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<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 24/064505/01
	Delivered: 08/10/2025

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**KING'S BENCH DIVISION
(JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY ROISIN NUGENT
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
AND
IN THE MATTER OF A DECISION BY THE CORONER**

**Ms Karen Quinlivan KC leading Mr Stuart McTaggart (instructed by O'Muirigh
Solicitors) for the Applicant**
**Mr Paul McLaughlin KC leading Ms Bobbie-Leigh Herdman (instructed by the Coroners
Service for Northern Ireland) for the Coroner**
**Mr Peter Coll KC leading Mr Andrew McGuinness and Mr Michael McCartan (instructed
by the Crown Solicitor for Northern Ireland) for the Ministry of Defence**
**Mr Ian Skelt KC leading Mr Ben Thompson (instructed by McCartan Turkington Breen
Solicitors) for Soldier B**
**Mr Des Fahy KC leading Mr Karl McGuckin (instructed by Mallon & Mallon, Solicitors)
for Lawrence McNally**

Hearing dates: 5, 7, 28, 31 March 2025 and 25 June 2025

McALINDEN J

[1] The applicant in this case is the daughter of Anthony Patrick Doris (deceased) who was shot dead by a soldier who was part of a specialist military unit on 3 June 1991 in Coagh, County Tyrone, when the deceased was a member of a Provisional IRA ("PIRA") team, on an active service operation to murder an off-duty UDR soldier in the village. The other two members of the PIRA team were also killed. An inquest into the death of the deceased and the other members of the PIRA team was conducted over a number of days in 2022 and 2023 and Humphreys J sitting in his capacity as a coroner, delivered his reserved findings running to 339 paragraphs on 11 April 2024. The applicant seeks to challenge some but not all of the findings of the coroner in relation to the death of the deceased.

[2] The applicant seeks an Order of Certiorari to quash part of the findings of the coroner, namely paras [294] and [295] as applicable to Soldier B, paras [298] to [302] as applicable to the deceased, excluding the finding within para [300] that Soldier B shot the deceased, para [315] as applicable to the deceased, and paras [337]–[338] as applicable to the deceased.

[3] The applicant also seeks an Order of Mandamus for the making of a finding on the available evidence that the deployment of lethal force against the deceased by Soldier B was not in accordance with the Yellow Card, was unreasonable, unjustified and unlawful. The applicant seeks a declaration that the impugned sections of the coroner's findings breached the applicant's article 2 ECHR procedural rights together with section 6 of, and Schedule 1 to, the Human Rights Act 1998 in that the inquest did not adequately or effectively address the "circumstances" by which the deceased came by his death.

[4] Further, the applicant seeks a declaration that the coroner failed, contrary to his obligations in conducting an article 2 inquest, to determine whether each shot fired by Soldier B was "unavoidably necessary" so as to be reasonable and "justified" (*Re Jordan's Application* (2014) NICA 76 at para [66]), particularly in circumstances where Soldier B was a highly trained marksman (*Bennett v UK Application* 5527/08 at paras [35], [71] and [73]). It is alleged that the coroner failed to properly consider whether the use of lethal force by Soldier B was disproportionate to the threat posed by the deceased, who is described in the Order 53 statement as "an unarmed driver driving away from the carpark when he was shot and killed."

[5] The applicant also seeks a declaration that the coroner's decision to deliver a verdict which was not capable of playing an effective role in the identification and prosecution of any criminal offences which may have occurred breached article 2 ECHR. Finally, the applicant seeks a declaration that the impugned sections of the coroner's findings that the deployment of lethal force against the deceased by Soldier B was lawful were irrational, contrary to the evidence, unreasonable, unjustified, unlawful and contrary to article 2 ECHR.

[6] It is alleged that the coroner erred in his conclusions at para [300] that in effect it was permissible to for Soldier B to fire eight aimed shots at the deceased and to thereby kill him in circumstances "where Soldier B by his own evidence did not believe him to be armed and consequently the deceased could not and did not present a clear threat to the life of Soldier L (or indeed anyone)." It is alleged that the coroner erred in his conclusion in para [300] that Soldier B 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.

[7] It is alleged that the coroner failed to give adequate reasons for, or to engage adequately or at all, with the evidence of Soldier B as to his rationale for firing at the driver of the car. It is alleged that the coroner failed to engage with Soldier B's acknowledgement that he fired at the driver when he was unarmed (inquest transcript

dated 13 December 2022 page 68 lines 19 to 30). The coroner failed to engage adequately or at all with the evidence that it was not Soldier B's case that he shot the driver because he was armed but because he was "part of a terrorist organisation that was there to murder Soldier L" and that "he and the rest of the terrorist team were a continuing threat" (inquest transcript 13 December 2022, page 74 lines 26 to 29) and the thesis advanced by Soldier B that he could shoot at someone who was part of a "terrorist organisation" even if unarmed. It is alleged that the coroner further failed to deal adequately or at all with the evidence that Soldier B fired at the unarmed driver as the car drove away from Soldier L, Soldier B and his colleagues.

[8] It is alleged that the coroner failed to engage adequately or at all with the submissions advanced on behalf of the applicant at the inquest as to why Soldier B was not justified in having recourse to the use of lethal force and that the coroner failed to give any or adequate reasons for his conclusion that the shots fired by Soldier B at the unarmed driver of the car were justified and he failed to give any or adequate reasons for his conclusion that the shots fired by Soldier B were in compliance with the Yellow Card. It is alleged that the coroner's findings fail to engage with the requirements of the Yellow Card relevant to Soldier B's actions.

[9] It is alleged that the coroner failed to take proper account of a number of material pieces of evidence including the following.

- (i) Soldier B was a member of a SMU and a highly trained marksman who fired eight aimed shots at the driver of a vehicle as the vehicle was driven away from his position and away from the car park where Soldier L had been.
- (ii) Soldier B accepted that he fired exclusively at the driver of the car. The other soldiers claimed to have been shooting at the other occupants of the car who were armed.
- (iii) At no stage did Soldier B ever suggest that he believed that the driver of the vehicle was armed. Rather he justified shooting him simply because he was part of a PIRA active service unit. The only person Soldier B had seen with a weapon was a rear seat passenger of the vehicle.
- (iv) Soldier B continued firing at the driver of the vehicle until it went out of view.
- (v) The driver of the vehicle lost control of the vehicle because he had been shot and fatally wounded, on the basis of the ballistics and pathology evidence.

[10] Finally, it is alleged that the coroner's decision was *Wednesbury* irrational because:

- (i) The conclusion that Soldier B was unaware of whether the driver was armed or not was irrational and entirely inconsistent with the evidence given by Soldier

B who acknowledged that he fired at an unarmed driver and who identified only one gun in the vehicle which was being carried by the rear seat passenger.

- (ii) The conclusion that the deceased was shot in accordance with the Yellow Card was irrational on the evidence received.
- (iii) The conclusion that Soldier B's shooting of the deceased was justified was irrational on the evidence received.

