldier AD was also at an OP, close to the junction of the Tamlaght Road and Bridgend Road but has no recollection of the events.

[154] Soldier Y was tasked to provide security for Soldier H and was not involved in the observations from the hotel. He did not video record the events on this occasion. They left by car shortly after the shooting ceased.

[155] Soldier Z led substitute Soldier L to Coagh and left him to drive alone to the car park from a junction just outside the village.

[156] Soldier V was a member of the surveillance sub-unit and he drove an unmarked van containing Soldier U into Coagh, and parked at the crossroads of Main Street and Hanover Square. He left the van in this location, with Soldier U in the rear, and walked away down Urbal Road where he was picked up by Soldier AB. He later returned, following the shootings, to collect the van and drive Soldier U out of the area.

[157] On the return journey to base, he stopped to let Soldier U out of the back of the van and he was then shown a video which Soldier U had taken of the incident. The van had video capabilities and was used in surveillance operations. Soldier V was not surprised that a video existed since the use of photographic and video equipment was the stock-in-trade of the surveillance operatives. Soldier U has not co-operated with this inquest.

[158] The inquest heard evidence from a number of HMSU officers who were in the vicinity of Coagh on 3 June 1991. All agreed that the role of the HMSU on that morning was to act as a QRF and provide a cordon around the village. It was anticipated that the extent of their involvement would depend on how events unfolded. Their tasks may include securing the scene, preserving evidence and taking over responsibility for any individuals arrested by the SMU. They were not, however, to be directly involved in the SMU operation. The possibility was recognised that HMSU may need to attempt to pursue, arrest and detain any PIRA operatives who were fleeing the scene. In the events which unfolded, the HMSU were only involved in the aftermath.

[159] The inquest also received evidence from a number of civilian witnesses who were residents of Coagh village. Heather Hetherington was just rising on 3 June 1991 when she heard the sound of gunfire outside. She looked out of the landing window at the front of the house and saw a Cavalier which had crashed into a Golf. She surmised that two persons had emerged from the front passenger door of the Cavalier, as this was the only door open. The two men were crouched down in the road between the two vehicles. They started to crawl along the road in the direction of the Urbal Road junction when she saw a soldier come up along the front of the house next door and shoot in the direction of the cars. The car then caught fire.

[160] Avril Gibson was awoken by the sound of gunfire and looked out her bedroom window, observing a Cavalier which had crashed into a garden wall across the street. She saw two persons lying beside the passenger side of the car, still moving. She could hear more gunfire and some moments later, the car burst into flames.

[161] Henry Bownes saw the Cavalier swerving across the road and crashing into the Golf and the wall of his neighbour's property from his front bedroom window. He could see a person in the front passenger seat of the Cavalier waving a gun around wildly. He heard gunfire and assumed it was coming from this man. The driver was slumped over the wheel.

[162] When asked if the arrest operation of 3 June 1991 had been a success, Soldier M gave evidence that it was since the suspects had been 'arrested', as in force had been used to stop them. In his opinion the word 'arrest' did not necessarily mean 'detain unharmed.' As such, the task given to him by TCG had been successfully completed. In his professional assessment, the prosecution of three unharmed suspects would have represented equal success.

Chapter 10

The Aftermath

[163] P1 was a sergeant attached to the HMSU who was deployed with P2, P5 and P13 close to the bridge and attended the scene after the SMU had ceased firing. He could see the crashed car on fire and could hear the sound of rounds cooking off.

[164] P1 spoke to military personnel at the scene in order to determine what had happened. He was able to identify the positions from which they had fired and marked them with chalk. It was P1 who created the ciphers for each soldier. He noted the presence of a dark blue balaclava outside 27 Hanover Square.

[165] P1 did not recall seeing bone fragments on the road. He was shown a photograph of them boxed in chalk with the word 'BONE' written on the roadway. In his experience, such items would have been marked by SOCO. He detailed P2 to commence a scene log and remained on the scene until uniformed police took over.

[166] P2 opened the serious crime log following an order from P1, in order to record the name, number and time of people coming and going from the scene. He handed over the log to Sergeant Monteith, CID. He could not recall seeing either the balaclava or bone fragments.

[167] P3 was deployed beside Coagh Primary School with P8, P9 and P10. He recalled hearing shots and taking cover behind a wall where he could hear rounds cooking off. He did not observe any shots being fired but could see the car on fire.

[168] P4 was with P12 and P17 at the primary school on Urbal Road but went to the junction with Hanover Square after the incident. From there, P4 could recall seeing flames and hearing rounds cooking off, but did not recall seeing a vehicle on fire.

[169] P5 was deployed close to Coagh Bridge with P1, P2 and P13. On arrival at the scene he saw a car on fire and heard ammunition cooking off.

[170] P5 was specifically questioned about the use of a stinger device in 1991. He initially indicated he believed that stinger devices were available at that time but later clarified that he was unsure about this.

[171] P6 was deployed beside the bridge with P14 and P15. He could recall hearing gunfire while lying up and remembered smoke rising from the scene.

[172] P7 was beside Coagh Primary School with P6 and P18. His only recollection was hearing gunfire and seeing a crashed vehicle on fire.

[173] P8 was at Coagh Primary School with P3, P9 and P10 but had little or no recollection of events.

[174] P9 gave evidence that his call sign drove quickly to the scene and blocked the junction of Hanover Square and Urbal Road. He could see that a car was under fire and watched as the car veered into a wall. He stated that it "crawled slowly into the wall." There were four or five soldiers with their rifles trained on the vehicle and at this stage, the firing stopped. His recollection was of:

"The sound of the firing it was rapid and intense, an extended noise rather than the sound of single shots."

[175] P10 was the driver of this call sign, and he blocked the road at the junction with two other cars and took cover behind the engine block of the vehicle. He was looking for the subject vehicle to ascertain if it was leaving the scene. He then observed it on fire. Once the ammunition had ceased cooking off HMSU moved to cordon off and preserve the scene.

[176] P11's role was to carry out reconnaissance at Coagh and he was there a number of times prior to the operation, identifying suitable locations for vehicles to lie up. He recalled walking around near the bridge and the primary school. He was not on duty on the 3 June 1991 at Coagh.

[177] P12 was positioned at Coagh Primary School with P4 and P17. Following receipt of a call on the radio, the vehicles moved to the cut-off position at the junction of Urbal Road and Hanover Square. He recalled hearing gunfire and took cover behind the engine block of his vehicle. The gunfire continued while he was in this position. He heard rounds cooking off, and so remained behind the vehicle. He did not enter the scene at any stage and never had a clear view of the subject car.

[178] P13 was on the bridge side of Hanover Square prior to moving to the cut-off position at the bridge. He saw a tarpaulin pulled over the car involved in the incident. He did not see any vehicle on fire.

[179] P14 was deployed to the north west side of the bridge with P6 and P15 and after being tasked to the scene set up a cordon about 150 metres from the bridge. He could hear gunfire en route but this had stopped by the time of arrival at the bridge.

[180] Once at the bridge, P14 recalled that they got out of their vehicles and took cover. He did not move from the cut-off point. His view was obstructed but he could see smoke rising.

