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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND KING'S BENCH DIVISION (JUDICIAL REVIEW)

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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

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Ms Karen Quinlivan KC and Mr Stuart McTaggart (instructed by O'Muirigh Solicitors) for the Appellant
Mr Philip Henry KC and Ms Bobbie-Leigh Herdman (instructed by the Coroners Service for Northern Ireland) for the Coroner
Mr Ian Skelt KC and Mr Ben Thompson (instructed by McCartan Turkington Breen Solicitors) for Soldier B
Mr Peter Coll KC and Mr Andrew McGuinness (instructed by the Crown Solicitor for Northern Ireland) for the Ministry of Defence

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Before: Keegan LCJ, Colton LJ and Fowler J

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KEEGAN LCJ (*delivering the judgment of the court*)

Introduction

[1] This case concerns a challenge to an inquest verdict. The appellant, Ms Roisin Nugent, is the daughter of the deceased, Anthony (Tony) Doris, who was shot dead by a member of a specialist military unit ("Soldier B") on 3 June 1991 at Coagh, Co Tyrone, during an attempted Provisional IRA ("PIRA") operation to murder an off-duty UDR soldier.

[2] During the course of 2022–2023, an inquest was conducted by Humphreys J ("the coroner") sitting as a coroner. This was an inquest which had to comply with the substantive and procedural requirements of article 2 of the European Convention

on Human Rights as the said article is engaged. It is worth reciting the terms of article 2 at this point:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

[3] The reserved inquest findings, running to 339 paragraphs, were delivered on 11 April 2024. In summary, the coroner found that the force used was justified, however, he also made some criticisms in relation to planning and control of the operation. The appellant only challenges a subset of those findings relating to the actions of Soldier B. That limited challenge was rejected at the leave stage after a rolled-up hearing before McAlinden J ("the judge") for reasons provided in *Nugent's Application for Judicial Review* [2025] NIKB 54 ("the leave judgment").

[4] The present appeal is confined to the leave ruling in respect of the coroner's treatment of one soldier who was involved in events, Soldier B. None of the other soldiers' actions are in issue. This is made explicit in the leave judgment where the judge notes that the representatives of the two other deceased PIRA members "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."

This appeal

[5] This appeal centres on whether the judge applied the correct standard of review and whether he was wrong to refuse leave in circumstances where the appellant alleges:

(i) misdirection on article 2 principles;

(ii) failure to apply *Bennett v UK* Application 5527/08;

(iii) failure to correctly apply or engage with the Yellow Card; and

(iv) irrationality and inadequate reasons in relation to Soldier B's use of lethal force.

[6] These propositions are expressed in the appellant's filed "core propositions" document as follows:

> "The central issue for this court will be whether the judge was wrong in law to conclude that the grounds advanced by the [appellant] were not arguable, and whether the leave threshold, in the context of an Article 2 case, was arguably met given the legal and evidential challenges advanced."

The parameters of the judicial review

[7] Following the findings of the coroner being delivered, the appellant issued judicial review proceedings seeking orders of certiorari quashing specific paras of the coroner's findings (paras [294], [295], [298]–[302], [315], [337]–[338]) insofar as they relate to the deceased and to Soldier B, excluding the finding at para [300] that Soldier B shot the deceased.

[8] The appellant also sought:

(i) An order of mandamus directing the coroner to find that the deployment of lethal force by Soldier B breached the Yellow Card, was unreasonable, unjustified and unlawful.

(ii) Declarations that the impugned findings breached article 2 procedural obligations.

(iii) A declaration that the coroner's findings on the lawfulness of the force used were irrational and contrary to the evidence.

(iv) A declaration that the coroner failed to determine whether each shot fired was "unavoidably necessary", contrary to *Re Jordan's Application* [2014] NICA 76 at [66], particularly in light of Soldier B's specialist training and *Bennett v UK*.

[9] During this appeal the appellant's representatives asked us to defer any remedy should we find in favour of the appellant.

