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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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

**IN THE MATTER OF AN APPLICATION BY BERNADETTE McKEARNEY,
ANTHONY FOX, LINDA HEWITT AND RAYMOND McCORD
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

**Desmond Fahy KC and Karl McGuckin BL (instructed by Phoenix Law) for Anthony Fox
Jude Bunting KC and Laura King BL (instructed by Phoenix Law)
for Bernadette McKearney
Martin O’Rourke KC and Andrew Moriarty BL (instructed by McIvor Farrell)
for Raymond McCord
Desmond Hutton KC and Malachy McGowan (instructed by Madden & Finucane)
for Linda Hewitt
Dr Tony McGleenan KC and Philip McAteer BL (instructed by the Crown Solicitor’s
Office) for the Secretary of State for Northern Ireland**

McLAUGHLIN J

Introduction

[1] These four applications for leave to apply for judicial review were all heard together on Monday 2 February 2026. The facts of each case are different, but all four applicants seek mandatory orders requiring the Secretary of State to establish public inquiries into the circumstances of the death of one or more family members who were murdered during the Troubles. In each case, the death was the subject of an inquest which involved allegations of state involvement or wrongdoing and in which national security sensitive materials were produced to the coroner by one or more of the security forces. In three cases (Fox, McKearney and Hewitt), the inquest was closed by the coroner on the ground that the extent of information which was subject to public interest immunity prevented the completion of the inquest in

accordance with its agreed scope. In the fourth case (McCord) a very large volume of national security sensitive information was produced to the coroner. However, before ruling on public interest immunity, the inquest was closed by the coroner in accordance with the statutory requirements of section 16A of the Coroners (NI) Act 1959 (“the 1959 Act”) (as inserted by section 44 of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023) (“the 2023 Act”).

[2] All of the applicants request the court to grant leave and rely upon the decision of the Northern Ireland Court of Appeal in *Re Brown* [2025] NICA in which a mandatory order was made compelling the Secretary of State to establish a public inquiry into the death of Sean Brown. Like the Fox, McKearney and Hewitt cases, the inquest in *Re Brown* was closed by the coroner on account of the extent of public interest immunity materials. The applicants also contend that any further delay in would breach obligations under article 2 ECHR to progress investigations with reasonable expedition.

[3] The Secretary of State does not dispute that the cases are arguable on the basis of the current state of the law in Northern Ireland. However, he contends that the law in this area may change in a manner which is material to these applications once the decision of the Supreme Court in *Re Dillon* is handed down (on appeal from the Northern Ireland Court of Appeal: [2024] NICA 59). The Secretary of State therefore requests that the applications are stayed or adjourned, at least pending that decision.

[4] A brief summary of the key facts of each case is set out below. Each summary is based upon the evidence filed by the applicants in these cases and is provided only for the purposes of explaining the background to the issue currently before the court. Nothing in this judgment should therefore be construed or understood as a finding of fact about historic events in any of these cases.

Fox and McKearney

[5] Bernadette McKearney is the wife of Kevin McKearney who was murdered on 3 January 1992 when gunmen entered his butcher’s shop in Moy, County Tyrone and shot him dead along with his uncle John. She was left as the sole parent and carer for the couple’s four children.

[6] Anthony Fox, is the brother of Bernadette McKearney. On 6 September 1992, nine months after the murder of Kevin McKearney, Bernadette McKearney and her sister Teresa discovered the bodies of their parents Charles and Teresa Fox, who had been shot dead in their own home.

[7] In 1992, Vicky Ahtty was arrested and admitted storing a VZ58 rifle which was used in the murders of Charles and Teresa Fox. In interview, he implicated two other individuals and named them as the gunmen, neither of whom were arrested or charged. In May 1993, Laurence Maguire was arrested in possession of the loaded VZ58 rifle which was used in the murders of Charles and Teresa Fox. He admitted

being the getaway driver for the Fox murders along with a range of other criminal offences, including other murders. He admitted purchasing the car which was used in the McKearney murder but denied involvement or knowledge of the murder. He was convicted and sentenced to life imprisonment for a total of five murders including Charles and Teresa Fox but not of any offence related to the McKearney murders. Maguire was designated a properly interested person in the inquests into all four deaths and has applied to be a notice party to these proceedings. Upon his request, that application has been deferred pending the court's decision on leave.

[8] In a Historical Enquiries Team ("HET") report in relation to the McKearney murders it identified eight separate shortcomings in the original RUC investigation, in respect of which the HET could not allay family concerns about collusion on the part of security forces. These included allegations made by Maguire that the UVF was regularly provided with security force photographs of individuals for the purposes of targeting. The report also expressed concerns about the failure to arrest the individuals named by Maguire as perpetrators of the attack. There were also public allegations of a relationship between some or all of these individuals and the security forces. The family also holds concerns about the weapons which were used in both murders and whether they may have been imported as part of a shipment in respect of which there are concerns that the security forces failed to take sufficient measures to prevent the importation. The allegations relating to the importation have been the subject of an open gist as part of a closed material procedure in other civil litigation (*Frizzell and Lundy* [2023] NIKB 9 and [2024] NIKB 93).

[9] In the years that followed the murders, no inquest was ever conducted. It would appear that inquests may have been opened at some point in the past, but they were never completed. On 19 January 2023, HHJ Greene KC opened public hearings in a single inquest into all four murders. The inquests were conjoined in light of the family relationship, geographical proximity and overlap in alleged perpetrators. The public hearings were preceded by multiple preliminary hearings on issues such as scope and disclosure. Evidence was heard over a two-week period from family and civilian witnesses but hearings were ultimately paused due to ongoing delays in the production of sensitive materials and applications for public interest immunity ("PII").

[10] On 26 April 2024, the coroner announced that he had decided to allow the majority of the applications for PII. In a written ruling, he also indicated that he wished to provide an open gist of those materials to the parties but was unable to do so in light of ongoing objection from some of the state parties. Notwithstanding that dispute, the coroner announced that the extent of the materials which were now the subject of PII meant that it would not be possible for the inquest to complete its investigations into some issues within the agreed scope. His preliminary view was that the *"inquiry into these deaths is seriously compromised because relevant information on issues central to the scope of the inquest cannot be disclosed and, as result, my provisional view is that I cannot continue with these inquests"*. The coroner also expressed a provisional view that an alternative form of investigation *"such as one with the powers*

of a public inquiry” was the appropriate method to consider the full circumstances of the deaths.

Hewitt

[11] Linda Hewitt is the sister of Samuel (Sam) Marshall, who was shot and killed by loyalist paramilitaries on 7 March 1990. He was killed while walking home from Lurgan RUC station with two co-accused, having just signed bail on charges of possession of ammunition. Mr Marshall’s two co-accused both survived the attack. Concerns about collusion in the murder have been held by the family from the outset. The murder occurred in a public street, in close proximity to the police station. Only a small number of persons ought to have known about the arrangements for signing bail. The three men appear to have been the subject of observation by a covert surveillance team at the time of the murder. The gunmen were able to alight from a vehicle in order to perpetrate the attack and also escape the scene unimpeded. In the month beforehand, police appear to have received information naming six individuals who were targeted for attack, including Sam Marshall. However, he was not warned about the threat until a number of weeks later.

