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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION (JUDICIAL REVIEW)
BEFORE A DIVISIONAL COURT

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IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW BY TERESA JORDAN

AND IN THE MATTER OF A DECISION BY THE PUBLIC PROSECUTION SERVICE FOR NORTHERN IRELAND

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Ms K Quinlivan KC with Ms L Smyth (instructed by Madden & Finucane Solicitors) for the Applicant
Mr T McGleenan KC with Ms B Herdman (instructed by the Public Prosecution Service) for the Respondent

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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 is an application for leave to apply for judicial review of a no prosecution decision in relation to two police officers, M and Q, who were reported by Mr Justice Horner sitting as a coroner ("the coroner"), after he conducted an inquest into the death of Pearse Jordan ("the deceased"). The coroner concluded that M and Q may have committed offences of perverting the course of justice and/or perjury.

[2] We have convened as a Divisional Court as this is a criminal cause or matter. By agreement of all parties, we have dealt with this case as a rolled-up hearing. We asked that Officers M and Q were put on notice of proceedings and record that they decided not to participate.

Background

[3] The applicant, Teresa Jordan, is the mother of the deceased. It is not disputed that shortly after 17:00 hrs on 25 November 1992 on the Falls Road, Belfast a car being driven by the deceased was forced off the road by a police car. The deceased ran from his car and was then shot by Officer A, a member of the Royal Ulster Constabulary ("RUC"). After the deceased's death the Provisional IRA ("PIRA") claimed that he was a volunteer, but as the coroner recorded prior to this incident he had not come to the attention of the RUC or Army in connection with any terrorist or criminal activities. It is not contested that the deceased was acting on behalf of PIRA that day.

[4] There have been several inquests opened into Mr Jordan's death as follows. The first inquest commenced on 4 January 1995 and was adjourned part heard. A further inquest before His Honour Judge Sherrard sitting with a jury was held at the end of 2012. The verdict from that inquest was set aside by the High Court and the Court of Appeal. A third inquest was held over 16 days between 22 February to 21 April 2016. It is this third inquest with which we are concerned.

[5] The following table taken from the coroner's ruling reported at [2016] NI Coroner 1 is a synopsis of the main police and military witnesses who made statements and/or gave evidence at the inquest:

Witnesses	Summary of the role of each witness
Officer A	Sergeant who shot and killed the deceased. Was the front seat passenger in Call Sign 8. The most senior officer in Call Signs 8 and 12 and in charge of those two vehicles 'on the ground'.
Officer B	Rear seat passenger in Call Sign 8.
Officer C	Driver of Call Sign 8. Call Sign 8 forced the Orion driven by the deceased off the road prior to the shooting.
Officer D	Front seat passenger in Call Sign 12. After the shooting drove Call Sign 12 away from the scene prior to the arrival of the CID.
Officer E	Driver of Call Sign 12. Call Sign 12 was behind Call Sign 8 at the time it forced the Orion off the road. Call Sign 12 collided with the rear of the Orion.
Officer F	Rear seat passenger of Call Sign 12.
Officer H	Headquarters Mobile Support Unit ("HMSU") Sergeant who attended at the scene after the shooting. Directed Call Sign 12 to be moved.
Officer M	HMSU Inspector based at Tasking and Coordinating Group ("TCG") headquarters. Directed communications and coordinated HMSU units 'on the

	ground'.
Officer Q	HMSU Officer based at TCG headquarters Castlereagh. Assisted in running of a 'desk' i.e. to monitor and assist with radio communications and compiling the HMSU log.
Officer R	Sergeant in HMSU who gave briefings and deployed Call Signs out of the police station.
Officer V	Head of HMSU. Off duty on the day of the shooting. Was contacted shortly after the shooting and went into work. Attended a debrief and also liaised with Officer A and took medical advice.
Officer AA	Detective Inspector AA in 'E' Department RUC. The second most senior TCG Officer at TCG headquarters. Along with AB had overall responsibility for the planning and control of the operation.
Officer AB	Detective Superintendent AB in E Department RUC. The most senior TCG Officer at TCG headquarters. With AA had overall responsibility for the planning and control of the operation.
Soldier V	Army Liaison Officer responsible for liaison in TCG between Army surveillance and E Department.
Soldier X	Undercover soldier who was driving a car several vehicles behind Call Sign 12 at the time of the stop of the Orion. Observed some of the events after the deceased left the Orion. Performed a U-turn and left the scene without attending at the scene.
Soldier Z	Undercover solider on general surveillance duties at 4-6 Arizona Street.
William Lowry	Chief Inspector of the RUC who attended the scene shortly after the incident. Took first account from Officer A.