[10] A rolled-up leave and substantive hearing took place over several days in March and June 2025. At the conclusion, the judge refused leave, concluding that the appellant had not established an arguable case with reasonable prospects of success; and further, treating the matter substantively, held that there was "no basis" for quashing the coroner's findings.

[11] The coroners' representatives were present but did not participate in this appeal based on the principles set out in *Re Darley* [1997] NI 384, *Jordan* [2014] NICA 36 *and Maguire v HM Senior Coroner for Blackpool and Fylde* [2023] UKSC 20. The contradictors were the representatives of Soldier B and the Ministry of Defence ("MOD") who both provided comprehensive written and oral submissions in response to the appellant's case.

Factual background

[12] The majority of the facts are not in dispute. On 3 June 1991, Tony Doris was one of three members of an East Tyrone PIRA active service unit ("ASU") who arrived in Coagh intending to murder a part-time UDR soldier. The security forces, operating on covert intelligence, had mounted a joint military–police operation in anticipation of the attack. As part of that operation, an undercover soldier ("Soldier L") impersonated the intended target by driving the UDR man's Maestro car to a car park at Hanover Square, where he exited the vehicle and positioned himself beside a toilet block.

[13] An army "cover group", including Soldiers A, B, C and D, was concealed in the rear of a flat-bed lorry opposite the car park, equipped with G3 rifles. They awaited radio instruction from a spotter, Soldier H, who was positioned in an upstairs room overlooking the scene. A separate arrest group was stationed nearby, and police vehicles were deployed to block exit routes from the village.

[14] Shortly after 7:30am, a red Vauxhall Cavalier, driven by Mr Doris and containing the ASU approached Hanover Square. Soldier H observed three occupants and broadcast "standby standby." The vehicle came to a stop at the entrance to the car park, at which point a rear-seat passenger armed with an AK-type rifle opened the door and aimed towards Soldier L. Soldier H immediately transmitted "go, go, go."

[15] Soldier L threw himself over a wall at the rear of the car park, and the cover group dropped the concealed side of the flat bed lorry and opened fire on the Cavalier which began moving across the square. The vehicle collided with a parked car and became engulfed in flames due to the ignition of ammunition inside. Two AK-style rifles were later recovered from the scene. No member of the ASU discharged a weapon during the incident. Two rifles were recovered from the scene which had been brought there by the occupants of the vehicle.

The coroner's findings (relevant to Soldier B)

[16] The coroner found that the ASU arrived at Hanover Square in Coagh intending to murder an off-duty UDR soldier (impersonated that morning by Soldier L). The cover group, including Soldier B, was concealed in the rear of a flat-bed lorry opposite the car park. When the pre-arranged "go, go, go" signal was issued, the side of the lorry dropped, and the cover group opened fire on the red Cavalier containing the ASU.

[17] The coroner accepted that one rear seat passenger was armed with an AK-type rifle, aimed towards Soldier L, and that the situation unfolded within "a matter of seconds."

[18] The coroner's key findings on Soldier B are summarised as follows:

(i) The coroner found that upon the side of the lorry dropping, Soldier B observed an armed man in the rear of the Cavalier, but he opened fire on the driver, firing eight aimed shots. One round shattered the driver's side window. He continued firing until the vehicle moved out of view (para [27]).

(ii) The coroner found that Soldier B believed the driver was part of a "terrorist team" and that he did not know whether the driver was armed or not (para [294]; para [295]).

(iii) The coroner summarised Soldier B's evidence that he regarded all occupants as jointly posing a continuing threat, irrespective of whether the driver was physically holding a firearm at that precise moment. The driver's movement of the vehicle was not interpreted by Soldier B as an attempt to flee; instead, he believed the ASU continued to pose an imminent lethal threat (paras [28], [43]-[45]).

(iv) Having consulted the agreed ballistics evidence, the coroner found that the vehicle would have remained in Soldier B's line of sight for between one and two seconds, during which he fired eight shots (para [35]).