[12] The family have cited other concerns about possible collusion including the provision of targeting information to loyalist paramilitaries, the possible relationship between the perpetrators and security forces, the possible provision of tactical/logistical information to the perpetrators and the supply of weapons to the murder gang.

[13] A number of persons were arrested in connection with the murder. They included Victor Graham and Raymond Falls. Victor Graham admitted his involvement in two murders, including that of Samuel Marshall along with other terrorist offences. He also implicated others in the murder including Raymond Falls. Victor Graham was convicted of the murder of Samuel Marshall and his appeal was dismissed. Raymond Falls admitted to and was convicted of stealing the car used in the murder, along with other terrorist offences, but was not convicted of the murder itself.

[14] Following the trial, the coroner for Armagh and Craigavon directed that an inquest was not necessary on the ground that all necessary details about the death had been established.

[15] An inquest was ultimately established into the death of Samuel Marshall before HHJ Gilpin and public evidence commenced on 20 March 2023. Like the Fox/McKearney inquest, the coroner heard civilian and family witnesses but then adjourned hearings to conclude disclosure. National security sensitive materials were produced to the coroner by various state parties and claims for public interest immunity were made. On 29 April 2024, the coroner issued a ruling in which he

allowed the majority of the PII claims. He then considered whether it was possible to continue the inquest. He concluded:

“In the current inquest, an issue of interest is whether any state actor played a role in what was an obviously planned and unlawful killing. In the circumstances, I do not believe I could fully, fairly and fearlessly investigate the death in the absence of the materials in respect of which I have upheld the PII claims.”

The day after he issued his ruling on PII, the coroner wrote to the Secretary of State and invited him to consider establishing a public inquiry into the murder under the Inquiries Act 2005.

McCord

[16] Raymond McCord is the father of Raymond McCord Jr, whose body was found in Ballyduff Quarry on 9 November 1997, having been beaten to death.

[17] An RUC investigation into the death was carried out but no perpetrator was identified. The Police Ombudsman later carried out an extremely extensive investigation (Operation Ballast) into allegations of collusion between the RUC and the UVF in relation to the murder of Raymond McCord Jr. It was later broadened to include the handling by the RUC of informants from the 1990s onwards, including the involvement of informants in the murders of seven other persons. The conclusions of Operation Ballast were published in a report on 22 January 2007. The findings included a detailed analysis and criticism of the RUC handling of one individual (Informant 1) who was linked to 10 murders between 1991 and 2000, along with other serious criminality. The report identified investigative failures by the RUC in relation to the murder of Raymond McCord Jr. The report revealed that information held by police and corroborated from other sources indicated that, while in prison, Informant 1 had ordered the murder of Raymond McCord Jr, which was later carried out by a second individual during a period of release from prison.

[18] Following publication of the Operation Ballast report and litigation by the applicant, on 9 June 2022 Mr Justice Fowler was appointed to conduct an inquest into the death of Raymond McCord Jr. The disclosure exercise was extremely prolonged and involved the production to the coroner of large volumes of national security sensitive materials which had not been disclosed to the public in the course of Operation Ballast. Throughout 2023, the disclosure exercise was case managed by the coroner who conducted a series of preliminary hearings and issued directions. On 2 February 2024, the coroner concluded that the inquest would not be able to start and complete by 1 May 2024, which was the date by which he would be required by section 16A of the 1959 Act to close the inquest if evidence had not concluded. He therefore ordered that all preparatory work should cease. The inquest was formally closed by a decision dated 26 September 2024.

[19] The McCord case is therefore different from the other three cases insofar as the coroner did not reach the stage of ruling on PII applications and therefore did not reach any conclusion on whether the extent of the materials which would be withheld from the inquest would preclude its ability to proceed. The McCord application therefore now proceeds on the basis that the court is invited to infer that the coroner would have reached that conclusion by reason of both the sheer volume of national security sensitive materials which were likely to be relevant and the nature of the topics which the inquest would inevitably be required to consider.

[20] The unspeakable trauma which must have been endured by the Fox, McKearney, Marshall and McCord families as a result of all of these heinous crimes is difficult to conceive for anyone who has not experienced such tragedy. The pain which each of those families have endured can only have been exacerbated by the emergence over time of allegations of wrongdoing on the part of the state in each of these cases. The court is deeply conscious of the sensitive position of all of the families and of the importance of progress in the investigations in order to understand the facts of what occurred and, if possible, to ensure accountability for any perpetrators.

Article 2 ECHR investigative obligation

[21] It was not disputed by the proposed respondent (at least at this stage of the proceedings) that an investigative obligation arose under article 2 ECHR and section 6 of the Human Rights Act 1998 (“the HRA”) in relation to all of the deaths under consideration in these proceedings. In the *Re Fox, Re McKearney and Re McCord* cases, the deaths occurred within 10 years of the commencement of the HRA in October 2000 and therefore fell within the potential retrospective reach of that Act, as decided by the Supreme court in *Re McQuillan and Re McGuigan* [2021] UKSC 55. In the *Re Hewitt* case, the death occurred in March 1990 and was therefore within the additional two-year period during which an investigative obligation may arise in the exceptional circumstances identified by the Supreme Court in *Re Dalton* [2023] UKSC 36. In the absence of any substantive argument on the point, the court has therefore proceeded at this stage, on the basis that an article 2 investigative obligation arises in each of the cases. However, the point has not been fully argued and I make no further observation on the issue in the event that there may be dispute at a later stage of any of the proceedings.

Relevant pending Supreme Court litigation: Re Dillon [2024] NICA 59 and Re Brown [2025] NICA 16

[22] Two recent decisions of the NI Court of Appeal are relevant to these applications and to the broader issue of investigations into Troubles-related deaths in Northern Ireland: *Re Dillon* [2024] NICA 59 and *Re Brown* [2025] NICA 16. A summary overview of each of those case and their relevance to these applications is set out below. Appeals against both decisions have been made to the Supreme

Court. *Re Dillon* was heard by the Supreme Court on 14 – 16 October 2025 and judgment is currently awaited. I have been informed by the parties that the application for permission to appeal in *Re Brown* has been stayed by the Supreme Court, pending the decision in *Re Dillon*.