[11] Having given due weight to the detailed written and oral submissions made by the parties' representatives during the course of this wide-ranging challenge, I am satisfied that this challenge boils down to four core issues:

- (i) Whether Soldier B subjectively had a genuine and honest belief as to the need to open fire.
- (ii) Whether in addressing this issue, the coroner: (a) adopted the correct test and (b) provided adequate reasons for his conclusions.
- (iii) Whether the amount of force was proportionate in the circumstances; the relevant circumstances being as Soldier B genuinely understood them to be.
- (iv) Whether in addressing this issue, the coroner: (a) adopted the correct test and (b) provided adequate reasons for his conclusions.

In addressing these issues, the reviewing court must adopt the standard of anxious scrutiny.

[12] During the hearing of this challenge, much time and effort were expended addressing the questions of whether the reviewing court has to make its own assessments as to the existence of a genuine and honest belief on the part of Soldier B and the proportionality of his actions, bearing in mind his genuine and honest belief. I do not consider that it is necessary for me to expound on the law in relation to these matters other than to state that in considering the issue of Soldier B's genuine and honest belief, this court, exercising an essentially supervisory function, has to place real and meaningful weight on the fact that Soldier B gave oral evidence at the inquest; he waived his right to refuse to answer any questions put to him which might elicit incriminating answers; he was subjected to rigorous cross-examination from experienced senior counsel representing the applicant in this challenge; and an experienced coroner had ample opportunity to assess the credibility of this witness as he gave his oral evidence and dealt with the issues and points put to him in cross-examination. The coroner also heard oral evidence from a number of other soldiers who were also cross-examined by counsel for the next of kin and he, therefore, could similarly assess their credibility and use this evidence in the assessment of the credibility of other witnesses. This was no paper exercise. This was a meaningful and

rigorous analysis and assay of the available evidence, assiduously conducted by the coroner.

[13] In relation to the issue of proportionality, I am not convinced that it is in fact necessary for the reviewing court to conduct its own proportionality assessment if it exercises anxious scrutiny in its review of the coroner's assessment of this issue, but, adopting a belt and braces approach to this challenge, I intend to go the extra step and carry out such an assessment in an effort to provide more than ample reassurance that the circumstances surrounding the death of the deceased have been thoroughly, carefully, fairly, impartially and, indeed, exhaustively examined in a manner which is clearly compliant with the common law, statute and the Convention.

[14] In relation to the evidential matrix it is worth noting that the coroner also admitted in evidence and considered a whole raft of materials including statements made by soldiers to the police during the police investigation into the death of the deceased, statements made by soldiers as part of the coronial investigation, ballistic reports, pathology reports, maps, plans and photographs together with documentation disclosed by the Ministry of Defence ("MOD") to the coroner during the conduct of his investigations. There was absolutely no criticism of the approach adopted by the coroner as to the scope of his investigation or to his decision-making in respect of the material which was introduced in evidence at the inquest.

[15] The coroner was assiduous in his inquiry into the facts and circumstances surrounding the death of the deceased. When it transpired that a member of the army team had been using video equipment during this operation and had recorded video of the incident but had subsequently disposed of this video material, the coroner had no hesitation expressing his concern about this and, indeed, went so far as to make a report to the PSNI about the conduct of the soldier in question. In relation to the substantive findings of the coroner, these included a finding that the planning and organisation of the operation in question was such as to render the use of lethal force "highly likely if not, in fact, inevitable." As a result, the coroner made a report to the PSNI about the conduct of the soldiers directly involved in the planning and organisation of the operation. The coroner showed no reticence in making findings critical of the MOD when the evidence justified this.

[16] Prior to addressing the specific complaints raised by the applicant in this challenge, it is probably helpful to set out some general background and context to the events of 3 June 1991 on the main street of the village of Coagh, County Tyrone. This was during the latter part of "the Troubles" when republican and loyalist paramilitaries continued to wage murder campaigns in the east Tyrone area. The three individuals (Tony Doris aged 21, Peter Ryan aged 35 and Lawrence McNally aged 39) whose deaths were investigated during the course of this inquest were members of the East Tyrone Brigade of the PIRA. On the day in question, they were on active service and their intention was to murder a part-time UDR soldier who worked as a contractor in the area and who had an arrangement with another employee of the

same firm which involved him driving to a carpark in Coagh on each morning he was working and then getting a lift to his place of work with the fellow employee.

[17] It would appear that by reason of the use of covert surveillance and/or by reason of information provided by a state agent or informant operating within the ranks of the East Tyrone Brigade, the state was aware of the plan to murder the part-time UDR soldier and as a result an operation was devised to arrest those who were intent on carrying out this killing. This involved the deployment of members of a specialist army unit to Coagh on the morning in question. One member of this unit (Soldier L) was tasked with impersonating the part-time UDR man and, in order to do so in a convincing manner, he dyed his hair and was wearing padding to make him look heavier. He was tasked with driving the part-time UDR man's car (a gold-coloured Maestro) to the carpark located on Hanover Square in Coagh, where he was supposed to get out of the vehicle and make himself an obvious target for the gunmen. He was not wearing any body armour but he was armed with a handgun.

[18] The rest of the army unit were deployed in the area to protect Soldier L and to act as an arrest detail. Soldiers A to D were deployed, lying prone in the back of a flat-bed lorry with drop down sides and a tailgate, which was parked on Hanover Square, directly opposite the entrance to the car park where Soldier L had parked the part-time UDR's man's car. The four soldiers were armed with Heckler and Koch G3 rifles with 7.62mm armour-piercing ammunition and a number of tracer rounds. The soldiers were hidden from view by the sides, tail gate and a cover on the flatbed. The plan was that, if necessary, the side of the flatbed lorry nearest the road could be dropped down and the soldiers could engage the PIRA active service unit from their prone positions. Soldier B was lying closest to the tailgate of the lorry. The tailgate was closer to the centre of the village and the cab was pointing down the hill towards the Ballinderry River bridge. The other three soldiers were lying beside him, with Soldier A (the most senior officer in the rear of the lorry) closest to him, Soldier C next to that and Soldier D closest to the cab of the lorry.

[19] The soldiers were in radio contact with other soldiers, including Soldier H, who was acting as spotter and who was tasked with alerting the four soldiers lying in flatbed so that, if necessary, they could drop the side of the flatbed nearest the road and engage the PIRA active service unit. Soldier H (the spotter) was located on the first floor of a building on the same side of the road as the flatbed lorry (the Hanover House Hotel). The pre-arranged verbal signals were "standby standby" to alert the team in the back of the flatbed that the active service unit were approaching the carpark and "go, go, go" to alert the said team that Soldier L's life was in danger and they should drop the side gate and engage the active service unit in order to protect Soldier L.

[20] The arrest team including Soldier G were hiding out of view down an alleyway beside the Hanover House Hotel on the same side of Hanover Square as the flatbed lorry was parked. It was intended that they would run out onto the main street and effect the arrest of the active service unit. The police were also involved in the

operation. Their role was to drive armoured vehicles onto the road at both ends of the main street in order to prevent the vehicle containing the PIRA active service unit leaving the village.