(v) The coroner accepted that it was Soldier B who shot the deceased (para [300]) but noted that Soldier B did not positively assert in evidence that he had struck the driver, only that he fired at him and shattered the driver's window (paras [28], [48]).

(vi) The coroner concluded that the actions of all four soldiers in the cover group, including Soldier B, were "entirely within the guidance provided by the Yellow Card" (para [298]) in that: there was no opportunity to give a warning, as doing so would have increased the risk to life; each soldier held a subjective belief that the ASU presented an immediate and ongoing threat to life; and, that it was "unrealistic" to distinguish between firing at the occupants when stationary and continuing to fire as the vehicle moved across the road (para [299]).

(vii) The coroner also found that: Soldier B held an honest and genuine belief that: it was necessary to open fire (para [300]); his belief was subjectively reasonable in the circumstances; the force used was reasonable and proportionate to the threat to life presented (para [38]); and, there was no alternative or reduced level of force available that would have mitigated the threat (para [38]).

(viii) The coroner also stated:

> "I do not accept the distinction that has been drawn between Doris and the other occupants of the car … together they presented a clear threat to the life of Soldier L. No member of the cover group could have known that Doris was unarmed." (para [300])

Decision of the judge at the rolled-up leave/substantive hearing

[19] The judicial review was heard before the judge on 5, 7, 28 and 31 March 2025 and 25 June 2025. In a judgment delivered on 8 October 2025, the judge refused leave, concluding that the appellant had not established an arguable case with a realistic prospect of success.

[20] The judge identified the issues raised in the challenge as ultimately reducing to four core questions:

(i) whether Soldier B genuinely and honestly believed it was necessary to open fire;

(ii) whether the coroner adopted the correct test and provided adequate reasons for that conclusion;

(iii) whether the force used was proportionate in the circumstances as Soldier B genuinely understood them; and

(iv) whether the coroner adopted the correct test and gave adequate reasons in addressing proportionality.

[21] The judge considered that the reviewing court's task was to apply "anxious scrutiny" to the coroner's reasoning but rejected the proposition that the court was required to conduct its own primary assessment of the evidence. He stated that, in relation to the issue of Soldier B's belief, the court was required to place "real and meaningful weight" on the coroner's advantage as the tribunal who heard and observed the witness. The judge emphasised that Soldier B had waived the privilege against self-incrimination, given oral evidence, and been subjected to "rigorous cross-examination" by experienced senior counsel at the inquest.

[22] The judge noted that the coroner had ample opportunity to assess credibility and stated that, absent "cogent, compelling, contradictory evidence" that had not been before the coroner, which was not identified in this challenge, the reviewing court should accept the coroner's conclusion on Soldier B's state of mind.

[23] Although expressing doubt as to whether it was necessary, the judge went on to conduct what he described as a "belt and braces" independent proportionality assessment in order to provide "more than ample reassurance" that the circumstances of the death had been fully and properly examined. He held that the coroner's finding that the force used was reasonable and proportionate was "clear, comprehensive and flawless," and that he himself would have reached the same conclusion on the evidence.

[24] The judge rejected each ground advanced by the appellant. He concluded that the appellant's case improperly relied on a "freeze-frame, slow-motion analysis" inconsistent with the coroner's obligations or with article 2 jurisprudence.

[25] In relation to the Yellow Card, the judge held that the coroner's conclusion that the soldiers' actions fell within its terms was "beyond challenge." He stated that the version of the Yellow Card in force at the time overlapped entirely with the proportionality and necessity tests under article 2 and that the coroner had provided detailed reasons for his findings. He held that it was "patently obvious" that no warning was feasible and that the coroner's reasoning on this issue was unimpeachable.

[26] The judge further rejected challenges based on alleged irrationality or failure to give adequate reasons. He stated that the coroner's reasoning was "clearly sufficient," that the findings were grounded in "ample, cogent, compelling evidence," and that no reasonable reviewing court could question the coroner's acceptance of Soldier B's honest and genuine belief. He considered the appellant's case to amount to an impermissible merits challenge "under the guise of a judicial review" and described the leave application as "unmeritorious," expressing surprise that it had been legally aided.