Re Dillon [2024] NICA 59

[23] The 2023 Act achieved Royal Assent on 18 September 2023 and its provisions came into force on various dates during 2023 and 2024. The 2023 Act introduced a large number of reforms and changes regarding the investigation of deaths related to the Troubles in Northern Ireland. The Convention compatibility of many of the provisions in the Act were challenged in the case of *Re Dillon* including the prohibition upon the commencement of new civil proceedings arising out of the Troubles (section 43); the cessation of all Troubles related inquests which had not concluded (save for delivery of the verdict) by 1 May 2024 (section 44); immunity from prosecution for Troubles related crimes, if certain conditions were met (section 19). The 2023 Act also established a new body known as the Independent Commission for Reconciliation and Information Recovery (“ICRIR”) whose functions include conducting reviews and producing reports into Troubles related deaths. Any criminal investigations into Troubles related offences which were ongoing at the time of commencement were prohibited from continuing and no new criminal investigations into those offences could be commenced (section 38).

[24] The *Re Dillon* case raised a large number of difficult and novel issues relating the compatibility of many of the provisions of the Act with both the Convention and the Windsor Framework. For present purposes, only the Convention issues are relevant. In the High Court, in *Re Dillon* Colton J [2024] NIKB 11, found that several of the key provisions of the Act were incompatible with the Convention. However, in relation to the investigative capacity of ICRIR, he found that the statutory framework when read with ICRIR’s policy documents “left unsaid” much of the detail about how reviews would be conducted (Colton J at para [238]). He considered that the statutory structure and powers of ICRIR were such that it was at least possible for ICRIR to conduct article 2 compliant investigations. In the absence of specific cases and examples of the procedures which would be followed, he therefore declined to make any findings of incompatibility regarding ICRIR’s investigative capacity.

[25] All of the Convention findings, including those relating to ICRIR, were the subject of either an appeal or cross appeal to the Court of Appeal. It reached a different conclusion on two separate issues relating to ICRIR’s ability to conduct article 2 compliant investigations:

- (i) The Court of Appeal concluded that the lack of provision for family involvement in the investigation did not meet article 2 standards for next of

kin participation, particularly in cases where ICRIR reviews would replace inquests. In its view, this conclusion was reinforced by the absence of legal aid for families to have representation during reviews - which the Department of Justice did not consider amounted to “proceedings” for the purpose of the current legal aid legislation (NICA, at paras [218]-[222]).

- (ii) It also concluded that the role of the Secretary of State in relation to disclosure of sensitive information to family members was not consistent with the effective participation of the next of kin. It considered that while the 2023 Act required the relevant state authorities to make all relevant information available to ICRIR, Schedule 6 makes provision for the Secretary of State to prohibit ICRIR from disclosing materials to third parties where he considered that it would risk prejudicing or would prejudice the national security interests of the United Kingdom. Previously, decisions on public interest immunity and disclosure of materials to parties were made by an independent coroner. In doing so, the coroner balanced the public interest in protecting national security against the public interest in conducting a full, fair and public investigation into the death (per *R(Wiley) v Chief Constable West Midlands Police* [1995] 1 AC 274) (NICA, at paras 224 - [237]). The Court of Appeal contrasted this process with that governing ICRIR, in which the Secretary of State was given a much greater role in decisions about dissemination to third parties.

[26] Following the Court of Appeal decision in *Re Dillon*, the Secretary of State elected not to appeal all of the adverse findings in relation to Convention incompatibility. He has proposed to address some of those adverse findings in a Remedial Order made under section 10 of the HRA. At the date of this judgment, the Remedial Order been approved by the House of Commons and consideration by the House of Lords remains outstanding. Other findings of incompatibility may be addressed by primary legislation, if the Northern Ireland Troubles Bill is ultimately enacted by Parliament. The Bill was introduced in House of Commons on 14 October 2025 and is currently at Committee Stage. However, the Secretary of State did appeal to the Supreme Court against the two principal adverse findings by the Court of Appeal concerning the ability of ICRIR to conduct article 2 compliant investigations (see [25] above). As set out above, the appeal in *Re Dillon* was heard by the Supreme Court between 14 - 16 October 2025 and judgment is awaited.

***Re Brown* [2025] NICA 16**

[27] Sean Brown was the Chairman of Bellaghy Wolfe Tones GAA Club. On 12 May 1997, he was locking the gates of the club when he was abducted, beaten and shot six times by loyalist paramilitaries. His body was found the following morning in Randalstown beside his burning car. Nobody has ever been prosecuted or convicted for his murder. His widow Bridie and their children have always held concerns about the circumstances of his death including the possibility of collusion by members of the security forces and also the adequacy of the investigation which

followed. An inquest into the death was established in 1997 but it did not progress. The primary impediment to progress appears to have been compliance by the state parties with disclosure obligations. A Police Ombudsman report in 2004 also identified a series of investigative failings.

[28] Kinney J was ultimately appointed to conduct the inquest. Like his predecessors, he also experienced difficulties in securing compliance with disclosure obligations by the state authorities. On 4 March 2024, Kinney J delivered an open ruling on public interest immunity in which he allowed most of the claims but also ruled that the inquest could not continue on account of the extent of PII. In an open gist, read to the inquest by coroner's counsel, it was confirmed that more than 25 persons involved with loyalist paramilitaries were linked to the murder by intelligence and that some of those individuals were agents of the state at the time of the murder.

[29] In his open ruling Kinney J also expressed the view that a public inquiry was the appropriate means of continuing the investigation into the murder. In the aftermath of this decision, PSNI also stated openly that it would support a public inquiry as the means by which to continue the investigation. Kinney J repeated his view when asked by the Secretary of State whether he would consider referring the case to ICRIR pursuant to section 9 of the 2023 Act. The family refused a similar request from the Secretary of State and formally requested that he establish a public inquiry.

[30] Bridie Brown commenced judicial review proceedings against the Secretary of State on 22 May 2024 seeking a mandatory order to compel the establishment of a public inquiry. At the time the proceedings commenced, the decision of Colton J in *Dillon* was the subject of appeal. The Court of Appeal delivered its decision in *Dillon* on 20 September 2024 and on 17 December 2024, Humphreys J gave judgment in the *Re Brown* case. He held that, in light of the decision of the Court of Appeal in *Re Dillon*, the only lawful option to progress the investigation was a public inquiry. He considered the circumstances of the case to be exceptional and that they provided a compelling basis upon which to take the unusual step of making a mandatory order, requiring the Secretary of State to establish a public inquiry into the murder.

[31] The Court of Appeal held that the advice which had been given to the Secretary of State about a public inquiry in *Re Brown* was flawed on a number of grounds, including the capacity of ICRIR to conduct article 2 compliant investigations. It considered that the choice of investigative options was a "binary one" and that the "only lawful option available to the SOSNI to remedy the egregious delay in providing the Brown family with an article 2 compliant investigation was to order a public inquiry" (NICA at para [132]). It acknowledged the possibility that ICRIR may be reformed in a way which addressed the deficiencies identified in *Re Dillon*, but that no firm proposals were available at that time. The Court of Appeal allowed the Secretary of State some time to respond to its findings, but in the absence of

sufficiently firm alternative proposals to complete the investigation, the Court of Appeal upheld the mandatory order for a public inquiry.