[21] The intelligence in the possession of the state obviously was not precise in that it was not known who would make up the PIRA active service unit or indeed when the attack would take place. As a result, the special army unit and the police were all in place on the previous Friday morning (31 May 1991) but nothing happened on that date. Soldier L was wearing heavy body armour and did not get out of the vehicle on that occasion. The soldiers directly involved in the operation thought that a PIRA scout or “dicker” was deployed on that occasion but an active service unit was not deployed. The whole security operation was stood down and then put back in place on the morning of Monday 3 June 1991 and it was on this morning that the planned attack was actually attempted. It was subsequently ascertained that in order to facilitate the attack, a Vauxhall Cavalier was stolen from a house in Moneymore on Sunday 1 June 1991 and the family who owned the car were held hostage in their home overnight. The vehicle was then driven by Tony Doris to Coagh with the two other members of the PIRA active service unit onboard as passengers.

[22] I now turn to Chapter 9 of the coroner’s findings which sets out what happened in Coagh on the day in question, concentrating on the actions of Soldier B. The deployment of soldiers to Coagh was commenced late on 2 June and into the early hours of 3 June 1991. The Bedford lorry containing Soldiers A, B, C and D was driven to the scene at 07:30 hrs by Soldier K who was in plain clothes. He then left the lorry in position in front of the hotel, pointing down the hill and he then joined the arrest group at the back of the hotel, where he changed into uniform. Soldier L then arrived in the UDR man’s car and parked in the carpark opposite to where the lorry was parked on Hanover Square. The front of the Maestro was pointed towards the entrance to the carpark. Soldier L got out of the Maestro car and stood beside a toilet block at the back of the car park ostensibly reading a newspaper. There was a low wall at the back of the carpark with a significant drop on the other side of the low wall. His actions were different from his actions on 31 May 1991 when he had remained in the car at all times. The cover group in the back of the lorry had very limited views of the carpark through slits in the dropdown side of the lorry.

[23] A short time later the red Vauxhall Cavalier carrying the members of the PIRA active service unit drove towards the scene from the direction of Moneymore, over the Ballinderry River bridge. The spotter, Soldier H observed three men in the vehicle and made a radio call “red car three up.” Due to the low speed of the car, Soldier H was suspicious of the intention of the occupants and made the radio call “standby standby.” This instruction meant that radio silence had to be observed with only Soldier H permitted to transmit.

[24] The Vauxhall Cavalier then attempted to turn left into the carpark but was unable to do so. It then came to a halt at the entrance of the carpark. The rear passenger door opened and a man armed with an AK47 type rifle started to get out of

the car. He aimed the rifle in the direction of Soldier L. Soldier H then give the instruction “go, go, go” which was an instruction to the cover group and the arrest group to spring into action as Soldier L’s life was in danger.

[25] Soldier L saw what was unfolding. He saw the rear seat passenger of the red Cavalier with a balaclava rolled up to the top of his head bringing a rifle to the aim position with Soldier L as the intended target. Soldier L then threw himself over the low wall at the rear of the carpark and fell some 14 feet onto a grass bank. In his evidence he stated that he was winded but he was able to take out his handgun and pointed it up at the top of the wall in case a gunman came to the top of the wall. This didn’t materialise and he then heard shots.

[26] When the instruction “go, go, go” was given, the side of the Bedford lorry nearest the Vauxhall Cavalier was dropped and Soldier A opened fire on the man with the AK47 rifle who was pointing it in the direction of Soldier L. He perceived that there was an immediate threat to Soldier L’s life. He fired 13 rounds at this man and it was during this salvo that the red Vauxhall with this man back on board still pointing his rifle into the carpark began moving up the hill towards the centre of the village. Soldier A stopped firing when the vehicle was no longer in view from his position in the rear of the lorry. He then got out of the back of the lorry at took up a position of the rear offside corner of the lorry. He could see that the Cavalier had crashed into a parked Volkswagen Golf on the same side of the road as the lorry about 30m away from the rear of the lorry. Soldier A fired a further 3 shots into the rear of the vehicle directed at the man with the AK47. Other soldiers moved towards the car and Soldier A stopped firing. The Cavalier then became engulfed in flames and ammunition in the vehicle began exploding due to the heat.

[27] With specific regard to Soldier B, the coroner found that Soldier B helped lower the side of lorry when he heard the instruction “go, go, go.” At that stage, he could see the red Cavalier with a man armed with a rifle in the rear. As the vehicle started to move forward, he opened fire on the driver who was wearing a dark coloured hat. One of the rounds shattered the driver’s side window. He fired a total of eight rounds until the vehicle went out of view. He was the last to dismount from the rear of the lorry and he did not fire any further shots. Soldier B saw 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 as they moved towards the crashed vehicle.

[28] Soldier B did not accept that the action of the vehicle moving away was indicative of an intention to escape. His belief was that the occupants were intent on killing Soldier L. He was asked why he considered that the unarmed driver of a vehicle which was moving away from the scene posed a threat to Soldier L’s life. He stated in reply that the driver was part of a terrorist team intent on taking life and his task was to prevent that occurring. He did not know whether any of the rounds that he fired actually hit the driver and therefore he could not state that it was he who shot and killed Tony Doris.

[29] Soldier C was long deceased by the time the inquest took place but the notes of his police interview which was conducted on 12 June 1991 were adduced in evidence at the inquest. He fired eight to 10 shots at the red Cavalier vehicle from a prone position in the rear of the lorry and then dismounted from the lorry and engaged the rear of the crashed vehicle. He moved towards the vehicle in the company of Soldier G and was of the view that a “fire fight” was still going on. He saw two men on the ground on the passenger side of the vehicle, both of whom were armed. Both he and Soldier G fired at these individuals and the vehicle then became engulfed in flames. In total, Soldier C fired 24 rounds.

[30] Soldier D was available to give evidence at the inquest and he also helped lower the side of the lorry when the instruction “go, go, go” was heard. He could see a man in the rear of the Cavalier with an AK 47 type rifle which was pointed in the direction of the Maestro and toilets where he assumed Soldier L was although he did not see Soldier L. He fired nine aimed shots at the armed man in the rear of the car then the car sped off out of view. He stated that the occupants of the car continued to pose a threat to Soldier L as the vehicle moved away. When he disembarked from the rear of the lorry, he took up a position at the front driver’s side of the lorry facing the bridge. He did not engage the car or occupants after this. The coroner noted that Soldier D stated at the inquest that he saw an object flying out of the car on the passenger side which at the time he thought was a balaclava. However, when he was interviewed by the police on 6 June 1991, he made no reference to this despite being told by the police that a mask was found on the road just up from the entrance to the car park.

[31] It is important to remember that the actions of Soldier B are the focus of this judicial review challenge. The representatives of the other deceased members of the PIRA active service unit did not consider that there were any grounds to challenge the coroner’s findings in relation to the actions of Soldiers A, C and D. It is worthy of note that having considered all the evidence including the evidence of ballistic experts, the coroner concluded that the only weapons carried by the PIRA unit that morning were two AK style rifles and that no member of the PIRA active service unit deliberately discharged his weapon at Coagh on the morning in question. The coroner concluded that there was no evidence that the state knew the identities of the PIRA members making up this active service unit prior to the incident or that prior knowledge of the identities of those involved fuelled an approach to the operation which encouraged the use of lethal force rather than arrest.