[27] The judge also stated that were he required to determine the matter substantively himself he would have unreservedly upheld the coroner's findings and rejected the challenge in its entirety.

Consideration of the grounds of appeal

[28] We have considered the arguments made by Ms Quinlivan KC in writing and orally. We have also been provided with all of the relevant inquest papers with the statements of soldiers including B. In addition, as Soldier B gave evidence we have read the transcript of his evidence before the coroner. This means that we can effectively consider this case in a rolled-up manner as the court below did.

[29] In support of the appellant's case Ms Quinlivan raised five core points as follows which we will deal with:

(i) The judge erred in holding that there was no arguable ground that the coroner failed to apply the heightened article 2 obligations applicable to trained firearms officers, as per *Bennett*.

(ii) The judge erred in concluding that it was unarguable that the coroner failed to adequately engage with, or provide adequate reasons for, his findings concerning Soldier B's justification for firing.

(iii) The judge wrongly held that there was no arguable case that the coroner erred in finding that the shooting of the unarmed driver was absolutely necessary.

(iv) The judge erred in concluding that the coroner's finding of compliance with the Yellow Card was unarguable.

(v) The judge erred in finding unarguable the contention that the coroner improperly treated the four soldiers' actions collectively, without assessing Soldier B's individual justification for firing.

[30] At this juncture we record that the legal principles which frame an article 2 inquest were not controversial. The coroner sets these principles out in his ruling. Specifically, he references the structure of article 2(2) and the settled domestic and Strasbourg jurisprudence on self-defence and the use of lethal force which emphasises both limbs of the self-defence test, namely (i) an honest and genuine belief in the necessity of force, and (ii) the reasonableness of that force in the circumstances.

[31] Given the agreement as to the legal principles we need not set out all of the authorities cited to us including a wide range of Strasbourg cases where violations were both established and not established. We wish to stress that in a case where a substantive breach of article 2 is alleged the outcome is fact sensitive. We also highlight that *McCann v United Kingdom* [1996] 21 EHRR 97, *Armani Da Silva* and *R (Duggan) v North London Assistant Deputy Coroner* [2017] EWCA Civ 142, all cited by the coroner make clear that article 2 requires the assessment to be undertaken from the perspective of a soldier confronted with an imminent threat, and not with hindsight. Unsurprisingly, Ms Quinlivan accepted that the coroner did not misdirect himself in relation to the law.

[32] As to the point made that the coroner did not expressly quote the requirement of "absolute necessity" found in article 2 in his conclusions, it is implicit from his ruling that he knew what the article 2 requirements were. In any event the Strasbourg jurisprudence that Ms Quinlivan brought us through confirms that the domestic test of self-defence and the ECHR standard exist in symmetry. Any attempt to distinguish between "absolute necessity" under article 2 and domestic reasonableness in self-defence law is answered by *Armani Da Silva v United Kingdom* [2016] 63 EHRR 12. Article 2(2)'s language of "absolute necessity" is properly understood as the same proportionality-based reasonableness test applied domestically. The coroner and judge correctly applied this standard. In Northern Ireland it is telling that this has not

posed a problem in any of the legacy inquests that have been heard to date and translates into coroners having to decide whether force was justified or not.

[33] Furthermore, we are not convinced that any issue in relation to appellate review arises. The suggested approach was defined by Ms Quinlivan for the lower court at para 34 of her skeleton argument:

> "34. In written and oral submissions, the next of kin submitted that the proper approach of the court should be that:
>
> > 'The court should consider the relevant evidence, primarily Soldier B's justification for shooting the deceased, as set out in the 3 accounts provided (his 1991 police interview, his 2022 statement and the transcript of his evidence) and should thereafter consider Soldier B's actions and the coroner's decision to 'particularly thorough scrutiny' (or 'careful scrutiny') and if the court concludes that the coroner was wrong in concluding that Soldier B was justified in shooting the deceased, the court can and should so conclude, without any particular deference to the coroner, albeit acknowledging that the coroner heard, as opposed to read the evidence."