Requests for Public Inquiry in Fox, McKearney and Hewitt; Secretary of State Decisions and Litigation Chronology

[32] For present purposes, there is some relevance in the litigation chronology of these four cases, relative to *Re Dillon* and *Re Brown*, as appears from the public record, in particular the decision of Humphreys J in *Re Brown* ([2024] NIKB 109 at paras [10]-[34]).

[33] The decision of Colton J in *Re Dillon* was handed down on 28 February 2024. On 4 March 2024, Kinney J delivered his PII ruling in *Re Brown* in which he indicated an intention to request the Secretary of State to establish a public inquiry in that case. On 8 March 2024, the Secretary of State wrote to Kinney J, the Attorney General for Northern Ireland and the Brown family inviting them to consider making a referral to ICRIR once the relevant provisions of the 2023 Act came into force on 1 May 2024. All parties declined to do so and on 13 March 2024, Kinney J wrote to the Secretary of State expressing his view that a public inquiry was the appropriate means by which to continue the investigation. The Brown family then issued pre-action correspondence requesting a decision to establish a public inquiry into the murder. On 16 May 2024, officials for the Secretary of State indicated that they were preparing advice and gave an estimated decision timescale of weeks from that date. On 22 May 2024, Bridie Brown commenced proceedings.

[34] The Court of Appeal decision in *Re Dillon* [2025] NICA 59 was handed down on 20 September 2024, overturning Colton J on the capacity of ICRIR to conduct article 2 compliant investigations. On 12 November 2024, the Secretary of State reviewed his decision on a public inquiry in *Re Brown*, in light of the Court of Appeal decision in *Re Dillon*. The advice given to the Secretary of State was that ICRIR was not capable of delivering an article 2 complaint investigation, but that the position may change, depending upon further appeal to the Supreme Court and/or legislative change. The Secretary of State maintained his earlier decision not to establish a public inquiry in *Re Brown*, on the basis of a “clear commitment to ensure that ICRIR is made ECHR compliant”. Humphreys J gave his decision in *Re Brown* [2024] NIKB 109 on 17 December 2024 and the Court of Appeal [2025] NICA 16 affirmed that decision on 3 April 2025.

[35] Also of relevance to this chronology was the United Kingdom general election of 4 July 2024, following which the Rt Hon Hilary Benn MP was appointed Secretary of State for Northern Ireland on 5 July 2024.

[36] In the *Re Fox* and *Re McKearney* cases, HHJ Greene made his PII ruling and recommendation for a public inquiry on 26 April 2024. A request to establish a

public inquiry was made by solicitors for both families on 15 May 2024. At that time, the decision of the Court of Appeal in *Re Dillon* had not been handed down. On 21 August 2024, officials for the Secretary of State indicated that he had received initial briefings about the cases, that further detailed advice would be provided and that he wished to meet the families in person before deciding how to proceed. The meeting took place on 5 September 2024 and a decision not to establish a public inquiry was communicated by letter of 19 September 2024. The decision letter includes, *inter alia*, reference to the findings of Colton J in *Dillon* and states “*I have concluded that an inquiry under the Inquiries Act 2005 is not the best way to proceed*” and “*.... I consider that the ICIR can discharge the article 2 obligations which arise in this case.*” These proceedings were commenced on 22 November 2024 (McKearney) and 25 November 2024 (Fox).

[37] In the *Re Hewitt* case, HHJ Gilpin made his PII ruling and decided to close the inquest on 29 April 2024. He wrote to the Secretary of State the following day, requesting that a public inquiry was established. Pre-action correspondence then followed and the Applicants made a request to establish a public inquiry. A decision letter by the Secretary of State, refusing an inquiry and expressing a preference for an ICIR referral was also issued on 19 September 2024 in terms, materially similar to those in the Fox and McKearney cases. These proceedings were then commenced on 4 December 2024.

[38] In the *McCord* case, Fowler J directed on 2 February 2024 that preparatory work for the inquest should cease. In accordance with section 16A of the 1959 Act, the inquest did not progress after 1 May 2024 and it was formally closed on 26 September 2024. Unlike the other cases, Fowler J did not make a formal request to the Secretary of State to establish a public inquiry. Mr McCord made that request by means of pre-action correspondence dated 25 October 2024 and commenced these proceedings on 31 October 2024.

[39] All four of the present cases were therefore commenced while the *Re Brown* case was ongoing in the High Court and in the weeks prior to the judgment of Humphreys J.

[40] Following publication of the judgment of the Court of Appeal in *Re Brown* on 3 April 2025, the final order was issued on 2 May 2025, stayed until 2 June 2025. On 30 May 2025, the Secretary of State applied for permission to appeal *Re Brown* to the Supreme Court. He requested expedition and for the substantive appeal to be heard alongside *Re Dillon*. At that time, the permission application in *Re Dillon* was still outstanding. The Brown family did not wish for the two appeals to be heard together and opposed the Secretary of State’s permission application. The Supreme Court ultimately declined to hear the *Re Brown* appeal alongside *Re Dillon*. On 30 June 2025, the Supreme Court granted permission to appeal in *Re Dillon* and listed the appeal for hearing on 14 - 16 October 2025. It has also ordered that the *Re Brown* permission application be stayed until after the judgment in *Re Dillon* and it has given the Secretary of State permission to amend his grounds of appeal in *Re Brown*.

[41] Several matters are clear from the above complex chronology.

[42] First, amongst this group of cases in which inquests were stopped around the same time for reasons of PII, the *Re Brown* case was first in time. Those proceedings were commenced in May 2024, with the decision of Humphreys J on 17 December 2024. The current four cases were commenced between 31 October 2024 and 4 December 2024.

[43] Second, the *Re Brown* case was commenced and progressed in parallel with *Re Dillon* both at first instance and the Court of Appeal. Indeed, at an early stage of the *Re Brown* case, Humphreys J refused a request to stay the proceedings, pending the decision of the Court of Appeal in *Re Dillon*. However, the approach of progressing the *Re Brown* case in parallel with appellate litigation in *Re Dillon* now appears to have changed. The Supreme Court has decided to stay the *Re Brown* permission application pending its full judgment in *Re Dillon*.

[44] Third, from the outset these four cases have been case managed differently to *Re Brown*. While *Re Brown* was progressed in parallel with the *Re Dillon* litigation, these cases were not. Despite all of these proceedings being commenced in late 2024 after the decision of the Court of Appeal in *Re Dillon*, these leave applications were all either stayed or adjourned pending progress in the appellate litigation. From 5 December 2024 onwards, these four cases were case managed together by Humphreys J. On that date, the cases were expressly adjourned until the conclusion of the *Brown* case. Further group case management reviews took place in January and June 2025 while the *Re Brown* and *Re Dillon* appeals were progressing to the Supreme Court. At a conjoined review hearing of all four cases on 19 September 2025 (after the Supreme Court had decided upon sequential hearings in *Re Dillon* and *Re Brown*), all four cases were listed for a conjoined leave hearing on 15 December 2025, which was then adjourned until 2 February 2025.