[6] We also reference some salient facts taken from the coroner's ruling as follows. Shortly before the shooting the deceased had been driving, and was the sole occupant of, a red Ford Orion Reg Mark BDZ 7721 ("the Orion"). The Orion had been hijacked by PIRA earlier that day. Of relevance is that on the morning of 25 November 1992 the RUC suspected, based on what it considered to have been reliable intelligence that there was to be a movement of explosives and/or arms ("munitions") later that day from West Belfast by PIRA. It was thought that this movement of munitions would involve the area around Arizona Street, West Belfast. Arizona Street was known to the RUC and the Army as a place where PIRA would engage in terrorist related activity involving the preparation and movement of munitions.

[7] The police officers centrally involved in this case were members of the HMSU. The HMSU was a group of around 60 uniformed officers split into three teams. They were deployed alongside surveillance teams and were able to react to situations as and when they arose. The nature of HMSU's work meant that its officers were often engaged in dangerous situations involving terrorist activity and so they tended to be the more highly trained and experienced officers within the RUC.

[8] The RUC (including the HMSU) worked in liaison with the Army. Officer AA was working in the Command Room at the Belfast Regional Headquarters at Castlereagh. He was effectively in charge of the RUC officers in the HMSU who were deployed in the operation. During the course of the day Officer AA liaised with his senior officer, Officer AB, who would have issued instructions from time to time. Army personnel were also working within the Command Room. Soldier V was the Army liaison officer on duty in the Command Room that day.

[9] Officer AA requested that military surveillance be performed in the Arizona Street area. HMSU officers were to support that army surveillance. Soldier Z was one of those providing surveillance information about what was happening in Arizona Street that afternoon.

[10] As officers came on duty during the day they were given briefings by Officer R. He deployed several call signs, and in particular Call Signs 8 and 12, from police HQ to West Belfast to assist in the Arizona Street surveillance operation. The briefings included information relating to the ongoing surveillance operation and to the expected movement of munitions from West Belfast. Officers were deployed to take part in this ongoing operation. Officers A, B and C were deployed as a group in a red Ford Sierra Reg Mark WXI 3711 and collectively known as "Call Sign 8." Officers D, E and F were deployed in a dark blue Ford Sierra Reg Mark XXI 8693 known as "Call Sign 12."

[11] Officer C was the driver of Call Sign 8. Officer A was the front seat passenger and Officer B sat in the rear of the car behind Officer A. In Call Sign 12 Officer E was the driver, Officer D was front seat passenger and Officer F was the rear seat passenger. He sat behind the driver. Officer A was the most senior officer in the two Call Sign cars and was, as a result, in overall charge as between the two vehicles.

[12] At about 15:40 hrs there was a report from military surveillance that two men and a red Orion were seen around the Whiterock Leisure Centre. They were thought to be engaged in paramilitary activity. Military surveillance was tasked through the Army liaison officer to attend the area, but it seems that the Army liaison officer lost track of the Orion. Military intelligence identified one of the persons "using" the Orion as DP2. He was a person with a relevant history of suspected involvement in terrorist activity. It was thought that he had been a Quarter Master in PIRA.

[13] An important distinction is that DP2 should not be confused with DP1, a name, which appeared in the original military briefing after the shooting and who was said to be the deceased. DP2's name was subsequently scored out and the name of the deceased inserted. As the coroner noted DP1 and DP2 could be confused, as both had the same surname but different Christian names.

