Judicial Communications Office

29 April 2026

COURT DISMISSES JUDICIAL REVIEW AGAINST NO PROSCUTION DECISION OF OFFICERS M & Q FOLLOWING PEARSE JORDAN INQUEST

Summary of Judgment

The Court of Appeal[1] today dismissed an application by Teresa Jordan ("the applicant"), the mother of Pearse Jordan ("the deceased"), for leave to apply for a judicial review of a decision by the Public Prosecution Service ("PPS") not to prosecute two police officers, M and Q. A coroner had concluded at inquest that Officers M and Q may have committed offences of perverting the course of justice and/or perjury by editing the HMSU logbook to remove entries and that they had been untruthful in their evidence.

Background

On 25 November 1992, the RUC suspected that there was to be a movement of explosives and/or arms later that day by the Provisional IRA. At approximately 13:00 hrs, military surveillance was deployed at Arizona Street, Belfast supported by HMSU officers. At around 15:40 hrs, there was a report of two men and a red Ford Orion thought to be engaged in paramilitary activity. Military surveillance was tasked but the officer lost track of the Orion. At approximately 16:30 hrs the Orion was seen again. HMSU officers went to the scene and forced the Orion off the road. The deceased ran from the car and was shot by Officer A. The shooting was reported to HMSU Command Room at about 17:18 pm. HMSO officers conducted searches in the vicinity of where the Orion had earlier been spotted and found a timer and power unit which can be used in under car booby trap devices.

At inquest in 2016, the coroner found that there was "strong evidence of terrorist activity taking place at Arizona Street that day and that the Orion and its occupants from the time of its hijacking were active participants in such activities." The coroner reached the verdict[2] that due to the passage of time he was unable to conclude whether the use of lethal force was justified. He stated, however, that insofar as the onus fell on the PSNI to provide a satisfactory and convincing explanation to the inquest for the use of lethal force, it had failed to do so. The coroner made findings against Officers M and Q, that one or both had edited the original HMSU log by removing all entries made before 17:03 hrs[3]. He also concluded that the officers had been untruthful when they gave evidence during the inquest and decided that the matter should be referred to the Director of Public Prosecutions by way of referral.

In a letter dated 11 October 2023, the PPS declined to issue a prosecution notice on foot of the referral made by the coroner. The applicant took a judicial review of this decision and was successful, with the court remitting the matter back to the PPS. The PPS issued a further no prosecution decision on 19 April 2024 finding that there was insufficient evidence to provide a

[1] The panel was Keegan LCJ, Colton LJ and Fowler J. Keegan LCJ delivered the judgment of the court.
[2] [2016] NICoroner 1.
[3] [2016] NICoroner 3.

reasonable prospect of conviction. That decision was upheld on internal review by the PPS on 25 March 2025 and it was this decision that was challenged in these proceedings.

During these proceedings, an application was made for discovery of the miliary logs and other public interest immunity ("PII") material which the coroner had indicated were not made available to the inquest. It transpired, however, that the applicant's solicitor was in possession of these materials at the time of the inquest and that the coroner had made an error in his ruling as to their existence.

Grounds for judicial review

The applicant contended that the PPS did not properly consider all relevant material in reaching the impugned decision, failed in its duties by not interviewing Officers M and Q under caution and reached a decision which, based on the facts, no reasonable prosecutor could make. The applicant maintained that had the HMSU logbook (representing a contemporaneous record of events leading up to the shooting of the deceased) been made available in its entirety it would have assisted the coroner who may have reached a firmer conclusion.