[34] In practice, this approach of particularly thorough scrutiny has been consistently followed by judicial review and appellate courts in Northern Ireland for years when an article 2 issue arises. The reliance placed upon *Shvidler and Dalston* [2025] UKSC 30 is misplaced as the instant case does not concern an article 8 proportionality balancing exercise. What is in issue is this case is whether the coroner's factual finding that force was justified can be impugned on public law grounds and/or is a substantive breach of article 2.

[35] We acknowledge that the leave judgment variously and inconsistently refers to "anxious scrutiny", an "essentially supervisory" approach, proportionality, and "putting myself in the decision-maker's shoes." The interchangeable use of such expressions has the potential to distract from the real issue. However, we are satisfied on an overall view that the judge has conducted thorough scrutiny which satisfies the stricter and more compelling necessity test required by article 2(2) highlighted by Ms Quinlivan. In any event this court has itself applied the proper standard.

[36] We are not engaged in a direct merits appeal against the coroner's inquest findings. We are also mindful of the principles set out in *Re DB* [2017] UKSC 7, and subsequent authorities which caution against upsetting factual findings. However,

given that article 2 is engaged, and a substantive breach is alleged we must thoroughly scrutinise the coroner's reasoning to determine whether any ground of challenge could rationally have been considered arguable. Respect is owed to the coroner's findings, particularly where those findings were made after extensive oral evidence. However, that does not absolve a reviewing or appellate court from undertaking such a thorough analysis.

[37] The ancillary point advanced by the appellant is that that the coroner failed to apply the *Bennett* principle requiring a higher standard of care from trained firearms officers. It is submitted that neither the coroner nor the judge engaged with the implications of Soldier B's specialist training and marksmanship. The appellant contends that *Bennett* imposes an enhanced level of objective scrutiny on the actions of trained firearms officers and soldiers, such that neither the coroner nor the judge applied the correct standard.

[38] We have considered this submission carefully by reference to the law and the evidence. First, in terms of law, *Bennett* considered the state's obligations where a person had been shot by police officers during an attempted arrest. The judgment contains several passages emphasising rigorous examination where the state deploys lethal force. In particular, paras [63]–[65] and [67]–[81] of the judgment focus on:

(i) the State's obligation to provide a "satisfactory and convincing explanation" for any use of lethal force by its agents;

(ii) the importance of ensuring that investigations are capable of examining whether the force used was "absolutely necessary" under article 2(2);

(iii) the relevance of training, planning and control measures in demonstrating that the state has taken appropriate steps to minimise recourse to lethal force.

[39] However, *Bennett* does not actually articulate a distinct substantive standard of justification applicable to highly trained officers, drawing a distinction only between an untrained civilian and an officer with training:

> "73. In the first place, it is evident (and it was confirmed by the Court of Appeal) that the application of the test of self-defence imposes in principle a higher standard of care on firearms-trained police officers than, for example, on untrained civilians."

[40] Rather, the court went on to utilise the officers' training and instructions as contextual factors in assessing both the adequacy of the investigative process, and whether the explanation offered by the state was capable of discharging the burden of showing that the use of force was no more than absolutely necessary. *Bennett*, therefore, emphasises the need for rigorous examination, rather than espousing a separate legal test. Properly analysed, *Bennett* expressly reaffirmed the core principles

from *McCann* and *Da Silva*, including that the assessment of whether lethal force was "absolutely necessary" or proportionate must take into account the circumstances as the officer honestly and reasonably believed them to be, as well as the rapidity with which decisions must often be taken in life-threatening situations, while recognising the danger of applying hindsight.

[41] Turning to the evidence, Soldier B 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.