[45] Fourth, *Re Brown* is the only one of the cases in which a public inquiry has been refused in which the Secretary of State has reconsidered the decision in light of the Court of Appeal decision in *Re Dillon*. In *Re McCord*, no public inquiry decision has been taken at all and in the other three cases, the Secretary of State has not been provided with updated advice. The advice which he received in *Re Brown* could clearly not be recycled at this time, since it was found by the Court of Appeal in *Re Brown* to have been flawed ([2025] NICA 16, at [130]).

Northern Ireland Troubles Bill

[46] Since the decision of the Court of Appeal in *Re Brown*, the Secretary of State has introduced in Parliament the Northern Ireland Troubles Bill. The Bill has passed its Second Reading in the House of Commons and is currently at the Committee Stage. The Bill is therefore at an early stage of the legislative process. It contains many detailed proposals which, if enacted, would bring about significant changes to

the current arrangements under the 2023 Act. For example, the Bill includes proposals to permit the commencement of new Troubles-related civil claims and proposals for considering the possibility of resuming Troubles-related inquests. It proposes to establish a new body known as the Legacy Commission in place of ICRIR, which would conduct reviews and investigations into Troubles-related deaths, including new proposals for the handling of national security sensitive information and the roles of victims/families. All of these provisions appear to be intended to address the article 2 investigative deficiencies identified in *Re Dillon*. The explanatory notes published along with the Bill contain the following statement of its objectives and legal background:

“[24] The primary purpose of the Bill is to repeal and replace Part 2 and certain sections of Part 3 of the 2023 Act. In *Re Dillon’s* application for judicial review [2024] NIKB 11 the Northern Ireland High Court held that various provisions of the 2023 Act were incompatible with Convention rights and made declarations of incompatibility under section 4 of the Human Rights Act 1998 (‘HRA 1998’). Further declarations of incompatibility were then identified by the Northern Ireland Court of Appeal [2024] NICA 59. Certain findings made by that Court are the subject of an appeal to the UK Supreme Court (with the appeal being heard in October 2025). The Secretary of State laid a draft Remedial Order before Parliament under section 10 HRA 1998 in December 2024 (with the revised draft being laid on 14 October 2025). The Remedial Order will, if adopted by Parliament, repeal a number of the provisions that were the subject of the Courts’ declarations in advance of Royal Assent of this Bill. The remaining incompatibilities are remedied through changes being made in this Bill.”

[47] There is currently no available timescale for progression of the Troubles Bill in Parliament. It is also impossible for the court to predict its final content, if it is ultimately enacted. For present purposes it is only possible to observe that it is a government Bill and that, at the time of this decision, there appears to be an ongoing commitment by the government to progress the Bill in accordance with the normal parliamentary procedures.

Applicants’ submissions

[48] All of the applicants contended that the state is subject to an article 2 obligation to conduct an effective investigation into these heinous murders and that in each case the obligation remains outstanding. They all rely upon the fact that there has already been extreme delay in progressing the investigations and that no further delay should be tolerated when deciding how to proceed. On the basis of the

current state of the law, they contend that the claims are not only plainly arguable with reasonable prospects of success, but that they are unanswerable. Leave should simply be granted now and no further time should be wasted. They contend that completing the investigations will not be a quick or easy process. A clear option is available in the form of a public inquiry which would enable the investigations to continue. Hence, they argue that there should be no further delay to facilitate additional decision making on the method of investigation. In all cases, there are credible claims of state wrongdoing (whether through agents or state officials) and each of the families have identified features of the cases which they contend are exceptional, similar to those relied upon in *Re Brown* to justify taking the exceptional course of ordering the establishment of a public inquiry. They contend that further delay may risk the loss of witness evidence through death, illness or memory and is likely to undermine public confidence in both the capacity and the resolve of the state investigative authorities to ascertain the facts of each of these heinous murders or to hold people to account. They emphasise that these are minimum and undisputed obligations of the state under article 2 ECHR and section 6 of the HRA.

[49] The applicants all recognise that the outcome of the Supreme Court appeal in *Re Dillon*, could change the legal landscape for conducting Troubles-related investigations in Northern Ireland. However, they also point out that it may not. The decision of the Court of Appeal could be upheld, in which case there will be no change and time will have been wasted, unless leave is granted and the cases progressed. They also point out, entirely accurately, that the article 2 investigative obligation will remain, whatever the outcome of the Supreme Court decision in *Re Dillon*. The investigations will have to be concluded to article 2 standards, one way or another.

[50] The applicants also recognise that the Troubles Bill, if enacted in its current or a similar form, could also make a significant change to the legal landscape. A new Act may overcome the article 2 investigative deficiencies identified by the Court of Appeal in *Re Dillon*. If the proposed new Legacy Commission was capable of conducting article 2 compliant investigations, the “binary choice” relied upon by the Court of Appeal in *Re Brown*, would no longer apply. A third option for Troubles-related investigations could be available. While all of these are possibilities, the applicants all claim that the future landscape and investigative options are simply too uncertain and, in any event, none of those options have a clear timescale. If there are new opportunities for article 2 compliant investigations through the current or future investigative mechanisms, they contend that they should be applied to future cases, but not these ones. They contend that they have waited for far too long and have experienced delay after delay at the hands of state authorities, through no fault of their own. Essentially, they claim that enough is enough, that the time for waiting has passed and that the time for uninterrupted investigation is now. If it transpires that the Supreme Court upholds the decision of the Court of Appeal in *Re Dillon*, time will have been wasted, adding to the trauma of the families. Even if the *Re Dillon* decision does change some relevant aspects of the Court of Appeal findings, at least these four cases would be underway.

[51] On behalf of the McKearney family, it was contended that there has been an inconsistency in the approach of the Secretary of State. It was pointed out that he took the decision to refuse a public inquiry on 19 September 2024 by relying upon the decision of the High Court in *Re Dillon* in the knowledge that the Court of Appeal was likely to provide clarity the next day, as the court had listed the case for judgment. It was contended that, having proceeded to make his decision in the absence of appellate level clarity, it is now inconsistent for the Secretary of State to request this court to await the Supreme Court decision.

[52] It was also contended in the *Re McKearney* case, that even if the Supreme Court does reverse some or all of the key findings in *Re Dillon*, it is unlikely that there will be a quick or clear pathway to resuming the investigations. Much more clarity would be required about the procedures which ICRIR proposed to follow and the legal basis for its actions. In reality, it was contended that the entire process will become inter-linked with the progress of the Troubles Bill. It was therefore submitted that “waiting for *Dillon*” would amount in practical terms to “waiting for the Bill”, which was simply too uncertain.