[32] In Chapter 17 of his findings, the coroner deals with the issue of the use of lethal force. He made a number of preliminary observations. He stated that the use of lethal force must be subjected to the most detailed and rigorous examination. The examination must be prepared to examine every perspective including a full recognition of the enormous challenges facing state actors in such cases with the urgency and almost instantaneous decision-making required of the highly trained individuals involved.

[33] In para [294] of his findings, the coroner summarised the evidence of the four soldiers who were deployed in the back of the lorry in the following terms:

“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 judgment, to issue a warning.”

[34] The coroner then found that Soldier B fired shots at the driver: “whom we now know to have been unarmed at the time. His belief was that this was a terrorist team and he did not know if the driver was armed or not.” The coroner summarised Soldier L’s evidence in the following terms:

“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.”

The coroner then found that the “vehicle began moving off and the cover group continued firing as it moved across the road. These events all happened within a matter of seconds.”

[35] During the hearing of this judicial review, I specifically asked whether any evidence had been given in respect of the amount of time the red Cavalier would have been in view from Soldier B’s perspective. I was referred to the agreed written evidence of the three ballistics experts, Mr Olden, Ms Kiernan and Mr Griffiths and to the oral evidence that they gave when they were called to the witness box to give evidence together (a so-called hot-tubbing exercise) on 16 December 2022. Having regard to the relevant portion of transcript, it would appear that the rifles used by the soldiers were supported by bipods mounted near the front of the barrel [Ms Kiernan, page 329 line 11]. Mr Olden’s evidence was that a proficient marksman could fire eight aimed shots in “less than a second” using the type of rifle Soldier B was using on the day in question [Page 331 line 26]. In fully automatic mode it would be possible to fire 10 rounds per second [Page 331 line 30]. Mr Griffiths commented on the need to factor in the time required to re-acquire the target [Page 332 line 13]. Further, I was informed by Ms Quinlivan KC, Senior Counsel for the applicant, that it was agreed that, from Soldier B’s perspective, (remembering that Soldier B was closest to the tailgate of the trailer, it was to his immediate right, and it did not drop when the side of the trailer dropped and the tailgate would have obstructed his view as the vehicle moved off) the red car would have been in view for between one to two seconds and Soldier B fired eight shots during that time.

[36] At para [298] of his findings, the coroner concluded that the actions of the cover group were “entirely within the guidance provided by the Yellow Card.” He stated that 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 the individuals within the car continued to present an ongoing threat to life.”

The coroner concluded at para [299] that it was simply unrealistic, having regard to 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.

[37] The coroner went on to state that, having heard the evidence of Soldier B, he was satisfied on the balance of probabilities that it was this soldier who had shot Tony Doris. He found that the balaclava that had been worn by Mr Doris had been ejected from the vehicle during the shooting. He then specifically stated that:

“I do not accept the distinction that has been 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.”

[38] The coroner went on to conclude 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. He 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.

[39] Turning then to the salient parts of the evidence heard and received by the coroner that resulted in him reaching the conclusions that he reached, I will deal firstly with Soldier B’s police interview notes which relate to his interview by senior police officers under caution on 5 June 1991 at Gough Barracks in Armagh. I set out the following portions of the interview that I consider to be of central relevance to this challenge:

“A. The sides of the lorry opposite the car park in front of me went down. I saw a red car and in the rear seat of the vehicle was a dark figure with a weapon. I

caught a fleeting glance of another person partly in and partly out of the vehicle. I believed that the occupants of the vehicle were going to kill someone in the carpark. The red vehicle started to move forward. I observed the driver was wearing a dark coloured hat. I opened fire on the driver. The car continued to move forward and I continued firing at the driver. The vehicle went out of view and I stopped firing."

Q. What did you understand by the phrase "go, go, go"?

A. I knew this to mean an immediate threat to someone's life including my own and those of my patrol."

Q. Do you know if you hit the vehicle or the driver?

A. Yes I hit the car but I don't know if I hit the driver ... I saw the driver's offside window shatter."

In his interview Soldier B stated that he fired eight single aimed shots.

[40] Soldier B made a statement for the purposes of the inquest on 5 September 2022. He joined the army in 1978 and served six tours in Northern Ireland, three with the Parachute Regiment and three with the Special Military Unit. In total he was on active duty in Northern Ireland for four and a half years. He was specially trained before each tour in Northern Ireland and this training would have included training on the "Yellow Card." His understanding of the rules of engagement were that if there was an immediate risk to life and no time to give a warning, a soldier was entitled to fire his weapon to eliminate the threat.

[41] In relation to the operation itself, Soldier B emphasised that none of the soldiers knew who would make up the terrorist team, how the terrorist team would arrive or leave or the direction they would come from or leave by. Soldier B stated that his weapon was loaded with armour piercing rounds "because the terrorists may have been in a vehicle (possibly armour plated) and/or wearing body armour." It transpired that the vehicle was not armoured but the occupants were wearing body armour. His usual practice was to load a number of tracer rounds at the bottom of the magazine to alert him to the fact that he was coming to the end of the magazine.

[42] Soldier B gave evidence at the inquest on 13 December 2022. He was initially examined by Mr Lockhart KC on behalf of the coroner and then questioned by Ms Quinlivan KC on behalf of the next of kin of Mr Doris.

[43] The salient additional evidence to be gleaned from his time in the witness box is set out below.

In response to questions by Mr Lockhart KC:

“Q. Why was it you focused on the driver?”

A. Initially I focused on who was in the vehicle. Eventually I ended up looking at the driver.”

He stated he had a view of a person in the back seat of the vehicle with a gun. However, there were three people in his visibility:

“Q. Why focus on the driver who is unarmed, as opposed to the man who is armed?”

A. I would focus on the whichever terrorist person was before me ... Whether they are a firer or whether they are a driver. They are all ... with the same terrorist team.”

In response to questions by Ms Quinlivan KC:

“Q. ... before you opened fire, the car had started to move forward?

A. Correct.

Q. So at the point in time you open fire, the car is travelling up the village of Coagh, away from you and away from the carpark?

A. It's travelling away from the carpark, yes.

Q. Is it not also fair to say that it's travelling away from you, as in away from the lorry?

A. It's travelling to my right, yes.

Q. Did it not occur to you that the driver of the car was trying to escape the attention of the soldiers by driving away?

A. No.

Q. What did you think the driver of the car was trying to achieve by driving away?”

A. He was part of a terrorist organisation that was there to murder Soldier L. I don't know what he was attempting to do. All I realised was that he and the rest of the terrorist team were a continuing threat. The fact that he is moving, that is nothing.

Q. Is it not a reasonable interpretation of what you saw that he was trying to escape the attention of soldiers? He was trying to escape.

A. I do not accept that comment ... he was there for one specific reason. The team were there for one specific reason. They were there to murder Soldier L. Whatever he did in the preceding seconds thereafter could have been whatever he was going to do next. I don't know what he was going to do. All I know is that he was part of a continuing threat against Soldier L."