[181] P15 was with P6 and P14 lying up near Coagh bridge. He recalled hearing gunshots and receiving a radio transmission to move to Coagh bridge. At that location, they began to set up a cordon and recalled seeing a vehicle crashed into a wall and on fire.

[182] P16 was beside Coagh Primary School with P7 and P18. They moved to the cut-off point and he observed the subjects' car travelling towards their position, veering to the right and crawling towards a wall. The vehicle then went on fire and he did not observe any shots being fired.

[183] P17 was deployed with P4 and P12 behind Coagh Primary School. After hearing gunfire, they received a radio transmission to move to the cut-off position with two other vehicles at the junction of Hanover Square and Main Street. On hearing gunfire, he took cover behind the driver's side of the vehicle, which obstructed his view. He did not observe any exchanges of fire. The subjects' car quickly went on fire.

[184] John Magee was at that time an RUC SOCO based in Dungannon and he attended the scene at 8:55am. His role was to examine the scene and collect evidence. He was joined later that morning by Brian Thompson of FSNI. Mr Magee observed the Cavalier burnt out and crashed into the wall of 20 Hanover Square. The VW Golf was also damaged by fire. The badly burnt remains of three individuals were identified. Body C was across the front seat of this vehicle whilst Bodies A and B were beside the Cavalier, body A face down and body B face up, with burnt rifles beside them. The bodies were removed from the scene around 3:15pm. It was later established that body C was that of Tony Doris, body A that of Lawrence McNally and body B that of Michael Ryan.

[185] He marked the locations of spent cartridge cases at the scene in chalk but when shown the photograph of fragments marked 'BONE' in chalk, stated that he did not mark these and was not aware who did. He was unable to say if anyone else was using chalk to mark the scene that day. He was also unable to say what happened to the bone fragments after the scene had been inspected. It was acknowledged that there was no record of these having been collected, bagged or inspected and no explanation was forthcoming for this omission.

[186] Mr Magee also gave evidence that the Cavalier was removed from the scene at around 5:30pm and taken to Gough Barracks. When it was inspected, two AK

magazines were found in the rear footwell on the driver's side together with Kevlar body armour. It was observed that the rear seat had been physically removed from the vehicle.

[187] The late Millar Farr was a Detective Inspector in the RUC and arrived at Coagh on the morning of the incident at 8:50am. He observed the lorry and two burnt out cars and various markings on the roadway. He also saw various spent bullet cases. He took control of the scene until Detective Superintendent Christy arrived at 10.27am.

[188] Kenneth McFarland was an RUC Detective Chief Inspector in 1991 based at Cookstown. He arrived at the scene at 9:14am and was there for around 10 minutes. The scene was explained to him by Detective Inspector Farr. He observed the charred remains of three bodies, two lying between the cars and one within a burnt-out vehicle. Two rifles were located beside the bodies on the ground.

[189] Robert Anderson, an RUC mapper, gave evidence that he prepared three maps of the scene. He worked closely with Brian Thompson who was the person 'running the scene.' He recalled the bone fragments being pointed out to him on 3 June but did not know what had happened to them. His plan was mistaken in that the soldiers in the lorry had been placed in the wrong order. He returned to the scene the following day in the company of Leslie Cairns and further items were located and identified.

[190] Leslie Cairns was an RUC SOCO in 1991 who attended at the scene in Coagh on 4 June at around 5.10 pm. His role was to collect, bag and label items and take them to FSNI. These included all cartridge cases and bullet fragments. He was not aware of any bone fragments.

[191] DSU George Christy took charge of the scene on his arrival at 10:27am and was briefed by DI Farr. He was there until 3:45pm during which time FSNI and SOCO carried out their work, the scene was mapped and photographed.

[192] Brian Thompson of FSNI came on the scene around 11am at which stage SOCO were already present. He observed the three burnt bodies, the damaged vehicles, the rifles and the modified lorry. He could also see a balaclava on the edge of the roadway and various spent cartridge cases. These were collected for forensic examination.

[193] He left the scene at 5:30pm and took the collected items to the FSNI laboratory the following day.

[194] He stated that the chalk mark 'BONE' was not his writing, and he could not recall what had happened to the fragments. He could confirm that they had not been bagged or taken for forensic examination.

[195] On 4 June 1991 the three bodies were identified, with the assistance of dental records, as those of Anthony Patrick Doris, Michael James Ryan and Lawrence Joseph McNally.

[196] Colin Glynn, Consulting Forensic Engineer, carried out an analysis of the photographs and plans prepared at the time of the incident and has concluded that the Cavalier travelled a distance of some 35 metres from the entrance to the car park to where it collided with the Golf and is likely to have been travelling at a speed of between 18 and 32 mph at the time of impact.

[197] Dr Ruth Griffin, Senior Scientific Officer at FSNI, was tasked in 2010 by the Historical Enquiries Team ('HET') to examine a sample of blood and tissue found on the balaclava recovered from the scene. When comparing the DNA profile to blood samples from the parents of Tony Doris it was found that the wearer of the balaclava could have been the son of these two parents. No explanation was forthcoming for the lack of any attempt to link the balaclava to any of the deceased in 1991.

[198] Jason Bennett, Principal Scientific Officer at FSNI, carried out a physical examination of the balaclava. The damage to it and the presence of hair and decomposed tissue were, in his opinion, consistent with the balaclava being worn by an individual who was shot in the head.

Chapter 11

The Destruction of the Video and Other Evidence

[199] When the SMU soldiers returned to base on 3 June, Soldier U informed Soldier E that he had made a video recording from his surveillance location. Soldier E proceeded to watch the video on a screen, and it showed the actions of the soldiers who used lethal force at Coagh that day. His particular concern was that the video showed the faces of SMU soldiers, including Soldier E, and he believed this could compromise their security. Following this, the video was destroyed.

[200] There could scarcely have been more probative and significant evidence of the events which unfolded at Coagh than a video taken from close range showing the arrival of the vehicle and the engagement of the soldiers with its occupants. If this had been available, it would have rendered the task of the inquest on many of the issues straightforward. It would also, of course, have been of central importance to the RUC, whose role it was to assess whether any crime had been committed by the soldiers.

[201] Instead of preserving this vital evidence, soldiers made a decision to destroy it, without reference to either Soldier M or Soldier X or, indeed, Soldier N.

[202] When asked if he had destroyed the video, Soldier E claimed his privilege against self-incrimination, which he was entitled to do. Soldier M gave evidence that

in 1994, some three years later, he was made aware by Soldier E of both the existence and the destruction of the video which had been taken of the Coagh operation. He had told Soldier M that he and another soldier had destroyed the video, fearing that it may “fall into the wrong hands.”

[203] Soldier M was questioned about whom the “wrong hands” might belong to. If, for instance, the soldiers had made a decision to pass the video up the chain of command to their commanding officers, that would be unlikely to give rise to the risk referred to. It was also apparent that once Soldier E chose to tell a more senior officer about the matter in 1994, no action was taken to investigate or, indeed, inform the RUC of what had occurred.

[204] Soldier N, who held the role of OC of the SMU, declined to criticise the actions of the soldiers in destroying the video but rather endorsed the course of action. When asked about the options available in relation to a video of an operation which had the potential to reveal the identities of SMU soldiers, he stated that it would have to be stored securely or destroyed. When specifically asked about the production of the video to the RUC, he said this was not an option even if the video showed evidence of a crime being committed.