[53] Two further important points are made by the applicants. First, they all contend that if the Supreme Court in *Re Dillon* does overturn some or all of the decision of the Court of Appeal in a material manner, no prejudice will follow since the pleadings can be revisited and the claims reformulated, if appropriate. Second, relatedly, the applicants all seek a declaration that the delay in the cases amounts to a breach of article 2. In the *Re McCord* and *Re Hewitt* cases, there is also an article 2 delay damages claim which is not dependent upon the outcome of *Re Dillon*. The applicants therefore claim that these aspects of the cases will proceed in any event and hence they are entitled to the grant of leave.

[54] In the *Re McCord* case, the court was informed candidly that if the leave application was adjourned further or if leave was granted but the cases stayed, there was likely to be an appeal to the Court of Appeal. The other applicants all associated themselves in general terms with the submissions made in *Re McCord*. When assessing overall delays in these cases, the court is therefore invited to “factor in” the prospect of further appeals in some or all of these cases if leave is not granted.

[55] In the *Re Fox* case, it was submitted that the court should not be swayed by the possibility of a “floodgates” argument, with more requests for a public inquiry. It was contended that this is a narrow group of cases in which inquests were closed as a direct consequence of the volume and significance of the national security sensitive materials over which PII claims have been allowed. As set out above, the position in *McCord* is slightly different, insofar as the inquest was closed before the coroner made any PII rulings.

Respondent's Submissions

[56] The proposed respondent's primary submission is that the decisions of the Court of Appeal in both *Re Dillon* and *Re Brown* were wrong and for that reason, both of those decisions have been appealed to the Supreme Court. However, subject to its primary position, it was not disputed that, based upon the current state of the law, the four cases raised issues which were arguable with reasonable prospects of success.

[57] The proposed respondent's key alternative submission was a straightforward one. It contended that the decision of the Supreme Court in *Re Dillon* was of plain relevance to these cases and that the leave applications should be adjourned or stayed pending that decision. It was submitted that on one possible outcome, the Supreme Court's decision in *Re Dillon* could be entirely dispositive of these cases and that in almost every other possible outcome, it will provide valuable guidance on the common central legal question, namely whether and how investigations by ICRIR would be capable of meeting article 2 obligations. Accordingly, it was submitted that the decision in *Re Dillon* is central to the grounds of challenge and hence the court's approach to case management. The appeal hearing in *Re Dillon* was completed over four months ago and this court was invited to infer that the timescale for publication of the judgment was unlikely to be extensive, relative to past delays and the overall duration of the litigation.

[58] The proposed respondent also relied upon the case management history of these four cases, when compared with *Re Brown*. While *Re Brown* was progressed before the Northern Ireland courts in parallel with *Re Dillon*, these four cases were not. The leave applications in these cases have always been adjourned or stayed, pending clarity about how the appellate courts would proceed. It was emphasised by the proposed respondent that the recent case management approach of the Supreme Court to stay the permission application in *Re Brown* until after the judgment in *Re Dillon*, underscores the importance of *Re Dillon* to both *Re Brown* and to these cases. In its words, the Supreme Court has now "de-coupled" the two cases, which, it was contended, provides strong support for the propriety of waiting.

[59] The proposed respondent also disagreed with the applicants' submission that the grant of leave would enable the cases to progress and to avoid further delays. It was pointed out that, unlike *Re Brown*, in the *Re Fox*, *Re McKearney* and *Re Hewitt* cases, the decision to refuse a public inquiry had never been reconsidered following the decision of the Court of Appeal in *Re Dillon*. It was submitted that, in practical terms, if leave is granted, the first task of the Secretary of State would be to reconsider those decisions in light of the updated legal position in both *Re Dillon* and *Re Brown*. Since the Court of Appeal had criticised the content of the advice upon which the *Re Brown* re-consideration had taken place, fresh advice would be required. Accordingly, it was submitted that granting leave on the current evidence would lead to the court ultimately adjudicating on a false factual position, unless a reconsideration took place. In those circumstances, there was a real possibility (if

not probability) that the advice given to the Secretary of State would be that he should wait. If this occurred, the further likelihood was that the Applicants would also seek to make further amendments to the pleadings, change the focus of the cases and potentially waste effort. If the decision in *Re Dillon* was awaited, the entire exercise of reformulating the challenge and updating the evidence would be more focused and accurate. In short, it was submitted that pressing on with the cases in their current form could simply be a treacherous shortcut.

[60] It was also submitted that granting leave could create additional complications in the event that the Supreme Court decision in *Re Dillon* was dispositive of the cases in favour of the proposed respondent. If leave was granted in any or all of these cases, there was no clear legal means by which to stop the cases, since they would proceed to a full hearing in the High Court with an automatic right of appeal to the Court of Appeal. An application to set aside leave would not necessarily be an effective remedy, since the caselaw makes clear that the bar to setting aside leave is a high one, particularly, if leave was granted based upon an understanding of the facts or law which was correct at that time (see eg *Re Ballyedmond's Application* [2000] NI 174).

[61] In response to the freestanding concerns about delay and article 2 investigative obligations, the Secretary of State emphasised that judicial review is not always the best means by which to conduct damages claims under the HRA. Those claims require an individual analysis of the conduct of each public authority alleged to be responsible for the delay and judicial review was not always an appropriate procedure for conducting a fact finding exercise. If *Re Dillon*, proves to be dispositive of the investigative aspects of these cases, it was contended that the court may wish to keep open the option of converting the damages claims into writ actions. The grant of leave for a damages claim would therefore be inappropriate.

[62] Relatedly, it was contended that the primary obligation to investigate deaths lies upon the devolved authorities. Indeed, in all cases, those authorities have been responsible for all investigations until the point when inquests were closed. It was claimed that prior to that time, the Secretary of State could not have had responsibility for any delay. Accordingly, it was argued that any delay potentially attributable to the Secretary of State was small, compared with the prior delay of the devolved authorities or those who held up progress with the inquest. None of those other bodies were respondents in these judicial review and hence the article 2 damages claim were not without their own complexities. Furthermore, it was submitted that the article 2 duty upon the state was to commence the investigation promptly and to progress it with "*reasonable expedition*", not simply with expedition. Accordingly, the question for present purposes was not only whether there had been delay, but whether any delay attributable to the Secretary of State was unreasonable or unjustified delay. For that purpose, the proposed respondent placed reliance upon the decision of the Court of Appeal in *Jordan v PSNI* [2021] NI 149, [2019] NICA 61, in which the Court of Appeal declined to hold the PSNI responsible for the totality of inquest related delays between 2002 and 2007 where the PSNI had

“engaged appropriately” in appellate litigation “in order to establish clarity about its obligations” even where it was ultimately unsuccessful in that litigation (per Morgan LCJ, at [24]).