The Inquest

The coroner found the HMSU log unsatisfactory in many respects. He said it was kept on foolscap sheets of paper which were then torn out of the notebook apparently and stapled or otherwise bound together. It was retained with all papers relating to the operation. The sheets were not numbered sequentially. The log commenced with an entry at 17:03 hrs and there were no entries for the period 13:00 to 17:00 hrs despite HMSU officers having been deployed from 13:00 hrs to provide support for military surveillance in relation to a possible movement of munitions. At 15:00 hrs additional units were deployed because of radio communications to the effect that the operation was showing signs of materialising. The explanation given at the inquest for there being no notes prior to 17:03 hrs was that the log started with the instructions to stop the car. The coroner found the evidence of Officers M and Q on the logbook issue was inconsistent and contradictory. Specifically, he recorded that he found "their explanations as to why it commenced at [17:03 hrs] were entirely unconvincing." He considered it was likely that there were earlier entries prior to 17:03 hrs on different sheets and that these had been removed and probably destroyed.

Consideration

The court commented that the coroner's ruling was wrong in a material respect in relation to the HMSU logs as he recorded that some were missing. It said this error was extremely unfortunate as the logs had in fact been made available and were shared after a PII process. Furthermore, the error invariably meant that the strong terms the coroner expressed himself in against M and Q are subject to a caveat as he clearly did not consider all of the relevant material in that he was labouring under the misapprehension that some logs were missing. The court noted that, by contrast, the PPS have now had the benefit of considering all of the logs and all of the relevant material.

The court was also concerned that the PPS did not seem to consider or at least explain their consideration of all relevant materials at an earlier stage and, in particular, the statements/evidence of relevant witnesses. It said this was something that needs to be corrected in future cases not least to avoid the delay and costs of protracted judicial review proceedings.

The core question for the court was whether the PPS fell into a legal error in determining whether there was a reasonable prospect of proving to the criminal standard whether entries existed in the HMSU log prior to 17:03 hrs and, if so, whether they had thereafter been deleted or destroyed. The issue was why there was no recorded information in the HMSU log in the lead up to the death and whether there had been some criminal behaviour associated with that omission on the part of M and Q. That is what the PPS had to assess in deciding whether there was a reasonable prospect of conviction of M and Q. In that regard, the court was satisfied that the substance of the military surveillance logs and the evidence have now been fully considered by the PPS. Thus, no arguable case with a reasonable prospect of success could be sustained that the PPS had left material considerations out of account, breached policy or failed in the duty of inquiry. Those grounds of challenge therefore failed.

This left the court to consider what was essentially an irrationality challenge. A high threshold is required for such a challenge to succeed. In this case, the court had to deal with the PPS analysis of the evidence relating to the logging of police actions on the day in question in order to decide if the two officers acted criminally. This was in a context where intelligence was involved in an effort to thwart a terrorist attack. The court said it was therefore a rational view that relevant intelligence information was communicated to police but that this was not logged in the usual way, may have been by way of a handwritten action sheet and was not received by way of a radio transmission.

The court was satisfied that a balanced and rational position had been presented by the PPS in dealing with the question whether the additional evidence can be used to establish that there must have been earlier entries in the log to reflect the earlier tasking and movements of the HMSU vehicles on the ground. The impugned decision proceeded on the basis that there was earlier activity in relation to the operation in that both Officer M and Officer Q accepted this in their evidence to the inquest. The court said the fact that earlier activity took place was therefore uncontroversial, the additional evidence relied upon did not advance this proposition, which was established by the other evidence considered. It said this outcome followed because "all of the evidence on this issue, including the additional evidence which has been highlighted, is at the level of supposition as to what the officers would assume would be the case, rather than based on actual knowledge or recall." This is relevant to the overall assessment of the evidential picture about the alleged destruction of logs, bearing always in mind, the fact that [the PPS decision maker] was considering what could potentially be proven to the criminal standard.

A further affidavit filed by the PPS consolidated the position in that the content of all the materials received does not support the proposition that there must have been earlier entries in the HMSU log which were later removed or edited. The court said these materials also do not support the conclusion that a TCG log may have been in existence or that the HMSU log which does exist is incomplete or has been altered. It noted there are relevant entries which lend support to the proposition that the HMSU log commenced at the point of tasking and not earlier on the date in question. In conclusion, the PPS decision maker stated that she took this information into account in reaching the conclusion that there is not a reasonable prospect of proving such log entries ever existed.