[205] Soldier X thought it acceptable for an individual who had fired live rounds on the day in question to be engaged in an ‘operational decision’ to destroy evidence. Moreover, on his evidence, it was standard practice for videos to be destroyed.

[206] Soldier T was the witness called to address the question of SMU training. His statement said expressly:

“We were trained that as soon as an incident had been contained, all evidence must be protected ...”

[207] Under questioning, he agreed with the suggestion that his evidence needed to be altered to read:

“We were trained that as soon as an incident had been contained, all evidence must be protected, save for anything which might compromise the identity of a member of the SMU.”

[208] The attitude of the soldiers who gave evidence to the inquest in relation to the destruction of the video demonstrated a clear and unequivocal willingness to subvert the rule of law. The possible revelation of the identities of any member of the SMU, even to the RUC who had primacy in the field of law and order, took precedence over the investigation of crime and the proper administration of justice. Even when one takes into account the particular security issues which were prevalent in 1991, the fact remains, as the soldiers were well aware, that the work of the investigating police officers and of the coroner in fulfilling his statutory responsibility have been

fundamentally undermined by these actions. Rather than condemning them, the response of senior officers in the British Army has been to excuse, justify and support such reprehensible conduct.

[209] During the course of evidence presented to the inquest, reference was made to various documents or classes of document which would, at one time, have been in existence:

- (i) Notes of briefings given within the SMU;
- (ii) Briefing packs created for CLF and GOC;
- (iii) Tasking sheets;
- (iv) Situation Reports ('Sitrep');
- (v) 'Planned Sequence Reactive Operations' documents;
- (vi) Radio logs;
- (vii) Notes of debriefings given; and
- (viii) 'Lessons learned' documents.

[210] It is clear that, despite the obvious awareness of an ongoing RUC investigation and the requirement to hold an inquest in due course, decisions were made by military personnel to destroy such documents.

[211] As a result of the evidence which was given, the court issued a section 17A notice to the MOD requiring further disclosure in relation to policies of document retention and the preservation of evidence. Thomas O'Flaherty, Deputy Director in the Directorate of Judicial Engagement Policy, has day to day responsibility for the management of legacy inquests on behalf of the MOD. His evidence was as follows:

- (i) Searches have not located any 'lessons learned' document created by the SMU and relating to the incident at Coagh;
- (ii) Corporate policy documents were identified which related to the evidence and forensic handling as well as document retention;
- (iii) In August 2014 the MOD issued a Defence Instruction Notice entitled 'Document and Material Retention and Preservation - in relation to Operation BANNER Northern Ireland 1969-2017' which reminded recipients of the MOD's disclosure duties and the requirement to preserve all documents and materials in existence that may potentially be relevant to inquiries, court cases and investigations.

[212] Under questioning by counsel, Mr O’Flaherty was taken to a document entitled ‘Northern Ireland General Staff Standing Instruction Part Four - Legal Aspects’, understood to date from around 1975. It addresses the use of force and the rules of engagement and the test of reasonableness to which soldiers’ conduct will be subject. It cautions:

“Hence it is important for units to keep a record not only of operations which may themselves become the subject of complaint, but also of the circumstances surrounding such operations. For this purpose photographs, film and video type are exceedingly valuable, though for them to be admissible evidence in court proceedings, the Rules of Continuity of Evidence set out at Section 3 of these instructions apply and must be observed.”

[213] The Manual of Army Security dated October 1982 prescribed rules for the security of classified imagery which could only be destroyed in accordance with regulated procedures and the fact of such destruction officially recorded.

[214] Ultimately, Mr O’Flaherty accepted that the destruction of the video evidence following the events of 3 June 1991 was contrary to the existing MOD policy at the time and ought not to have occurred.

[215] The corporate position of the MOD, as presented to the inquest, is that the destruction of the video should not have happened. This must be seen in the light of the routine destruction of other relevant evidence which would have contributed substantially to the ability of this inquest to conduct its statutory role.

Chapter 12

The RUC Investigation

[216] A document disclosed by the MOD in the course of this inquest, dated 24 August 1987, is entitled ‘Duties of the Northern Ireland Flying Lawyer’ and gives some insight into the prevailing views at that time. The ‘Flying Lawyer’ is described as the individual tasked by HQNI to assist soldiers in cases where weapons have been discharged and the matter is under investigation by the RUC. The document states:

“Most RUC CID personnel are now familiar with the FL arrangements and are normally content to postpone interviewing the suspect for a considerable time, often until the following day, both in order to allow the FL to take instructions and offer advice and to give the soldier a chance to unwind.

Even though the RUC are occasionally suspicious of the role of the FL, they are normally supportive of the soldiers' actions when terrorists are killed, and in such cases the FL can find himself in the odd situation of having to prevent the RUC investigator going overboard in his attempts to demonstrate that the shooting was justified."

[217] Advice is given to the flying lawyer as follows:

"For security reasons, and particularly bearing in mind that the firer's statement is read out in full by the RUC investigator at the inquest, the statement needs to be as brief as possible. Against this, however, is the need to demonstrate to the DPP that the shooting was within the law, thus avoiding a prosecution, but it is usually possible to achieve both objectives without undue difficulty."

[218] In the course of this inquest, criticisms have been levelled by the representatives of the NOK at the RUC investigation into the killings at Coagh, it being described variously as desultory, perfunctory and slipshod. The failures to properly analyse some of the real evidence at the scene in the form of the bone fragments and the balaclava have already been noted.

[219] Interviews with the soldiers did not commence until 5 June 1991 and took place as follows:

- (i) Soldiers A, F, H, K and B were interviewed on 5 June;
- (ii) Soldiers J, D and G were interviewed on 6 June;
- (iii) Soldiers E, C and I were interviewed on 12 June.

[220] In each case, the soldier was cautioned and then invited to give an account of what occurred on the morning of 3 June. Some follow-up questions were asked before the interview notes were written up, then agreed and signed off by the soldier. In each case, the offer was made to provide a written statement, but this was not taken up.

[221] Written statements were provided by Soldier L on 26 June 1991 and Soldier M on 23 September 1992.

[222] Derek McAllister, a Detective Constable in the RUC at the time, was present during some of the interviews but was unable to offer an explanation for the delay in commencement and was unaware if any steps had been taken to prevent the soldiers from discussing their evidence with each other prior to interview. The 1987 Flying Lawyer document indicated that the RUC would often be content to postpone the

holding of interviews, offering a 'chance to unwind' which would be unlikely to be afforded to any other suspect in a criminal investigation. It also presented the very evident risk that witnesses would 'get their stories straight' before being subjected to interview.

[223] DC McAllister was unable to explain why no questions were asked of any soldier about the planning of the operation, including what had transpired on 31 May. No one was interrogated about any briefing or any documents which might exist outlining the intelligence or the means by which an arrest was to be achieved. Not one document was requested or sought by the RUC from any of the witnesses or the SMU. No questions were asked about the Yellow Card or how its guidance was applied on the day.