[63] The proposed respondent also drew the court’s attention to a number of other ongoing challenges before both the High Court and Court of Appeal in which the cases have been stayed or adjourned pending the decision in *Re Dillon*. However, it was acknowledged that these cases raised arguments about the application of the Windsor Framework, rather than article 2 investigative obligations. No real weight can therefore be afforded to these decisions, other than to acknowledge the use of the court’s case management powers to await appellate decisions.

Consideration

[64] In contrast to the lengthy exposition of the background to these claims and the competing submissions, the court’s conclusions can be stated relatively succinctly. Despite the complexities of the *Re Dillon* and *Re Brown* litigation, the task currently facing this court is ultimately a case management decision. It is admittedly one of considerable difficulty in which there are strong and persuasive arguments to be made on each side. On behalf of Mr McCord, it was acknowledged that the decision facing the court was an “unenviable one”. I do not disagree.

[65] The difficulties which a court may face when making “group” case management decisions, particularly where they involve claims for breaches of Convention rights and article 2 ECHR investigative delay, were recognised by the Supreme Court in *Re Jordan* [2019] UKSC 9. In that case, a series of principles were identified to assist a first instance court. The case concerned a damages claim for article 2 ECHR investigative delay arising out of an inquest. The issue to be decided was whether a court could make an order preventing a damages claim from being commenced before the conclusion of the inquest or alternatively, whether a court could stay proceedings which had already been commenced. The Supreme Court made clear that it was not permissible to prevent a person from making a claim alleging breach of the article 2 ECHR investigative obligation at a time of that person’s choosing. However, a court could exercise case management powers, which may include ordering a stay in “appropriate circumstances” (per Lord Reed, at [28]). The Supreme Court emphasised three important principles relating to Convention rights which must be borne in mind when exercising case management powers of this nature:

- (i) Rights must be practical and effective. It is a consistent theme of Convention jurisprudence that the rights guaranteed should be applied in a way which renders them both practical and effective. In the context of claims for article 2 investigative delay, if the purpose of the proceedings is to bring to an end a period of delay, the court must be careful to ensure that any order to stay the proceedings should not be operated in a way which does prevent that right from being effective. Where such a claim is made, damages awarded at the

end of a delayed process is unlikely ever to be an adequate alternative remedy.

- (ii) Determination of the claim must take place within a reasonable time. The right to bring proceedings under section 7 of the HRA is itself a “civil right” for the purposes of article 6 ECHR. Accordingly, any proceedings alleging a breach of one of the Convention rights (including article 2) should be determined within a reasonable period of time. The imposition of a stay which prevented the proceedings from progressing over an excessive period of time, was capable, in principle, of giving rise to a breach of the reasonable time guarantee.
- (iii) Proportionality of a restriction on access to the courts. A court order staying proceedings amounts to an interference with the claimant’s article 6 right of effective access to a court. Accordingly, any stay must pursue a legitimate aim, and it must be proportionate to the attainment of the relevant objectives. For the purposes of case management, the objectives of avoiding a proliferation of unnecessary litigation and of the court being aware of all relevant circumstances at the point of determination were both legitimate aims. In the context of a damages claim for article 2 investigative delay, the court stated:

“[37] Whether a stay is proportionate depends on an assessment of the weight of the competing interests at stake in the circumstances of the particular case. The cogency of the arguments in favour of a stay will depend on the degree of risk that the proceedings may otherwise result in a proliferation of litigation, if that is the legitimate aim pursued. On the other side of the scales, the importance to the claimant of obtaining monetary redress for the violation of his or her Convention rights without avoidable delay has to be considered. In most cases the claimant is likely to be the widow, parent or child of the deceased, and may suffer anguish as decades pass without any adequate inquiry into the circumstances of the death, particularly where there are allegations of state involvement in the death (as in the present case), and of collusion and cover-up. The imposition of delay in the determination of their claim for damages may cause additional distress. There may be other factors in individual cases which make the expeditious determination of the claim particularly important. The present case, for example, illustrates the importance of expedition where proceedings are brought by claimants who are elderly or infirm. In striking an appropriate

balance between the different interests at stake, the length of any stay will be of considerable importance.

[38] There is no doubt that there may be cases in which it is proportionate to impose a stay on a claim for damages in a legacy case, weighing the relevant factors for and against it. There is equally no doubt that there may be cases in which, weighing those factors, a stay is not proportionate. Since the relevant factors can differ in nature and weight from one case to another, it follows that courts should carry out the necessary balancing exercise in the individual case. A virtually automatic rule requiring all such claims to be stayed until after the inquest, regardless of their individual circumstances, would not comply with that requirement and in addition, as previously explained, would result in breaches of the reasonable time requirement of article 6.”

[66] In this case, I have considered very carefully the competing submissions of the parties together with the complex procedural history of these claims alongside that of the *Re Brown* case and the *Re Dillon* cases. I have also considered the legal issues which this court will be required to determine in these proceedings together with the overlap between those issues and the issues arising the *Re Brown* and *Re Dillon* cases. Having done so, I have ultimately reached the conclusion that the appropriate course of action is to adjourn the leave applications in all four cases until after the judgment of the Supreme Court is available in *Re Dillon*. At that point in time, I will hear further submissions from all parties, informed by the content of that decision and determine how these proceedings should be progressed. I consider that this outcome is proportionate in all of the circumstances of all four cases. My reasons for reaching this conclusion are set out below.

[67] First, I consider that adjournment would further two related legitimate aims. The first aim is that and adjournment would assist in ensuring that the court will have available information which is of direct relevance to (and is potentially dispositive of) the determination of these proceedings. The decision of the Supreme Court in *Re Dillon* about the capacity of ICRIR to conduct article 2 compliant investigations involving national security sensitive materials, is the key legal issue at the heart of these cases. The second (and related) aim of an adjournment is to minimise, to the greatest extent possible, the risk of wasted effort by one or other or both parties which would be associated with progressing the cases on the basis of one understanding of the law or facts, which then changes.

[68] Second, even if the decision of the Supreme Court in *Re Dillon* is not dispositive of the cases, one way or another, it remains highly likely to be of high relevance to either the outcome of the cases or its approach to case management. I accept the submission that there is at least one possible outcome in which *Re Dillon* is