[44] Ms Quinlivan KC then put it to Soldier B that even if the occupants of the car were initially there with the intention of killing Soldier L, people can react to a situation and realise that there are other soldiers in the vicinity with the result that they change their minds about killing anyone and, instead, think:

"I'm no longer going to kill Soldier L. I'm going to get out of here as quickly as possible."

Soldier B did not accept that proposition. He stated:

"They were there as an entity together. They were acting in consort, and, therefore, whatever he decided to do, I have no idea. He was still a continuing threat."

[45] He was then asked how Mr Doris, the unarmed driver of a vehicle driving away from Soldier L could pose a continuing threat.

Soldier B gave the following important answers to the questions posed by Ms Quinlivan KC:

"A. You're presuming the fact that I knew what he was attempting to do. I don't know what he's attempting to do. He is still a continuing threat when he ... carrying armed terrorists. For that reason, he's a threat that could endanger the life of me, my team, the arrest team is arriving, or, even still, Soldier L.

- Q. He is in the car. He's the driver. He's unarmed. He is driving away from Soldier L ... how did he pose a threat to the life of Soldier L?
- A. He's part of a terrorist team. I don't know what he's going to do next. I can't pre-empt that. And you say he's driving away, I don't know that he's driving away. He went out of my sight. All I know that at that stage, he was a threat that was being posed to Soldier L and to others that may be in his vicinity.
- Q. He isn't carrying a gun that you can see, you accept that, don't you?
- A. I don't know that he wasn't carrying a gun ... I did not see him carrying a gun.
- Q. Did you see him pointing a weapon at any person?
- A. But there was people within the vehicle that had arms and they were there to murder Soldier L.
- Q. Is it that they were a threat to that person's life and he is facilitating that threat? ... (A)s far as you are concerned, is it proper and lawful to shoot at an unarmed driver because other people – because you saw one other person in the car who was armed?
- A. It was my last resort. I can only use firearms as a last resort. The circumstances which I had before me was that there was a terrorist armed team in front of me.
- Q. Is it lawful for you to shoot at someone who, as far as you can see, is unarmed, who is driving a car and driving away from the intended target of the terrorists?
- A. The distinction that you're asking here is do I distinguish the fact that he's unarmed. I don't know that he's unarmed. All I know is that he's part of a terrorist active team.
- Q. So it doesn't matter to you whether you can see a gun or not, you are entitled to shoot because you've seen one of the three men with a gun? That entitles

you to shoot any of the three men, is that your evidence?

A. They were microseconds away from killing another human being. It's my task that day to protect that human being, as well as to effect an arrest. They took that opportunity away. They were still an effective terrorist organisation and I am confident in my mind that I'm in no doubt that they would have killed him. Because he decided to move away, I don't know where he was going or what ... To me ... able to shoot at the driver.

Q. So what you witnessed yourself is a dark figure in the back of the car, carrying what you believe to be a rifle, and as far as you are concerned, that permits you lawfully to shoot the driver?

A. It permits me to engage an armed terrorist group, to stop them committing any further terrorist activity ... There was a second person who had debussed close to where Soldier L was, with a reasonable presumption that could be made that he also had a weapon, although I didn't see – and you provided an example of where it was because he was hidden behind a vehicle."

It is to be remembered that two rifles were recovered from the scene which had been brought to the scene by the occupants of the vehicle.

[46] Soldier B then stated that he shot at the driver because his fellow colleagues were engaging the other terrorist persons within the vehicle. He was not asked how he knew that the other members of the cover group were engaging the other occupants of the vehicle, bearing in mind that things unfolded so quickly or whether it was arranged in advance of the engagement that if it were necessary to engage targets within a vehicle, he was to engage the driver.

[47] Soldier B then confirmed that he fired eight aimed shots at the driver and that a bullet or bullets fired by him went through the driver's window. He confirmed that he had extensive experience in the use of firearms and was accomplished in the use of firearms. He also confirmed that the level of training he had undergone as a member of a specialist military unit was of a higher standard than the training provided to soldiers in other regiments serving in Northern Ireland at the time, including the Parachute Regiment. He described himself as a proficient marksman in 1991 and a soldier of greater experience and maturity than other soldiers serving in other regiments. He accepted that there was less than the width of the road between his firing position and the target that he was firing at when he opened fire. He agreed that

he fired at a target that was at relatively close range. Soldier B was specifically advised about his right not to answer questions which could elicit answers which would potentially incriminate him. Following obtaining his own legal advice on this matter, he agreed to continue answering any questions put to him. Ms Quinlivan KC then asked Soldier B whether he accepted that he hit the driver with one or more of his shots. He answered in the following manner:

“A. The circumstances were that I was in the rear of the vehicle in a difficult fire position. The driver was driving the red vehicle way ... so he was a moving vehicle. There were other members of the cover team who were firing at that. I just don’t know.”

[48] Soldier B accepted that at least one of his shots struck the driver’s side window. When asked whether he accepted that this meant that he must have hit the driver he answered in the following manner:

“The reality here is that I did not see where the glass shattered in the window. It could have been shattered to the front part, to the rear part, I just don’t know.”

[49] Soldier B was then questioned in detail about the Yellow Card rules of engagement. He was asked how opening fire in this instance fell within any of the suggested justifications set out in the Yellow Card. To this question Soldier B gave the following important answer to questions posed by Ms Quinlivan KC:

“I’ll start by saying shooting at the driver and the armed terrorist team. They opened fire against a person who is about to commit an act likely to endanger life. They had arrived at that location, fully armed, debussed, they positioned the vehicle to commit murder against Soldier L. That is the grounds upon which I decided that there was an act which was likely to endanger Soldier L’s life and, therefore, there was no other way of preventing that danger because ... the challenge could not be given.

What was the driver doing by reference to the Yellow Card which was endangering life? Acting in consort, in agreement, with an armed terrorist team to commit murder.”

[50] It was then put to Soldier B again that Mr Doris was driving the vehicle away from Soldier L when he was shot and that he (Soldier B) had accepted this. He answered:

“I said he was driving away to my right. I didn’t say he was driving away. I never said driving away.

Q. How does the act of driving away from Soldier L endanger Soldier L's life?

A. The point being that it's not just Soldier L's life. I was conscious, of course, of the cover team and I was conscious of the arrest team that was coming from the rear of the hotel. Therefore, their lives were in danger. Why? Because there is a heavily armed terrorist team inside a car that could commit an act which would endanger life."

[51] It was put to him that he only saw one rifle, not two or three rifles and he answered that it takes one rifle to kill one person:

"Based on the circumstances I was faced with in a matter of microseconds, I had to make a decision. The decision was that there was an armed terrorist group that had to be stopped to make sure that they wouldn't commit further terrorist activity ... They had arrived and were ready and within the very final stages of committing murder."