[224] One explanation for these omissions was provided by George Christy, the Detective Superintendent with overall responsibility for the 1991 investigation. He was not directly involved in the interviews but had an oversight role and was briefed as to what was said by the soldiers.

[225] DSU Christy provided a report to the Director of Public Prosecutions in which he recommended there be no prosecutions arising out of the Coagh shootings on the basis that the use of lethal force was justified. The report contained no reference at all to the briefing given to soldiers in advance or to the plan which was implemented by the members of the SMU on 3 June 1991.

[226] DSU Christy was questioned in some detail about this omission, and he explained that he had previous experience of soldiers refusing to answer questions about the planning of operations. When asked why such an issue was not pursued in this instance, he stated that "it comes from the Chief Constable down" and he would have been told by HMSU or Special Branch not to ask such questions. It was clear to him that this was "off limits."

[227] It was put to DSU Christy that, in the immediate aftermath of the shootings, allegations were made by political representatives and others, that this operation was part of a wider 'shoot to kill' policy being implemented by agents of the state. He accepted that this would encompass an allegation that there was in place a preordained plan to kill these PIRA operatives when they arrived on the scene. However, on his unequivocal evidence, the existence of any such conspiracy to murder was not open to investigation by the RUC CID.

[228] DSU Christy accepted that his report to the DPP recommending no prosecution contained no caveat to the effect that the planning of the operation fell outside the remit of the RUC investigation. He explained:

"I was instructed to take it from, you - you know, the scene of the shooting and so on, and investigate that. Not to go back any further than that."

[229] Detective Chief Inspector Molloy was the lead interviewer of the SMU soldiers, having been asked to carry out the role by DSU Christy. His evidence was that no request was made of him to refrain from looking at any aspect of the events at Coagh but when asked why no questions were directed at the planning of the operation he could not recall. It was obvious to him as a senior police officer that there must have been a plan – it was inherently highly unlikely that the SMU would have stumbled across the PIRA unit by accident. Despite this, he could not say why nothing was asked about briefing or planning. It was, on his evidence, a matter for the Senior Investigating Officer to ask for any relevant documentation. In relation to the Yellow Card, he said it was “taken as read” that the soldiers understood this.

[230] DSU Christy, whilst asserting that there was a direction not to investigate the planning of the operation, denied that any such restriction applied to the issue of lethal force. However, neither he, DCI Molloy nor DC McAllister provided any explanation as to why the guidance provided by the Yellow Card was not referenced in a single interview.

[231] Sir Hugh Annesley, the Chief Constable of the RUC between 1989 and 1996, provided a statement to the inquest. He categorically refuted the suggestion that any direction which was given to CID not to investigate the planning and control of military operations came from him or his office.

[232] The inescapable fact is that the soldiers who were interviewed after caution were asked no questions about the planning of the operation. This obvious omission from the police investigation was recognised by the DPP who wrote to the RUC Chief Superintendent on 10 September 1992 in the following terms:

“The Director wishes to be informed of the nature and extent of the intelligence available to the security forces in regard to this matter and of details of any plan formulated in regard to the concealment and proposed role of soldiers A, B, C and D in the back of the Bedford lorry and the placement and proposed role of soldiers E, F, G, I, J and K at the rear of the Hanover House Hotel. You may consider it appropriate to record a witness statement from the person or persons responsible for the briefing and instruction of soldiers A-L inclusive.”

[233] It was only at the direction of the DPP, and over 15 months after the event, that Soldier M gave a statement to DSU Christy in which he alluded to both the plan which he had formulated, and the briefings given to soldiers. Despite this, no request was made for any of the documents which would inevitably have been prepared and generated for these purposes.

[234] In his report to the DPP, DSU Christy stated:

“I am satisfied that the evidence contained in these papers shows that the actions of the members of the Military Patrol were reasonable and justified in these circumstances and that the minimum force necessary was used to prevent death and serious injury to Soldier L and to themselves.”

[235] These conclusions were drawn despite the obvious shortcomings in the police investigation, namely:

- (i) The failure to challenge the accounts given by soldiers by reference to the Yellow Card guidance;
- (ii) The failure to investigate the planning of the operation at all;
- (iii) The failure to interview each of the soldiers promptly after the shootings occurred;
- (iv) The failure to properly seize, retain and test relevant exhibits from the scene; and
- (v) The failure to identify and seek disclosure of relevant documentation from military sources.

[236] Whether or not this was a result of direct orders from above, or whether it was merely reflective of the attitudes suggested in the 1987 Flying Lawyer document, it can only be concluded that the RUC investigation into the shootings was woefully inadequate. A decision was reached and relayed to the DPP on the basis of untested and unchallenged accounts of soldiers. Evidence at the scene was wantonly disregarded. No questions were asked of those who had formulated the plan and its methodology. Had it not been for the holding of this inquest, many of the facts around these events would simply never have been known.

Chapter 13

Publications and Media Sources

[237] Soldier AA was an SMU officer in Northern Ireland between 1989 and 1991. She left the armed forces in 1992 and published a book entitled “One Up” in 1997 under the pen name ‘Sarah Ford.’ This followed several successful books written by other former SMU operatives and was intended to provide an account of the life of a woman soldier in the male dominated world of special forces.

[238] The book was written with the assistance of a ghost writer and drafts were submitted to the MOD for review prior to publication. One such draft contained the following text:

“... we had a date, a time and a place – a car park on Coagh high street. The plan was that we would mallet the Provos as they moved in for the hit.

The plan they outlined was a good one. A Det surveillance team would pick up the bad guys as they headed for Coagh. One of the Teds – who roughly matched the description of the target – would take his place in the car, whilst five others were hidden in a flat bed truck with false sides in the area where the hit was going to go down, as the main killer group ... My job, as top cover, was to keep a general watch on the whole area, and sweep in to pick up any runners who managed to get past the cut-offs when the ambush had gone down.

By the time I was sorted out and the heli was burning and turning, word was coming in that the surveillance team had picked up the PIRA vehicle and everything was going according to plan.

As the Provos came to a stop, H, in the main OP, saw their weapons flash and gave “Go Go Go” ... the troop team were out of the flat-bed, and laying down rounds with their G3s ... from the heli I watched as the Provo driver tried to let out the clutch and pull away, even though he must already have been dying.

The car began to pick up speed, with the Teds still pumping round after round into it, but at last the driver lost control, and it lurched across the road, hitting another vehicle. By now, the Provo car was shredded and either the impact, or the 7.62 rounds that were still hitting it, caused a terrific explosion.

The ambush had lasted just a few seconds – three dead terrorists, no security forces casualties : a classic result.

With the beer flowing, the real debrief started ... it was one hell of a party.”

[239] In correspondence passing between senior MOD personnel dated 23 January 1997, the observation is made that the text, if published in its original form, would

have compromised the public interest and national security. In particular, concern was expressed about the account of the Coagh operation. The letter states:

“What she wrote was substantially accurate and contained details for which we should have sought PII protection at the inquest ... We concluded that the only safe course of action was to turn the whole account into a fiction.”

[240] It was explained to Soldier AA that if she maintained the account this would make her a material witness who would have to give evidence at the inquest, something she did not want to do.