[42] Crucially, as the judge highlighted, Soldier B's firing took place within a one-to-two-second interval using a military rifle capable of rapid successive discharge, and that a freeze-frame or per-round disaggregation of his response was artificial and divorced from the operational reality. In that respect, his analysis aligns with *Bennett's* emphasis on assessing absolute necessity and proportionality from the perspective of the officer acting in the moment, and it provides a proper legal and practical basis for rejecting the appellant's contention that each individual shot required discrete justification.

[43] The judge expressly referenced the higher standard expected of trained personnel. At paras [40], [47] and [66] of his judgment he recited the evidence of Soldier B's training and the coroner's treatment of it. He then conducted an independent proportionality assessment informed by that training. There is no indication that he misunderstood or ignored the import of *Bennett*. Hence, although *Bennett* was not the subject of any substantive analysis by the judge, the approach he adopted to the firing sequence is consistent with the principles reaffirmed in that case. It follows that Ms Quinlivan's first argument contained in para [29](i) above fails.

[44] We can deal more swiftly with the second argument raised at para [29](ii) above which is essentially a challenge to the judge's reasoning. This argument is misconceived as it relies on isolated paragraphs from the coroner's ruling when the ruling has to be read as a whole. We reject the argument that the coroner's conclusions, particularly at paras [298]–[302], are cursory, global, and insufficiently reasoned, failing to explain why the shooting of the unarmed driver was justified. This was a detailed ruling. The coroner's findings are clear and easily discernible across the ruling. The second limb of argument also fails.

[45] We will consider the remaining arguments set out at para [29](iii), (iv) and (v) together as they cover the same territory. In undertaking this analysis, we have closely examined Soldier B's statements and evidence and cross referenced it to the coroner's findings. First is 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. We

set out the following portions of the interview that we consider to be of central relevance to this challenge (which are also the portions of evidence highlighted by the judge): A-answer, Q-question:

> "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."

[46] In his interview, Soldier B stated that he fired eight single aimed shots. Ms Quinlivan wisely did not pursue a case on appeal that the coroner should have examined each shot individually to decide if each shot was justified. However, she did advance the argument that the force used against each of the occupants of the car should be considered individually. In that regard the evidence of Soldier B is crucial.

[47] Moving on in time, Soldier B also made a statement for the purposes of the inquest on 5 September 2022. In that he set out that 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." He also said that 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.

[48] 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.

[49] To complete the sequence, Soldier B gave evidence at the inquest on 13 December 2022. He was initially examined by coroner's counsel and then questioned on behalf of the next of kin of Mr Doris.

[50] We agree with the judge's analysis that the salient additional evidence to be gleaned from his time in the witness box is as follows:

> "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."

[51] Soldier B also stated that 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."

[52] In response to questions by Ms Quinlivan he said:

> "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."

[53] Ms Quinlivan 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."

[54] 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."

[55] He was then asked how Mr Doris, the unarmed driver of a vehicle driving away from Soldier L could pose a continuing threat. Of importance is that Soldier B gave the following answers to the questions posed by counsel on behalf of the next of kin:

> "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."

[56] 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. He also 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 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.

[57] We find it significant that 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 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 away ... so he was a moving vehicle. There were other members of the cover team who were firing at that. I just don't know."

[58] Continuing, 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."

[59] 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:

> "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."

[60] 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."

[61] Finally, for present purposes 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."

[62] Also material in various respects is the statement of Soldier L which was read at the inquest without objection. We replicate the following paragraphs which were highlighted by counsel.

> "29. I recall travelling to Coagh along the same route as on the Friday, and I encountered cattle crossing the road at the same time and place.
>
> 30. I pulled into the car park and saw that the Renault 5 was in the spot that I had chosen on the Friday. I therefore reverse parked towards the rear of the car park as described in my witness statement.
>
> 31. I got out of the car. I walked to the rear and looked over the wall as that was where I would jump if necessary. I had not planned that in advance of arriving at the car park. I was parked nearer the back wall than I had expected to be. I then stood

near to the driver's side and opened the paper. I stood there as I would have access to weapons inside the car if needed. In my waist band I had a SIG Sauer P226 9mm pistol with, I think, 15 rounds.