entirely dispositive of all four of these cases (ie. if it overturns the Court of Appeal and upholds Colton J on the capacity of ICRIR to conduct article 2 compliant investigations in cases involving national security sensitive information). Equally, it may uphold the Court of Appeal findings, in which case the path forward for progressing the cases may also be clearer. While the decision in *Re Brown* may remain outstanding in that scenario and while the Supreme Court decision in that case may ultimately still be important for a final determination in these cases, the court would still be in a more informed position to case manage these applications. In so far as the Supreme Court in *Re Dillon* might reach a conclusion somewhere between these two extremes, the availability of that decision will at least assist the court in deciding how best to case manage these applications. In that scenario it would also allow the applicants a greater opportunity to re-formulate the challenges and to marshal the necessary evidence. It may enable reconsideration of the Secretary of State's decisions on public inquiries to take place with the benefit of more accurate legal advice and it may enable concessions to be made by the Secretary of State, if appropriate. Overall, I consider that awaiting the Supreme Court decision in *Re Dillon* is likely to enable the cases to progress through this court (and appellate courts if necessary) with all of the parties and all courts proceeding upon the same factual basis, addressing (and determining) the same legal issues and hence avoiding duplication and wasted effort to the maximum extent possible. One need only consider the complex and overlapping procedural chronology in *Re Dillon* and *Re Brown* to understand the potential for recurrence if these cases progress now, with the potential for the relevant legal landscape to change prior to determination. If that occurred after a decision by this court and efforts were made to reformulate these cases before the Court of Appeal, there is a prospect of the cases being remitted for the determination of any new issues. This court is also mindful that it is dealing with four cases, not one. If effort transpires to be wasted in progressing these cases, it is likely to be of a much greater magnitude. The case management approach adopted in *Re Dillon* and *Re Brown* of parallel progression of those cases has enabled both to arrive at the Supreme Court around the same time, with sequential decisions now likely. In my view, the benefit which that approach has brought is to enable subsequent cases, such as these, to be determined on a more informed basis, with less complexity and uncertainty. I would like to take advantage of that benefit when deciding these cases.

[69] In this regard it is important to record the acknowledgement made by the Secretary of State that, on the basis of the current understanding of these cases and grounds of challenge, there is no reason why these cases should not ultimately progress together, rather than selecting a lead case, as effectively occurred with *Re Brown*.

[70] Third, while it is clear that the purpose of these proceedings is to compel the continuation of article 2 investigations and to bring to an end any unjustified delay, I do not consider it to be entirely clear cut whether any current delay on the part of the Secretary of State will inevitably be regarded as unjustified nor whether the Secretary of State might be legally responsible for the long and repeated delays in

progressing the inquests. It is of note that in all of these cases, the criticisms made by the respective coroners were directed at those parties who delayed in completing production obligations or making claims for public interest immunity. Those bodies are not parties to these proceedings. I acknowledge that some of those parties may be agencies or departments of central government for which the Secretary of State has a responsibility, rather than devolved authorities. The above observation is therefore directed solely to the delay which might be attributable to the Secretary of State in relation to his decision on the establishment of public inquiries. As set out above, the state's obligation under article 2 is to commence an investigation promptly and thereafter to proceed with "reasonable expedition". Article 2 delay claims under the HRA require the court to look beyond simply the fact or duration of an investigative delay. It is necessary to consider the role of each public authority separately, to identify the reasons for the delay, to assess whether those reasons are justified or not and to attribute responsibility for any unjustified delay individually to one or more public authority. The decision of the Court of Appeal in *Jordan v PSNI* [2021] NI 149 makes clear that delay may be justified where it is consequent upon appellate litigation conducted in good faith and for the purposes of determining rights and obligations. I make no comment on the issue of whether the current delay by the Secretary of State in deciding the means of investigation is justifiable or not, save to acknowledge that the issue is unlikely to be clear cut and that there is likely to be argument on both sides. However, what is clear is that the fact of delay alone is not sufficient to amount to an ongoing Article 2 breach. While this current period of delay must undoubtedly be frustrating or even distressing for the applicants, whether it is capable of justification in light of the ongoing appellate litigation in *Re Dillon* and *Re Brown* is a separate legal question.

[71] Fourth, a decision to adjourn these cases pending the Supreme Court decision in *Re Dillon* is unlikely to result in an extensive further delay. While it is not possible to predict precisely when the Supreme Court will give its decision, experience would tend to show that Supreme Court judgments are published in most cases within a reasonably short number of months from the date of the hearing. *Re Dillon* is a particularly complex and important appeal and it may be that a longer period might arise. However, on balance, the court can have a reasonable degree of confidence that the likely remaining time for judgment is unlikely to be extensive, particularly when compared with the very substantial delays which have already taken place. While all delay is undesirable, the periods of time in question would seem to be unlikely to prove decisive to the state's ability to complete these investigations.

[72] Fifth, the decision to adjourn the leave application pending judgment in *Re Dillon* is consistent with the approach to case management which has been taken in these four cases from the outset. As the chronology shows, they have always been stayed or adjourned pending appellate progress in one or other of the *Re Dillon* and *Re Brown* cases. The leave applications were only listed for hearing once it was clear that permission had been granted in *Re Dillon* and that the permission application in *Re Brown* would be stayed. The different case management approach which has been taken in these cases, compared to that in *Re Brown* has resulted in the Secretary of

State not reconsidering his decision on a public inquiry following the decision of the Court of Appeal in *Re Dillon*. If leave is granted now, it is inevitable that a reconsideration will have to be undertaken. In those circumstances, the court must be realistic about the likelihood of any future advice to the Secretary of State including advice that he should await the Supreme Court decision in *Re Dillon*. Progressing the cases at this time may not therefore actually achieve meaningful progress. When considered with the prospect of a further reformulation of the challenge once a reconsideration takes place, I consider that there is a realistic prospect of unnecessary circularity and associated delay. Overall, there is no easy solution to avoiding the risk of duplication and wasted effort. The court is left with the unenviable choice of trying to identify the “least risky path”. On balance, I consider that the better approach (albeit not a perfect one), is simply to adjourn these applications pending the decision in *Re Dillon*.

[73] I do not find persuasive the applicants’ arguments that the claims should proceed in any event in light of the claim for damages and declaratory relief. For the reasons set out above, the claim for damages is not clear cut since it has been directed solely against the Secretary of State and since there may be genuine legal debate about whether any delay is justified in the current circumstances. If that transpires to be the sole issue for determination in those cases, there is scope for argument on whether judicial review is the appropriate method for conducting the close factual inquiry which will be necessary. It may transpire that the more appropriate course of action is to convert the damages claims into writ actions pursuant to Order 53, Rule 9(5). I consider that there could be proper arguments to be made on both sides on that issue, which may be prejudiced if leave is granted at this time. In relation to the claim for declaratory relief, that is a claim which, par excellence, is one which depends upon a correct understanding of the law. It seems to me that awaiting a further short period to obtain greater legal clarity before considering a claim for declaratory relief is the more appropriate course of action.

[74] For all of the above reasons, I therefore consider that the appropriate course of action is for the court to adjourn consideration of all four of these leave applications until after the decision of the Supreme Court is available in *Re Dillon*. I am satisfied that it is a proportionate case management decision and that any consequent delay in the cases or restriction on access to the courts is justified in the circumstances. While one cannot know for sure what impact this additional period of delay might have upon the ability of the investigations in each of these cases to conclude or to reach clear findings, in light of the delays which have already taken place, it does not appear to be likely that it would render the right to an effective investigation any less practical or effective than if leave was granted now. Once the decision of the Supreme Court in *Re Dillon* is available, the parties will be informed of a date for further review and any case management directions. The costs of these applications will be reserved until a future date.