[241] The version of events that ultimately appeared in the book does not mention Coagh and various details are changed such as times and vehicles. However, the operation is broadly recognisable, and the reader is told that Soldier AA witnessed the incident, or at least its immediate aftermath, and was hanging out of an open door of the helicopter, gun at the ready.

[242] In her evidence to the inquest, Soldier AA admitted that she was not an eye witness to events at all. She was sitting in a helicopter on the tarmac in Magherafelt whilst the incident was unfolding. The helicopter did fly over Coagh for a few minutes after the operation was over and some aerial photographs were taken. In reality, as she accepted, her account was derived solely from what she had been told by other soldiers in the aftermath.

[243] The explanation offered by Soldier AA for this was that she was trying to write a “popular page turner”, to make it to sound “more exciting” and to “glamourise her role.”

[244] The only reason why a former serving soldier would wish to write an apparently ‘glamorous’ account of an incident in which three people lost their lives is for financial gain.

[245] Witness XX is a former officer in both the RUC and PSNI and was a Detective Inspector in SB from September 1991 to December 2005. He had no direct involvement in the events at Coagh.

[246] He gave evidence of research conducted by him for a Ph.D. thesis entitled “Tir Eoghain Rebellion, a local war : a study of insurgency and counter-insurgency in post-1969 County Tyrone, Northern Ireland” at the University of St Andrews. This was carried out between 2011 and 2016 and focussed particularly on the conflict in East Tyrone.

[247] For the purposes of this research, XX interviewed three former RUC officers, whom he called T, F and L, in relation to the Coagh shootings. Notes and audio tapes of these discussions were taken for the purpose of validation. Once this had been

carried out by his supervising professor, the notes and tapes were destroyed. There is an embargo on the publication of the thesis for a period of 50 years.

[248] Officer T, who gave evidence to the inquest under the cipher P19, is recorded in the thesis as saying:

“The job went down on a Monday. The car drove into Coagh village and I am certain they [PIRA] opened fire first. As the IRA vehicle was hit by the guys in the lorry, it careered across the road and smashed into other cars. The SMU, however, had a small team hidden in an alleyway that opened fire as they advanced on the car. It was a combination of shots from the lorry and the team on the ground that killed them. Then the car burst into flames. You know there was no way on God’s earth that I would stand, nor would I ask anyone else to stand, on the road with your hand up, wave them down and say ‘please pull in.’ At the end analysis, lives were saved in the long run.

Occasionally these things have to happen, and they do have a massive effect on the tactics of the terrorists and their campaign. There is nothing moral about the conflict. Frank Murray [RHSB] had seen that the essence of defeating terrorists in East Tyrone was to come to grips with them and take aggressive action, action where you are liable to kill people. Killing is not always the answer but at that time things had got to such a state that we had to engage them otherwise they would have murdered at will.”

[249] P19 referred to XX as “a close personal friend” and confirmed that he did contribute to the thesis by way of a formal interview that lasted about two hours some time in 2014. He accepted that he said these words, or similar words, to XX during the course of their discussions, although he asserted that this was a likely a precis of the full conversation.

[250] In a previous draft of the thesis, these additional remarks are accredited to P19:

“We were aware that Doris was to be drafted in to drive the car. We were also briefed that Ryan and McNally were the intended gunmen. They had a long history of involvement in murders and were both on the run and wanted by the authorities in the north.”

[251] It is unclear why this account only appeared in the draft thesis and not the final version. This narrative stood in contrast to all the military and police witnesses who stated to the inquest that they did not know the identity of the PIRA unit in advance

of the operation. P19 maintained in evidence that this information was not known to him at this time, and it could have been that XX has brought some subsequently acquired knowledge to bear. XX, by contrast, was adamant that the words recorded were those said by P19.

[252] Under questioning, P19 accepted that Ryan and McNally were “likely candidates” to carry out this attack but that there were many others who could have done so.

[253] The supervising professor made a short statement to the inquest to the effect that it is not possible to check every quotation against original source material but rather that he listened to a small sample, checking those against the written transcripts.

[254] P23 is referred to as Officer L in the thesis. He was a Detective Inspector attached to SB in Cookstown but played no role in the planning of the Coagh operation. In the thesis he is wrongly described as being in charge of SB in East Tyrone at the time. The following comments are ascribed to him:

“You know McNally and Ryan had 43 murders under their belts as a team. How do you deal with people like that? FT [Frank Murray, Head of South Region Special Branch] was ruthless but absolutely the right man for the right time. Coagh was another notch on his belt.”

[255] Additionally, in the draft of thesis, he is recorded as stating:

“Doris was the driver but he was never meant to be the driver he was drafted in at the last minute.”

[256] In evidence, P23 referred to the fact that the interview with XX had taken place over 10 years previously and his recollection was vague. He was never asked to approve the quotes which were attributed to him in the thesis. He was well aware that Ryan and McNally were actively involved in PIRA but stated he had no idea where the suggestion of ‘43 murders’ had come from. He also denied having had any prior knowledge that Doris was to be the driver of the vehicle. Whilst he accepted that he may have described Frank Murray as ruthless, in the sense that he exercised high standards and was passionate about exploiting intelligence, he denied that he had used the terminology of ‘notch on his belt.’

[257] When asked why XX may have attributed these quotes to him, P23 stated that it may have looked good in his thesis to have these remarks associated with a person in charge of the area at the time. This was an incorrect picture to have painted since P23 had a Detective Chief Inspector and a Detective Superintendent above him in the chain of command.

[258] P22 was Officer F in the thesis. At the relevant time he was a Detective Constable in SB in East Tyrone. He was outside Northern Ireland at the time of the Coagh operation. In the thesis the following quote is attributed to him:

“Pete Ryan had a tomahawk concealed on his body at Coagh. He intended to injure the target [UDR soldier] and finish him off with a tomahawk; it was in a shoulder holster. It was personal, believe me.”

[259] P22 accepted that he had given this account to XX but now accepts it was wrong. Ryan was carrying no such weapon. He assumed that this was information given to him by a third party but could not recollect who this was.

[260] The inquest also considered other sources including contemporary media reports and books written subsequently about the events.

[261] Ultimately, none of these sources provided any evidence of substance or value to the inquest. Many have proved to be second hand or unreliable accounts. This inquest had the substantial benefit of receiving direct evidence from many of those who were present at the scene on 3 June 1991. It is incontrovertibly the case that this represents the best evidence available in order for the inquest to answer the statutory questions and satisfy the article 2 obligation.

Chapter 14

Expert Evidence - Ballistics

[262] The inquest had the benefit of reports from three ballistics experts, Paul Olden instructed on behalf of the coroner, Ann Kiernan for the NOK and Huw Griffiths for the FMWs.

[263] Detailed reports were provided by Mr Olden and Ms Kiernan and Mr Griffiths provided analysis on certain issues. At the direction of the court, and in full recognition of their professional responsibilities, the three experts met and produced a minute setting out areas of agreement and disagreement. The experts then gave their evidence concurrently, focussing on the key issues, and this proved to be an efficient use of court time and resources.

[264] The experts noted that 138 cartridge cases were recovered from the scene, 133 of which were of armour piercing variety and five were tracer bullets. All of these were fired from Heckler & Koch G3 rifles, being 7.62 x 51 (NATO) ammunition. It is noteworthy that the RUC summary report following the incident indicates that 149 shots were fired by the soldiers based on the ammunition counts. The location of the cartridge cases was consistent with the soldiers firing from the Bedford lorry and from the road between the lorry and the Cavalier.