The court understood that questions that may arise in the minds of the applicant about the content of the logs and the suspicions that may flow:

> "However, this case must be determined on established legal tests. As we have said the threshold for intervention by a court in a no prosecution decision is high even if article 2 is engaged. Of course, the discretion conferred on the PPS to make prosecution decisions is not unfettered. The PPS must exercise powers to promote the statutory purpose. A decision maker must direct him or herself correctly in law. They must act lawfully. A decision maker must do his/her best to exercise an objective judgment on the relevant material available to him. They must exercise their powers in good faith, uninfluenced by any ulterior motive, predilection or prejudice."

In a recent decision regarding a challenge to a no prosecution decision[4], the court reiterated that where a PPS review decision is exceptionally detailed, thorough, and in accordance with policy, it cannot be considered perverse. A significant margin of discretion is given to prosecutors. Decision letters should be read in a broad and common-sense way, without being subjected to excessive analysis and it is not incumbent on decision makers to refer specifically to every detail of the available evidence. An overall evaluation of the strength of a case falls to be made on the evidence as a whole, applying prosecutorial experience and expert judgment. The court added that article 2 of the ECHR does not change these principles but requires a thorough scrutiny of facts both by the decision maker and this court in case of this nature.

Within the particular context of this case the court considered whether the PPS acted irrationally. Having considered all of the relevant material and arguments and thoroughly scrutinising the impugned decision, the court was not persuaded that the PPS had acted irrationally for the following reasons. It said the PPS decision maker's analysis of the evidence is comprehensive on how the logs operated. Even if the logs were not sequential this case needs to be viewed in the round and in context. The court said this was not a matter with which it should interfere as the assessment made was a matter of judgment. It agreed with the submission that the decision maker's written reasons and affidavits outlined the evidence she took into account and the rationale for her decision: "Read in the round with the affidavit evidence the decision disclosed no error of fact or law nor any breach of policy."

The court also considered the argument raised that it may have been better to interview Officers M and Q and AA. The PPS decided that was not necessary given the extensive evidence set out in transcripts of evidence provided at the inquest. The case was made that in the particular circumstances of this case, where the officers had been questioned about the relevant events in detail under oath, and in the absence of any new evidence, it was highly unlikely that questioning under caution would produce further evidence capable of supporting a prosecution case. The court said that whilst there are valid competing views on this issue, it cannot say that the PPS approach is irrational or offends any procedural obligations to investigate. Rather, it is a decision within the discretion of the specialist prosecutor and not one with which a reviewing court should be slow to interfere with.

The court was clear that the complete body of evidence should have been considered at a much earlier stage in the forensic way that the PPS decision maker considered it. However, it is not determinative of the application, indeed, for this court to find that matters may have been conducted in a different way. Having now considered the decision making in the round we are

[4] *Re Duddy and others* [2022] NIQB 23.

satisfied that a rational and lawful judgement has been made by the PPS bearing in mind that any prosecution must be proven beyond a reasonable doubt.

Following the hearing, the court received and considered a fourth affidavit from the PPS decision maker which included police and Police Ombudsman's Office ("PONI") material. It said that these materials supported the PPS view that the prosecutorial test was not met in this case. Specifically, the court noted that the police report concluded that none of the documents suggested that earlier HMSU logs existed but had been destroyed or withheld and the PONI conclusion was that it did not appear that either of the officers may have committed a criminal or misconduct offence.

Conclusion

The court concluded that no arguable case for judicial review with a reasonable prospect of success was established on any of the grounds of challenge. In any event, had it decided that the leave threshold had been met the court indicated that it would have dismissed this judicial review on the full merits, having had available all of the relevant information. Accordingly, leave was refused and the application for judicial review was dismissed.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available shortly on the Judiciary NI website (https://www.judiciaryni.uk/).

ENDS

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