32. My communications were limited to the body fit radio on my leg. This went dead as soon as I got out of the car so I had no communications. I was not aware of any messages in the immediate period before the terrorists arrived.

33. I was pretending to read a newspaper when I heard a car screech to a halt in the road immediately outside the car park. The noise caused me to look at the car. I saw somebody in the front but not clearly as my focus was immediately on a man in the rear who was bringing a rifle into the aim position and I was his target. He was aiming it directly at me. It was an AK rifle in his shoulder. He was wearing a balaclava rolled up at the top of his head.

34. In my statement I refer to the person with the gun having some trouble bringing it directly to bear on me. By that I mean I thought he was still moving around slightly. It may be that this was due to the car just having come to a sudden halt or he was trying to get the best aim. He was aiming it at me.

35. I was in immediate danger and this man intended to kill me. I did not hang around to wait to be killed. I ran towards the rear wall of the car park and threw myself over the wall. As I did so, I pulled my pistol out and I recall that it struck the top of the wall as I went over.

36. I landed on my back on the grass about 14 feet below and became aware of firing. I cannot say precisely at what point the shooting started. I was winded by the impact. I got my pistol into an aim immediately on landing because I was convinced they would come after me. I stayed there until the shooting was over.

37. After the incident and reflecting on it, I was surprised that I had not been shot. I cannot say

anything other than the fact that he clearly intended to kill me and I was very lucky that he didn't."

[63] The above provides the context to the following arguments. First, the appellant argues that the judge failed to apply the "absolute necessity" standard under article 2. That argument is contradicted within the judgment itself. At para [62] the judge expressly applied the standard of "absolute necessity", stated that it equated in practical terms to proportionality in the circumstances as honestly perceived, and then concluded that the coroner's finding of absolute necessity was one to which he was "perfectly entitled."

[64] Next is the challenge to the coroner's reasoning on the Yellow Card and on the finding of the unit acting as a single entity. Dealing with the Yellow Card it is accepted that this is not a legal code. The coroner treated it as a relevant, but not determinative, guide. Similarly, the coroner's findings on the four soldiers reflected the operational reality that they were responding to a single, unified threat, while still making specific findings about Soldier B. The coroner also devoted a full chapter to the soldiers' training, experience and operational preparation. The need to appreciate the "enormous challenges" faced by trained officers required to make "almost instantaneous decisions" was emphasised. The coroner considered the Yellow Card, the nature and level of SMU training, and the impact of training on the soldiers' assessment of threat. The coroner's finding that the shooting was "entirely within" the Yellow Card was adequately reasoned namely that Soldier B's justification (that the driver was part of a "terrorist team") did not fall within any Yellow Card scenario given the circumstances.

[65] In our view, the Yellow Card was properly treated by both the coroner and the judge as a relevant but non-determinative guide. Soldier B argues that the appellant misuses the illustrative examples in the Card as if they constituted a rigid code limiting the lawful use of force, whereas in fact the operative test is whether the individual reasonably believed that lethal force was necessary to prevent an imminent threat to life. Soldier B's position is that it was a guide rather than a legal code; that it did not purport to exhaustively set out all circumstances in which lethal force might be lawful; and that actions outside its examples may nevertheless be justified under the ordinary law of self-defence is entirely sustainable. The coroner's finding that his actions complied with the Yellow Card, in the circumstances are not irrational. In any event non-compliance would not determine the legality of the force used.

[66] We also reject the argument that the coroner failed to properly engage with Soldier B's own evidence that he never believed the driver to be armed. Viewed in its entirety Soldier B's evidence speaks to the fact that he could not be entirely sure of the specifics within the conditions he was operating.

[67] In addition, the coroner expressly considered Soldier B's individual evidence, made clear findings about the continuing threat posed by all three occupants of the vehicle, and rejected any distinction between them in the circumstances of the rapidly

unfolding attack. Soldier B contends that they rest on a mischaracterisation or minimisation of the factual context.