[265] The remains of the two Romanian AKM rifles which were found at the scene were both set to fully automatic mode and each had a magazine inserted. There was no evidence that rifle AK NH9301 was discharged. This was the rifle found by the body of Ryan. In relation to the other rifle, NH8100, found by McNally's body, two cartridges, of the 7.62 x 39 (Russian) type, had been discharged. The second of these was discharged as a result of the heat of the car fire rather than deliberately. 136 unfired 7.62 Russian cartridges were found at the scene.

[266] In relation to the first cartridge, there was some dispute about whether it was discharged deliberately. The experts agreed that it is difficult to fire a single shot from a rifle which is set to fully automatic mode. It is also hard to imagine why a gunman in such a situation would wish to fire only one shot. However, Mr Griffiths stated that if the mechanism of the rifle failed to cycle correctly after one shot, further shots would not automatically be fired. It was agreed that the shot could have been fired from the rifle either deliberately or inadvertently.

[267] Many of the other unchambered cartridges 'cooked-off' during the fire. The occupants of the Cavalier were armed with at least 140 rounds of ammunition.

[268] The damage to the balaclava worn by Doris was consistent with a gunshot wound to the head from a G3 rifle, with the bullet entering the right hand side of the head and exiting from the left.

[269] Ann Kiernan in her report dated 6 October 2022 made the following findings in respect of Michael Ryan:

"Taking into consideration his position as found, and the fatal wound to the chest, Michael Ryan was outside the vehicle, most likely seated with his back to the Volkswagen Golf, when he was struck by this bullet before his body fell over in the position as found."

[270] Ms Kiernan also concluded, on the evidence, that Lawrence McNally was outside the vehicle when struck by the bullets which caused his death. She opined that he received one shot to the rear of the head which was fired from the front offside of the Cavalier and a second shot to the left eyebrow, fired from the rear or rear offside of the car. The wound to his left loin region suggested that this area was presented to the shooter which is indicative of him being outside the vehicle at the time.

[271] The experts also considered the image showing the passenger side wing mirror of the Bedford lorry and the purported damage to it. They agreed that the quality of the image was not such to allow this question to be assessed. The damage could have been caused by a bullet or any other general means. If it was a bullet strike, it was not possible to ascertain from which direction any such bullet was fired.

[272] The experts agreed that the bone fragments found at the scene could have been ejected from the head of either McNally or Doris when they were shot. It was noted, however, that there was no evidence that these were, in fact, human bone fragments.

Chapter 15

Expert Evidence - Pathology

[273] The photographs of the scene show two badly burned bodies located on the ground between the nearside of the Cavalier and the offside of the Volkswagen. These were identified as the bodies of Lawrence McNally and Michael Ryan. A third body, that of Tony Doris, was found inside the Cavalier, lying across the front passenger seat.

[274] The bodies were the subject of detailed post mortem analysis carried out by Dr Carson, Deputy State Pathologist and Dr Press, Consultant Pathologist.

[275] In relation to McNally, it was concluded that at least two high velocity bullets had struck the head causing immediate or very rapid death. There were also several high velocity bullet wounds to the trunk, one of which was to the heart and would have caused rapid death. Most of the burning to the body was caused after death.

[276] The post mortem examination in respect of Ryan revealed that death was caused by a bullet wound to the chest which severed the spinal cord. Other bullets had entered the body causing laceration to the liver and a fracture of the femur.

[277] The examination of Doris' body was limited in that the skull vault and brain were missing. He had received bullet wounds to the back and possibly the chest.

[278] The three expert pathologists, Professor Crane on behalf of the coroner, Dr Rouse for the NOK of McNally and Dr Cary instructed by the NOK of Doris and Ryan, also produced reports and met to consider their findings. As a result, the production of agreed minutes obviated the need for any of them to give oral evidence to the inquest.

[279] The following was agreed:

- (i) Each of McNally, Doris and Ryan died as a result of gunshot wounds;
- (ii) Both Ryan and McNally sustained their fatal injuries having exited the crashed vehicle;
- (iii) Doris was likely to have been wearing the balaclava found at the scene and sustained a bullet wound when so doing;

- (iv) If the balaclava were worn in the usual way, pulled down over the head, a bullet passing through it and the head of the wearer would not have caused it to be dislodged. If it were worn rolled up and only over the top of the wearer's head, then it could be dislodged by a high velocity bullet;
- (v) If the bullet struck Doris on the right side of his head, then it may have exited through the front nearside window of the car and the balaclava could have travelled out through this same window, thereby ending up on the roadway;
- (vi) There was no evidence to indicate that the bodies were moved, either placed inside or removed from the vehicle;
- (vii) The experts could not speculate on the provenance of the bone fragments.

Chapter 16

Findings of Fact

[280] As will be evident from the summary of the evidence set out above, there are relatively few disputed issues of material fact to be resolved in this inquest.

[281] The principal issue of fact to be determined is whether any member of the PIRA ASU fired a shot on the day in question. It is submitted on behalf of the FMWs that some of the deceased fired at the soldiers from the car.

[282] Significantly, none of the SMU soldiers state that they saw an occupant of the vehicle discharge a weapon. A number believed that they were engaged in a fire fight, but this was based on the scenario which they faced and the number of shots they could hear being fired.

[283] In terms of witness evidence, reliance is placed on the fact that the now deceased Reverend Orr reported having spoken to an eye witness who referred to seeing gunmen firing from the car. Given the nature of this hearsay evidence, and the fact that the witness is now deceased, little weight can be attached to it

[284] The alleged damage to the frame of the wing mirror of the Bedford lorry was not raised with the police by either Soldier J or Soldier K in the days after the accident. The first time it was mentioned by either was some 30 years later in preparation for this inquest. No explanation has been offered for this striking omission. On examining the photograph, the experts could not be satisfied that this showed a strike mark on the lorry. On balance, I do not accept that the lorry was struck by a bullet fired by a member of the PIRA ASU.

[285] The ballistics evidence makes it clear that there was no evidence that one of the AKM rifles was fired. In relation to the other, two cartridges had been discharged,

one as a result of ‘cooking off.’ Only one casing was found to indicate that a shot had been fired.

[286] The FMWs postulate a theory that since not all the casings for the cartridges discharged by the SMU were found at the scene (138 out of 149), this provides support for the contention that more than one shot was fired by the PIRA ASU. In reality, it does no such thing. This inquest is concerned with evidence and the conclusions of the ballistics experts are uncomplicated. The only issue is whether the shot fired from the AKM rifle was done so deliberately or not.

[287] It is instructive to note that the MOD itself classifies the incident at Coagh as one in which terrorists were armed but did not open fire – see the internal document entitled “Use of Force by the Security Forces” dated November 1992.

[288] The evidence of the ballistics experts was that it is very difficult to fire a single shot from an AKM rifle when it is set to automatic mode. Mr Griffiths contended that it was possible the rifle had suffered some malfunction after a shot was fired but the probability must be that the shot was fired inadvertently. I have therefore concluded, on the balance of probabilities, that no member of PIRA deliberately discharged his weapon at Coagh on the morning in question.