[52] I now intend to move on from the evidence upon which the coroner based his findings to the particular grounds of challenge mounted in this case. Before I do so, I consider it important to make the following overarching observations. Soldier B in giving oral evidence in this case waived his right against self-incrimination. He answered all questions put to him. Soldier B gave oral evidence setting out what he did on the day in question and what he believed to be the circumstances and challenges that he faced on that day. Soldier B's evidence was rigorously tested in cross-examination. However, at no stage during cross-examination or on questioning by the coroner was it suggested to Soldier B that he was being anything other than truthful in his accounts of what he did that day, what he believed was taking place that day and the circumstances and challenges that he faced. The coroner in his findings accepted Soldier B's evidence as being truthful. Bearing in mind all these matters, this court in exercising its supervisory role, should approach its task from the starting point of accepting the veracity of Soldier B's evidence both as to what occurred that day and what his beliefs were, unless other cogent, compelling, contradictory evidence which was not adduced at the inquest and not considered by the coroner, is brought to the attention of the court. It goes without saying that no such evidence was brought to the attention of the court during the course of this challenge.

[53] It is argued that the coroner failed to engage with the evidence given by Soldier B as to why he fired. It is further alleged that the coroner failed to give a proper and adequately reasoned decision as to why each of the eight shots fired by Soldier B were justified. This preceding sentence really highlights the ludicrous nature of this challenge funded as it is by legal aid. This vehicle contained three members of a PIRA active service unit, two of whom were armed with assault rifles and all three were wearing body armour. This active service unit were undoubtedly in Coagh on the

morning in question in order to commit murder; their target being an off-duty member of the UDR, waiting in a car park to get a lift to work. It subsequently transpired that they had brought enough ammunition with them to engage in a gun battle. The vehicle stopped at the entrance of the carpark where a member of a special military unit was standing near the intended victim's car, disguised as the off-duty UDR man. One member of the PIRA active service unit started to exit from the rear of the vehicle with a rifle and the soldier disguised as the intended victim threw himself over a wall at the back of the carpark to avoid being shot.

[54] At the same time, the soldiers in the back of the lorry were given a clear message over the radio that meant that their colleague's life was in immediate danger and they dropped the side of the lorry and they saw the vehicle with one of the rear occupants partially out of the vehicle and the other with a gun in the rear of the vehicle. They did not see the disguised soldier in the car park. They do not see that he had thrown himself over the back wall when the first gunman started to get out of the vehicle.

[55] The vehicle began to move from left to right and the four soldiers opened fire. The vehicle was in Soldier B's field of view for less than two seconds. He had to make a split-second decision what to do, having regard to the information he received over the radio and having regard to what he saw. He opened fire on the driver. He did not know whether the driver was armed or not. He certainly did not know that the driver was unarmed. He believed, with very good cause, that the driver was part of a PIRA active service unit, still intent on committing murder. He fired eight shots from a semi-automatic rifle at the driver's window in less than two seconds, shattering the window. The applicant's case which was, in all seriousness, put to this court was that Soldier B should have paused after every shot to consider whether it was absolutely necessary to fire another shot. The coroner's findings are challenged because the coroner did not deal with each individual shot fired by Soldier B in his findings and did not specifically address whether each individual shot was absolutely necessary.

[56] I find these grounds of challenge to be utterly divorced from the reality of the circumstances and challenges faced by Soldier B and the other soldiers. Soldier B had a split second to take action to stop what he honestly believed to be a PIRA active service unit from committing murder and in that split-second he made the decision to fire upon the driver, firing eight shots and he stopped firing when the driver was no longer in his field of vision, as the vehicle had moved out of view. He did not fire at the vehicle thereafter. That was the extent of his engagement with the vehicle and any of its occupants. From start to finish, less than two seconds elapsed. In this challenge, this Court is being asked to slow the passage of time down, to analyse events in freeze-frame and to address the issue of absolute necessity in slow-motion. This court is also being asked to quash the coroner's decision on the basis that he failed to engage in this slow-motion forensic exercise. It is ludicrous to suggest that this court should analyse the events of the day in question in that manner and it is equally ludicrous to urge the court to quash the coroner's findings because he did not engage in such a slow-motion forensic exercise.

[57] It is argued on behalf of the next of kin of Mr Doris that the coroner was not entitled to conclude that Soldier B honestly and genuinely believed that the unarmed driver of the car which was travelling away from the soldiers posed a threat to his life or the life of any other person. Firstly, no one challenged Soldier B's honesty or genuineness. Secondly, the coroner was able to assess this witness's honesty and genuineness at first hand as he answered all questions put to him including those put to him in cross-examination. Thirdly, the coroner accepted the evidence of Soldier B that he did not know that Mr Doris was unarmed at the time. It was repeatedly put to Mr Doris that Soldier B knew or must have known that Mr Doris was unarmed. Soldier B repeatedly replied that he knew no such thing. The coroner accepted that evidence. Fourthly, it was repeatedly put to Soldier B that Mr Doris was trying to flee the scene when he was shot and that neither he nor the other occupants of the vehicle were posing a threat to life to anyone. Again, Soldier B repeatedly stressed that he did not interpret the actions of the driver as an attempt to escape. As far as he was concerned, the occupants were still on a mission to murder, if not Soldier L, then any other soldiers who got in their way. There was ample, cogent, compelling, evidence which had stood the test of rigorous cross-examination to allow the coroner to conclude that Soldier B honestly and genuinely believed that the driver Mr Doris was an integral part of a PIRA active service unit that continued to pose a threat to the lives of others in the less than two second period that elapsed during which he decided to open fire and continued to direct fire at the driver. Although I consider it unnecessary to do so, putting myself in the decision maker's shoes, on the basis of the evidence, I would have felt compelled to reach the same conclusion as the coroner reached in this case.

[58] It is argued that the coroner was not entitled to conclude that the force used was proportionate to any perceived threat posed by the unarmed driver, in circumstances where the car was travelling away from soldiers. In essence, it is argued that Soldier B could not have concluded that the driver was armed and, indeed, should have concluded that the driver was unarmed. There is a clear and obvious difference between being unarmed on the one hand and being armed but not actually holding a firearm in the clear view of an observer observing events from outside the motor vehicle while the driver is driving a manual transmission motor vehicle, which said task usually requires two hands. Soldier B is being criticised for not concluding that the driver was unarmed from what he observed in that split-second period of time. That criticism is unfair, naive, and demonstrates a detachment from reality which can only be explained by being motivated by a desire to re-write events rather to uncover the truth. Soldier B stated and re-stated that he did not know that Mr Doris was unarmed. The coroner accepted this evidence. He cannot be criticised for doing so. Unnecessary as it is for me to go further, I do so and I state that exercising anxious scrutiny, I would have felt compelled to reach the same conclusion as was reached by the coroner.

[59] I have already dealt with the argument that Soldier B should have concluded that the occupants were not continuing to pose a threat to life and were simply trying to avoid capture by attempting to make good their escape. I re-state that Soldier B

repeatedly stressed that he did not interpret the actions of the driver as an attempt to escape. As far as he was concerned the occupants were still on a mission to murder, if not Soldier L, then any other soldiers who got in their way. There was ample, cogent, compelling, evidence which had withstood the test of rigorous cross-examination to allow the coroner to conclude that Soldier B honestly and genuinely believed that the driver Mr Doris was an integral part of a PIRA active service unit that continued to pose a threat to the lives or others in the less than two second period that elapsed during which he decided to open fire and continued to direct fire at the driver.