[68] Both the coroner and the judge expressly found that Soldier B honestly believed that the entire ASU, including the driver, constituted a unified and immediate threat to life, and that his firing of eight rounds over one to two seconds was a proportionate response in a fast-moving and lethal situation. To our mind, these are factual findings which were open to the coroner and with which the judge rightly found no issue. The findings are also not just a validation of Soldier B's subjective belief. They are stronger in that they were also made on an objective view of the evidence. In addition, as exchanges during this appeal confirmed Ms Quinlivan does not in fact challenge the honest and genuine belief of Soldier B.

[69] Furthermore, we reject the appellant's claim of a structural flaw on the basis that the coroner improperly treated the actions of Soldiers A–D collectively, despite their evidence and roles being materially different, and despite Soldier B being the only soldier found to have shot the deceased. The appellant asserts that the judge failed to recognise the arguability of this structural flaw. We are unconvinced by this argument. When the coroner's ruling is read as whole the appellant's assertion that the coroner improperly conflated the actions of all four soldiers loses any traction. That is because the coroner did engage with Soldier B's position throughout his ruling including the fact that he fired at the driver. Also, where conclusions were expressed collectively, this reflected the operational reality that all four soldiers faced the same immediate threat within the same seconds-long timeframe.

[70] When the facts of this case are fully and properly analysed the appellant's arguments all fall away. The undeniable reality of this case is that the coroner was entirely justified in finding that Soldier B had an honest and genuine belief that L's life was in danger. That is amply validated by the evidence. We accept Ms Quinlivan's submission that this is not the end of the matter as the threat posed by the deceased must also be assessed. As to that remaining issue the coroner had the benefit of extensive evidence. Having considered that evidence ourselves we conclude that the coroner's finding that Soldier B was entitled to view the occupants of the car in the way that he did as a group of terrorists who posed a collective threat is sustainable in law. Mr Doris was part of the threat to life in this fast moving situation. In our view, it would be absurd to disaggregate the driver from the other men in this case, all active members of the PIRA, part of an ASU plan to murder which clearly involved an imminent threat to life which Soldier B sought to protect. Therefore, the remaining arguments in para [29](iii)(iv) and (v) also fail.

Overall conclusion

[71] This case is dictated by its own facts. Applied to the law no arguable legal error emerges with a reasonable prospect of success which would justify leave. None of the pleaded public law grounds in relation to article 2 compliance are arguable on the facts of this case. The coroner has applied the correct legal tests and reached a rational

well-reasoned decision. Within the factual and legal framework, the coroner conducted a lengthy, article 2 compliant inquest over many weeks; heard extensive oral and expert evidence; and made detailed, nuanced findings, none of which are challenged procedurally. In addition to his conclusion that the force used was justified, the coroner made criticisms in relation to planning, control and operation which have not been impugned which is an indication of the balanced approach he took.

[72] The judge considered those findings. Having done so, he affirmed the coroner's findings regarding Soldier B's honest belief, subjective reasonableness, and the proportionality of his use of force. The appellant's argument that the judge effectively conducted a full merits review of the coroner's findings and then refused leave on the basis that he personally agreed with the coroner is also unsustainable. The judge thoroughly scrutinised this case, applied the leave test, and reached an entirely proper conclusion on the facts of this case with which having conducted our own analysis is also our view.

[73] Furthermore, having had the benefit of all the evidence which a grant of leave would generate we can confidently say that had we granted leave we would have dismissed the case on its merits. In addition, if any legal error were established, there is a real issue that the relief sought would be inappropriate or unworkable and potentially prejudicial to the position of the other two families who did not challenge the inquest findings.

[74] We do not express ourselves in such strong terms as the judge did in relation to the merits of this appeal. However, to us the challenge really amounted to a disagreement with the coroner's findings. That is not the purpose of judicial review in this area or an effective use of public funds even when article 2 is engaged. Accordingly, for all the reasons we have given, the judge correctly refused leave, and the appeal is dismissed.