[289] There are other subsidiary issues of fact. There are claims in the thesis compiled by XX that SB were aware of the identities of the members of the ASU prior to the operation in Coagh. The suggestion is that such knowledge fuelled an approach to the operation which encouraged the use of lethal force rather than arrest. Aside from the disputed quotations in the thesis, there is no evidence of any such prior knowledge. Indeed, every witness who gave evidence to the inquest relating to the prior planning of the SMU operation denied that there was any such advance awareness of the identity of the likely assailants.

[290] Evidently, SB had intelligence that the attack would be mounted by East Tyrone PIRA and it was known that Ryan and McNally were amongst the potential candidates to carry it out. However, I am satisfied that the identities of those tasked with the operation were not known to members of SMU in advance of the operation.

Chapter 17

Conclusion (1) - The Use of Lethal Force

[291] When considering the question of whether the use of lethal force by the soldiers was justified, I remind myself of two important principles set out by Sir Brian Leveson P in *E7 v Sir Christopher Holland* [2014] EWHC 452 at para [1]:

- (i) The use of lethal force by state actors must be subject to “the most detailed and rigorous examination”; and

- (ii) The requirement that “the examination must be prepared to consider every perspective. Those perspectives include a full recognition of the enormous challenges facing the police along with the urgency and almost instantaneous decision making required of the highly trained officers involved.”

[292] The Cavalier arrived at Coagh, across the bridge, only minutes after the Maestro was parked in the car park. The message “one up” was conveyed on the radio by one of the OPs and then, when Soldier H saw two more individuals pop up within the car, he gave the “three up” message. In light of his location, this must have been as the Cavalier was approaching the end of the bridge. This was accompanied by the “stand by stand by” message as he assessed the vehicle to be suspicious.

[293] The car then turned quickly towards the car park, came to a halt and Soldier H observed a man getting out of the rear of the vehicle with a rifle. He then gave the “go go go” instruction, meaning that both the cover group and the reaction group should deploy immediately.

[294] As the sides of the lorry dropped, the cover group was faced with an individual with an AKM rifle aimed directly at Soldier L. The evidence of each of Soldiers A, B, C and D was that this represented an immediate threat to the life of their colleague, and they opened fire. Soldier A made it clear that there was no time, in his judgement, to issue a warning.

[295] Soldier B fired shots at the driver of the car, whom we now know to have been unarmed at the time. His belief was that this was a terrorist team, intent on murder, and he did not know if the driver was armed or not.

[296] The evidence of Soldier L was that he was in immediate danger, the rifle was pointed towards him and, ultimately, after he jumped over the wall, he was surprised that he had not been shot.

[297] The vehicle began to move off and the cover group continued firing as it moved across the road. These events all happened within a matter of seconds.

[298] The actions of the cover group were entirely within the guidance provided by the Yellow Card. There was no opportunity to give a challenge or warning to those in the Cavalier since to have done so would only have increased the risk to the life of Soldier L. The cover group fired only aimed shots and did so in circumstances where there was a clear and immediate threat to the life of Soldier L. Each of the soldiers held a subjective belief that this was the case. As the vehicle moved, they maintained this belief that the individuals within the Cavalier continued to present an ongoing threat to life.

[299] I have concluded that it is simply unrealistic, when one bears in mind the fast-moving nature of events, to draw a distinction between shooting at the occupants of the vehicle when stationary and when it was moving across the road.

[300] The evidence of Soldier B is such that I am satisfied, on the balance of probabilities, that he shot Tony Doris at or about this time. The balaclava which was found on the roadway had been worn by him and was ejected from the vehicle during the shooting. I do not accept the distinction which has been sought to be drawn between Doris and the other occupants of the car. Each was involved in a planned operation to commit murder and together they presented a clear threat to life of Soldier L. No member of the cover group could have known that Doris was unarmed.

[301] I have therefore concluded that each of the cover group, including Soldier B, when firing from the lorry at the Cavalier, had an honest and genuine belief that it was necessary to open fire and that such belief was subjectively reasonable in all the prevailing circumstances.

[302] I have also concluded that the force used was reasonable and proportionate to the threat to life which was presented. There was no opportunity to issue a challenge or warning and there was no alternative or reduced level of force which would have served to mitigate or eliminate the threat to life.

[303] The second set of circumstances concerns the actions of the arrest or reaction group when they arrived on the scene, in conjunction with the cover group after they had exited the lorry.

[304] When the reaction group arrived on the scene, having travelled the 50 metres from the rear of the hotel, the Cavalier was already crashed into the pillar at 20 Hanover Square. They had heard shooting whilst making their way to the scene. As they arrived, the cover group were getting out of the lorry. Soldiers A and C both advanced with the reaction group and fired shots after having dismounted.

[305] The evidence of all soldiers was that this group moved towards the vehicle using what was described as either suppressing or suppressive fire. This involved shooting at the source of the perceived threat, thereby allowing soldiers to move towards it, by reducing the opportunity for the occupants of the vehicle to shoot the soldiers.

[306] The evidence of Soldier T, who was responsible for training many SMU soldiers, was that this was a tactical response, intended to reduce the threat to life, and which formed an integral part of training techniques. It is noteworthy that the 1971 version of the Yellow Card guidance stated that suppressive fire was not to be used but no such prohibition was contained in the version of the document in force at the time of this incident. In any event, the question for this inquest is whether the use of lethal force was justified in all the circumstances, not whether suppressive fire is or ought to be recognised as a lawful tactic.

[307] The soldiers involved all gave evidence that they believed suppressive fire to be necessary to address the particular threat posed on this occasion. Two of the

occupants of the vehicle were seen moving and carrying AKM rifles. There is no suggestion at any stage that they gave an indication of a willingness or intent to surrender.

[308] Soldier E's evidence was that he believed the SMU were being fired at from the vehicle, a view he shared with Soldiers C and G.

[309] Soldiers C and G moved into positions to the rear of the vehicle from where they could observe McNally and Ryan exiting from the passenger side. One was getting out of the rear door, holding an AKM rifle, and Soldier G fired aimed shots at him. G did so, on his evidence, in the belief that this man was going to shoot him. A second man emerged from the car holding a rifle and G fired aimed shots at him also. He continued firing until the threat had ceased.

[310] On the balance of probabilities, both Ryan and McNally were shot and killed by Soldier G. This is clear from the evidence of G himself and the other soldiers on the scene.

[311] The suppressive fire used by other soldiers was not, in itself, the use of lethal force. The key question for this inquest relates to the use of lethal force by Soldier G.

[312] It is evident that neither McNally nor Ryan were significantly injured by the engagement with the cover group since each was able to exit the vehicle following the crash. This is evident both from the evidence of the soldiers and from the civilian testimony. They were each armed with an AKM rifle and showed no signs of surrender. The evidence of the soldiers in the reaction group is that they honestly believed there was a real and immediate threat to life posed by the occupants of the car and that the use of force was the only realistic option. I accept that this was the subjective belief of Soldier G at the time he engaged both McNally and Ryan and that such belief was subjectively reasonable in all the circumstances.