[60] The proportionality assessment that the coroner had to carry out was to assess whether the force used was reasonable having regard to the circumstances as Soldier B honestly and genuinely believed then to be. This involves the coroner engaging in an objective assessment of the reasonableness of Soldier B's actions. The coroner recited the facts and circumstances that he found existed at the time and he found that the use of force was reasonable or proportionate in the circumstances. His reasoning is clear, comprehensive and flawless. He has not missed out on any piece of relevant evidence, nor has he included irrelevant matters in his assessment of proportionality. He has given appropriate weight to each piece of relevant evidence and he has engaged in a common-sense analysis of the issue of reasonableness or proportionality.

[61] Faced with a vehicle containing three members of a PIRA active service unit intent on murder, what was Soldier B to do? Should he have fired one shot in the hope that this would have frightened the occupants of the vehicle into surrendering? What if the occupants of the vehicle instead of surrendering, directed automatic rifle fire at the soldiers in the lorry, who were lying prone and trapped in their positions, a number of feet away from the vehicle, as the vehicle moved from the soldiers' left to their right. The soldiers would have effectively been sitting ducks. The only realistic response available to the soldiers in the back of the lorry was to neutralise the immediate threat to life posed by the occupants of that vehicle (a moving target) and Soldier B, clearly acted in a restrained and proportionate manner. He did not fire after he dismounted from the lorry. His burst of fire was confined to a period of less than two seconds while the driver remained in view. The coroner was perfectly entitled to conclude that Soldier B's use of force was proportionate in the circumstances and, even though I believe it is unnecessary as it is for me to do so, if required to carry out my own assessment by reason of Convention caselaw or otherwise, I would unreservedly conclude that the use of force by Soldier B was entirely proportionate, having regard to his honest and genuine belief at the time.

[62] This disposes with the argument that the coroner was not entitled to conclude that the force used was (a) not excessive and (b) was absolutely necessary. In a case such as this, absolute necessity and proportionality mean the same thing. When assessing whether the use of lethal force was proportionate or reasonable, one really has to be careful to scrutinise the actions under examination to determine whether they were absolutely necessary in the circumstances. But such scrutiny is not conducted by means of some sort of freeze-frame, slow-motion analysis but is conducted in a commonsense way, in real-time, having regard to the circumstances as honestly and genuinely believed to exist at the time by the person using the force.

[63] The next argument raised by the applicant is that the coroner failed to explain how Soldier B's actions were compliant with the Yellow Card. It is argued that he should have found that Soldier B's actions were in breach of the Yellow Card. Dealing with this second point first, the version of the Yellow Card that was in force at the time stated that soldiers in all situations had to use the minimum force necessary and could only use firearms as a last resort. This requirement completely overlaps with the issues in play when considering the issues of proportionality, reasonableness and absolute necessity in relation to the use of lethal force referred to above. In relation to the issue of a challenge being given prior to firing, Soldier A was specifically asked about this. He was the senior officer in the back of the lorry and he was adamant that the giving of a warning was not possible in the circumstances faced by the soldiers. The coroner accepted this. The Yellow Card stated that a challenge must be given before opening fire unless to do so would increase the risk of death or grave injury to you or any other person or you or others in the immediate vicinity are being engaged by terrorists.

[64] Any realistic consideration of the circumstances of this incident reveals that the giving of a warning was utterly impracticable at best and counter-productive at worst. Split second decision making was required. Any warning would have had to have been shouted from a prone position in the back of a lorry at a vehicle which was starting to move when the windows of the vehicle were up. What if the occupants of the vehicle instead of surrendering in response to an audible warning, directed automatic rifle fire at the soldiers in the lorry, who were lying prone and trapped in their positions, a number of feet away from the vehicle, as the vehicle moved from the soldiers' left to their right. The soldiers would have effectively been sitting ducks. It is patently obvious that the situation faced by the soldiers did not allow for them to give a warning and then wait to see what the response of the active service unit was before opening fire. It would have been utterly foolhardy of them in the sense of giving rise to a high risk the loss of innocent lives to have behaved in this manner.

[65] The relevant version of the Yellow Card mandated that a soldier could only open fire against a person if he is committing or about to commit an act likely to endanger life and there is no other way to prevent this danger. Mr Doris was part of an active service unit intent on murder. Mr Doris was driving the murder vehicle to the scene, parking it as close to the intended target as possible in order to facilitate the killing. It cannot seriously be argued that he was not committing an act likely to endanger life and he continued to commit that act as he started to drive from left to right from the soldiers' perspective. The proportionality, reasonableness, absolute necessity analysis conducted in this case clearly means that the "no other way to prevent" test was met in this case. The primary facts as found by the coroner in this case and his acceptance of the honest and reasonable belief of Soldier B inescapably lead to the conclusion that the provisions of the Yellow Card were complied with in this instance. The coroner's conclusion to this effect is beyond challenge. If required to make an independent assessment of this issue, I would have no hesitation in emphatically reaching the same conclusion.

[66] As to the complaint that the coroner failed to explain why he concluded that Soldier B had complied with the Yellow Card, this complaint is utterly groundless.

Chapter 4 of the coroner's findings deals at length with the issues of training and the Yellow Card. The issue of a warning is addressed at para [116] when dealing with Soldier A's evidence on this point. At para [292], the coroner concluded that the four soldiers in the back of the lorry believed that the actions of the members of the PIRA active service unit represented an immediate threat to the life of the soldier disguised as the off-duty UDR man and there was no time to issue a warning. Soldier B opened fire on the driver believing him to be a member of the terrorist team intent on murder (see para [295]). The coroner concluded that the actions of the cover group were entirely within the guidance provided by the Yellow Card. There was no opportunity to challenge or to provide a warning to the members of the PIRA active service unit since to do so would have increased the risk to life. The cover group only fired aimed shots and did so in circumstances where there was a clear and immediate risk to life. Each of the soldiers had a subjective belief that this was the case. As the vehicle moved, they maintained this belief that the PIRA active service unit continued to present an ongoing threat to life (see para [298]). The coroner concluded that it was simply unrealistic (bearing in mind the fast-moving nature of the events) to draw a distinction between shooting at the occupants of the vehicle when stationary and when it was moving across the road (para [299]). Each of the occupants of the vehicle was involved in a planned operation to commit murder and together they presented a clear threat to life. No member of the cover group could have known that Mr Doris was unarmed at the time (para [300]). To argue that the coroner did not explain why he concluded that Soldier B had complied with the Yellow Card is to argue that a black crow was white. It really is a poor argument without substance.

[67] This challenge is replete with very minute variations on a single theme. The next ground of challenge is that the coroner could not have concluded on any analysis that the actions of Soldier B were absolutely necessary, having regard to the fact that he shot an unarmed individual when that individual's actions did not pose a threat to life, relying on the sole justification that Mr Doris was part of a terrorist team. This ground of challenge does not survive even the most cursory logical analysis. Soldier B did not shoot at Mr Doris just because he was a member of a terrorist team. Soldier B did not know that Mr Doris was unarmed. He shot at Mr Doris because he was a member of a terrorist team who could well be armed and who at the time had driven a vehicle containing two gunmen armed with rifles to a spot very proximate to the intended victim in order to facilitate his murder. If the shooting had been successful, Mr Doris would undoubtedly have been guilty of murder. Soldier B shot at the driver because he honestly and genuinely believed that Mr Doris, as an integral part of a terrorist team, was at the time that Soldier B fired his shots still engaging in an activity (driving other members of a PIRA active service unit) which said activity was designed and intended to facilitate the taking of life by the PIRA active service unit. On any genuine analysis, the coroner could only have concluded that Soldier B's actions were absolutely necessary.