[313] The fact that several of the soldiers were labouring under a misapprehension that they were engaged in a 'fire fight' does not detract from the conclusion that, subjectively, they believed an immediate threat to life existed but rather reinforces it.

[314] I have also concluded that the use of lethal force in these circumstances was reasonable and proportionate to the threat which was presented. I accept that there was no realistic alternative open to Soldier G when presented with the circumstances as he believed them to be, namely that he was under immediate threat of being shot and killed.

[315] For these reasons, I have concluded that the use of lethal force at Coagh on 3 June 1991, which resulted in the three deaths, was justified.

Chapter 18

Conclusion (2) - The Planning of the Operation

[316] The inquest must also consider the question of whether the military operation was planned and controlled so as to minimise, to the greatest extent possible, the need to have recourse to lethal force.

[317] I have set out the elements of the plan as constructed by Soldier M, with the input of Soldiers E and F, and as approved by Soldier N and others.

[318] By deciding to replace the apparent target of the PIRA attack with Soldier L, an obvious risk to his life was created. If the PIRA ASU arrived on the scene at speed and opened fire, his life was in mortal danger. The role of the cover group was to protect Soldier L and, in reality, this meant protecting him by the use of force. Given that these soldiers were secreted in a prone position in the back of the lorry, such force necessarily entailed opening fire. Four experienced SMU soldiers opening fire at a range of around ten feet generated a very high risk of the loss of life.

[319] The location chosen for the reaction group was about 50 metres from Hanover Square, at the rear of the hotel. Regardless of the method of transport used by the PIRA ASU, it was always going to take in the region of seven to ten seconds from the command "go go go" to the arrival of any of these soldiers at the car park.

[320] As Soldier M accepted, there were two possibilities in terms of the arrival of the PIRA ASU. They could have arrived on foot with weapons hidden on their persons or they could have arrived by vehicle. In either scenario it is inherently unlikely that there would be any significant time lapse between their arrival and the presentation of a threat to the life of Soldier L. It was also known that East Tyrone PIRA were liable to be heavily armed since they had access to AK weapons. Once the threat to life existed, the use of lethal force by the cover group became not only highly likely but virtually inevitable.

[321] The location of Soldier H was also an important feature of the plan. He had a restricted view from the first floor of the hotel to his left in the direction of the bridge. If the PIRA ASU arrived from this direction by vehicle, it would only be a matter of moments between Soldier H sighting the car and its occupants presenting a threat to the life of Soldier L. In such circumstances, the cover group was never going to be in a position to issue a challenge or warning to the PIRA ASU which might have resulted in their surrender.

[322] None of these conclusions are reached with the benefit of hindsight. They would have been obvious to experienced soldiers formulating the plan in the days prior to 31 May and 3 June 1991. The difficulties in finding a suitable location to secret the reaction group were identified by Soldier F when he conducted his reconnaissance exercise on 29 May. The time gap created by the location behind the hotel was evident to him and would have been equally recognised by the other officers concerned in the planning.

[323] The manner in which events played out that morning demonstrated the flaws in the strategy.

- (i) The “go go go” command was given by Soldier H when the Cavalier was only a matter of yards from the car park;
- (ii) The car stopped and one of its occupants began to get out of the car with an AKM rifle;
- (iii) The cover group dropped the sides of the lorry and opened fire a combined number of around 40 times;
- (iv) The vehicle moved off across the road and crashed into the Golf and the wall of number 20, coming to a halt, some 40 metres up the road from the hotel;
- (v) All of this occurred before the reaction group arrived on the scene and began to engage the occupants of the crashed car.

[324] It is not the role of this inquest to seek to devise alternative plans which could have been put in place by the SMU. It is apparent from the evidence, however, that the SMU could always decline a task on the basis that it could not be carried out effectively or safely. It was clearly open to the TCG to make a decision simply to remove the intended target from the car park in which case no risk to life would have arisen at that time. The point is made that the risk to that individual’s life may only have been postponed but that is, of course, speculation.

[325] A plan could have been put in place whereby only the Maestro was at the car park, or the Maestro with a dummy driver, which may have brought the PIRA ASU to the scene without the consequent risk of life, at least to the substitute target. Concerns were expressed that any such omissions could have been identified by PIRA dickers but given that the ASU was located at the Donnelly house prior to driving to Coagh, it may have been difficult to relay any messages to them.

[326] In any event, it is apparent that the overwhelming likelihood must have been that this SMU operation would result in the use of lethal force. There was never any realistic prospect of the reaction group effecting an arrest. Indeed, it is surprising that the reaction group was involved at all given that four highly trained marksmen fired some 40 shots at close range at the occupants of the Cavalier. One would have thought it likely that this engagement would have resulted in the deaths of all three occupants.

[327] I have therefore concluded that this operation was not planned in such a way as to minimise the need to have recourse to the use of lethal force. Rather the plan was conceived in a manner which meant the use of lethal force was highly likely if not, in fact, inevitable.

[328] This outcome may have been influenced by Soldier M's interpretation of what was meant by an 'arrest' operation. In his opinion, applying the simple definition of arrest meaning 'stop', either the detention of the PIRA ASU unharmed or their killing without any harm being done to the SMU or civilians, represented success. It is disturbing, to say the least, that a senior army officer, trained in the specific demands of soldiering in Northern Ireland during the Troubles, and guided at all times by the use of the Yellow Card, could have arrived at such a conclusion.

[329] The evidence also casts doubt on the role of the reaction group located behind the hotel. In their police interviews, within days of the incident, these soldiers referred to themselves being in a support role, supporting the cover group, and none of them was able to explain why they did not articulate to the RUC that their function was to carry out an arrest. In the absence of any other coherent explanation, I have concluded that these accounts as given to the police are, in fact, correct. There was no real prospect of the reaction group arresting any PIRA suspects unless this resulted from the initial engagement with the cover group. Such was their distance from Hanover Square that the overwhelming likelihood was that the cover group would have to engage the PIRA ASU in order to protect the life of Soldier L, and the reaction group would be able to appear on the scene in order to support the cover group.

Chapter 19

Verdict

[330] The deceased were:

- (i) Lawrence Joseph McNally, born in Magherafelt on 20 November 1951, of Tyholland, Monaghan;
- (ii) Anthony Patrick Doris, born in Dungannon on 4 January 1969, of 45 Meenagh Park, Coalisland, Co Tyrone;
- (iii) Michael James Ryan, born in Ardboe on 6 July 1955, of 91 Glaslough Road, Monaghan.

[331] Each of the deceased died around 7:30am on 3 June 1991 at Hanover Square, Coagh, Co Tyrone.

[332] Lawrence McNally died as a result of gunshot wounds to the head and heart.

[333] Tony Doris died as a result of gunshot wounds to the head.

[334] Michael Ryan died as a result of a gunshot wound to the chest.

[335] Lawrence McNally and Michael Ryan were shot and killed by Soldier G.

[336] Tony Doris was shot and killed by Soldier B.

[337] In each case, the use of lethal force was justified as the soldiers had an honest belief that it was necessary in order to prevent loss of life.

[338] The use of force by the soldiers was, in the circumstances they believed them to be, reasonable.

[339] The operation was not planned and controlled in such a way as to minimise to the greatest extent possible the need for recourse to lethal force.