[68] It is argued that Soldier B could not lawfully have shot at Mr Doris unless he had formed the belief that Mr Doris was armed. That argument does not hold water. Soldier B did not need to form such a positive belief having regard to the fact that he

believed that the PIRA active service unit were intent on committing murder there and then and Mr Doris as an integral part of that active service unit was manifestly acting in a manner intended to bring about that result by driving the terrorists' vehicle. A PIRA active service unit engaging in such an attack, cannot murder someone unless the driver gets the shooters into position and in engaging in that act of driving, the driver is clearly constituting an immediate threat to life.

[69] The argument that Soldier B could not have formed an honest and genuine belief about the immediate risk to life because he only saw one rifle is simply grasping at straws. Soldier B states that he did not positively see the person who was debussing from the rear of the vehicle carrying a gun. However, we know that he actually was carrying a gun. Soldier B's evidence was to the effect that he assumed he had a gun and had debussed from the vehicle to shoot the soldier disguised as an off-duty UDR man and that he (Soldier B) could not see the gun because his (Soldier B's) view of all but the head of this man was blocked by the car. The fact that he only positively saw one gun is neither here nor there. If anything, what this admission does do is add to the credibility of Soldier B, he did not guild the lily. It would have been easy for him to say he caught a glimpse of what he assumed to be a rifle in the possession of that person but he did not.

[70] The proposition that the coroner acted irrationally in concluding, on the basis of the evidence that he had heard at first hand and that had been rigorously tested, that Soldier B held an honest and genuine belief is unsustainable. No one at any stage suggested to Soldier B that he was not being honest and genuine. If no one put that case to Soldier B, how could it possibly be irrational for the coroner to accept the tried and tested evidence of Soldier B as to his genuine and honest belief?

[71] The irrationality challenge based on a failure to give adequate reasons is equally unsustainable. A rationality challenge is most commonly and properly based on the proposition that no reasonable coroner could reach the conclusions that this coroner reached on the basis of the evidence that was received, tested and accepted at the inquest. The absence of fulsome reasons, even if established would not undermine the rationality of the findings if there was evidence upon which those findings were based. In this case the coroner's reasoning is clearly sufficient. Anyone seeking to understand why the coroner reached the conclusions that he reached in his findings would be able to achieve that level of understanding by reading the findings as a whole. In my view the reasons challenge here is motivated by a desire to attempt to undermine the coroner's substantive findings in any way possible, primarily because the applicant does not agree with the substance of the coroner's key findings in relation to the actions of Soldier B.

[72] I now propose to deal with the argument that when it comes to the application of the self-defence or defence of others justification, a higher standard of care is to be expected of highly trained soldiers than is to be expected of untrained civilians faced with similar circumstances, irrespective of how unlikely it would be for civilians to be faced with such circumstances. The nature and extent of an individual's training, skills and expertise, like all individual characteristics, are essentially factual matters which

are clearly relevant when assessing whether the use of lethal force by that person was absolutely necessary in any particular set of circumstances. It is correct to assume that members of a highly trained anti-terrorist army unit will possess a degree of relevant knowledge, expertise and skill far in excess of that possessed by an untrained civilian. One would expect that the expertly trained members of an anti-terrorist army unit would be trained and drilled in marksmanship, in a host of anti-terrorist tactics dealing with various scenarios that they would be likely to encounter and would be intimately familiar with the Yellow Card. It is reasonable to assume that through their expertise, training and experience, members of such units would be much better judges of when it was absolutely necessary to use firearms and when it would not be absolutely necessary to use firearms than untrained civilians, facing similar challenging circumstances. The safe utilisation of alternative strategies short of the use of lethal force would clearly be one area where one would expect highly trained members of an anti-terrorist army unit to have a much greater degree of knowledge, expertise and skill than untrained civilians. One must also bear in mind that it was not put to Soldier B that he was trained to shoot first and ask questions later or that he was a trigger-happy gung-ho soldier intent of taking out members of the PIRA whether they posed a threat or not.

[73] Just because Soldier B opened fire on Mr Doris, does not mean that Soldier B did not comply with the high standards expected of him. It could reasonably be argued that his training would have put him in a much better position to judge the absolute necessity of opening fire and that a civilian in his position would have been given more leeway when it came to taking this very important decision. Soldier B because of his training and experience, can be assumed to have known only too well the dangers of prevarication and the dangers of delayed decision making. High standards are to be expected from him when performing his duties and rightly so. But equally, a high degree of expertise is to be assumed which would have provided him with the wherewithal to make the right call at the right time. The coroner was able to assess Soldier B's evidence at first hand. He was able to assess how he performed under rigorous cross-examination. The coroner applied the test of absolute necessity. The coroner had discussed in detail the training and expertise of the special military unit in Chapter 4 of his findings. No additional leeway was provided to Soldier B as would have been provided to an untrained civilian. The coroner's assessment was that Soldier B having regard to his level of training, experience and skill, honestly and genuinely believed that Mr Doris constituted a continuing threat to the lives of others and that it was absolutely necessary for him to open fire. The coroner was entitled to take account of the fact that Soldier B was expertly trained when it came to assessing Soldier B's ability to accurately judge whether it was absolutely necessary to open fire and when it came to carrying out his own assessment of absolute necessity on the basis of Soldier B's honest and reasonable belief. If required to conduct my own assessment of this issue, I would have felt compelled to reach the same conclusion as was reached by the coroner.

[74] In conclusion, this challenge, which was conducted by way of a rolled-up hearing, fails to get off the ground. Leave to apply for judicial review is refused. The

applicant has not established an arguable case with reasonable prospects of success. Looked at substantively, there is no basis upon which to quash the coroner's findings either in their entirety or as set out in any discrete paragraphs of his detailed findings. I state in passing that it is somewhat ironic that the only soldier whose actions were challenged in this unmeritorious judicial review was the soldier who exercised by far the greatest degree of restraint in the use of firearms during this incident. The coroner conducted a thorough, diligent and detailed examination of the facts and circumstances surrounding the deaths of Mr Doris and the other deceased and he provided detailed findings which in every way complied with the state's duties under article 2 ECHR. The applicant in this case does not agree with the substantive conclusions of the coroner in respect of the actions of Soldier B. With the benefit of legal aid, she has attempted, without success, to mount a merits challenge against the coroner's detailed findings under the guise of a judicial review. I cannot conclude this judgment without expressing my surprise that legal aid funding was made available to mount such a challenge but as there is a Legal Aid Certificate in place, I make the following costs orders. There will be no order as to costs between the applicant and the proposed respondent. The proposed Notice Parties shall bear their own costs. The applicant's costs and Lawrence McNally costs shall be taxed as assisted persons.