[14] At approximately 16:30 hrs the Orion was again seen by surveillance. At this time, the Orion was in the vicinity of numbers 2 and 4 Arizona Street. The sighting of the Orion coincided with what was thought to be intense PIRA activity at Arizona Street. At this time Call Signs 8 and 12 were in a state of readiness and parked outside Andersonstown Police Station, with Call Sign 8 in front of Call Sign 12.

[15] Call Signs 8 and 12 went to the scene and forced the Orion off the road. The deceased ran from the Orion and was shot in the back by Officer A. The shooting was reported to the Command Room. That was timed at about 17:18 hrs, which tends to time the shooting at very shortly before 17:18 hrs.

[16] Meanwhile Officer AB had directed HMSU officers to attend immediately at 2-4 Arizona Street in order to conduct searches. Officers A, B, C and E remained at the scene. Officers D and F left the scene in Call Sign 12 and drove to Arizona Street. In the course of these searches at Arizona Street a Mark 15 Timer and Power Unit ("TPU") which can be used in under car 'booby trap' devices was found. The coroner therefore 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."

[17] Officers B, C and D were driven back to Lisnasharragh Police Station. Officer A was also driven back to Lisnasharragh with Officers E and F, but separately from Officers B, C and D.

[18] Officer V was the head of the HMSU. At the relevant time he was at home and off duty. He received a telephone call notifying him of the incident. He considered that as the senior officer in command his presence was required regardless of whether he was on or off duty. He attended for the debrief of the officers involved which was conducted by Officer M. He said he did so to prevent mistakes which had occurred in earlier investigations of incidents where civilians had been shot by police officers. At about 18:45 hrs a debrief was held. Present at the debrief were Officers V, R, T, S, J, N, I, E, K, P, O, L, D, A, C, B, F, Q, and M.

The coroner's findings

[19] The verdict reached by the coroner was that due to the passage of time he was unable to reach a concluded view as to whether the use of lethal force was justified. However, he stated that, insofar as the onus fell on the Police Service of

Northern Ireland ("PSNI") to provide satisfactory and convincing explanation to the inquest for the use of lethal force, it had failed to do so.

[20] Of most materiality to this application is that the coroner also made findings against two police officers who had given evidence to the inquest, namely Officers M and Q. He concluded that one or both officers had edited the original HMSU logbook made on 25 November 1992, the day upon which the deceased was shot, by removing all entries made before 17:03 hrs. He also concluded that the officers had been untruthful when they gave evidence during the inquest. He therefore decided that the matter should be referred to the Director of Public Prosecutions ("DPP") by way of referral although not formally under section 35(3) of the Justice (Northern Ireland) Act 2002. The coroner's full reasons for this decision are set out in a supplementary judgment [2016] NICoroner 3.

The first judicial review

[21] By way of correspondence dated 11 October 2023 the Public Prosecution Service ("PPS") declined to issue a prosecution decision on foot of the referral made by the coroner. This was characterised as a" non-decision" given the position of the PPS that, "there is no decision as to prosecution to take in respect of the officers because the police 'did not consider that there was evidence of an offence and there is no individual reported to whom the test for prosecution could be applied.'" The applicant took a judicial review of this decision and was successful before Scoffield J who quashed the decision, in a decision reported at [2024] NIKB 26.

[22] Scoffield J found that the matter needed to be decided by the PPS. Paras [50] and [51] of his decision encapsulate the outcome of the first judicial review as follows:

> "[50] For the reasons set out above, I intend to allow the applicant's application for judicial review. I do so on the basis that the respondent erred in law as to the meaning and effect of the 2002 Act by concluding that there was "no decision as to prosecution for PPS to take" and/or that there was "no individual reported to whom the test for prosecution could be applied." In the circumstances of this case, the referral by the coroner gave rise to a decision for the PPS to take, once it was satisfied (as it was) that all further appropriate investigative steps had been undertaken. The further 'reporting' of the officers to the PPS by the PSNI was unnecessary in this regard, although the DPP could have required a formal report and recommendation from the PSNI had he wished to receive it. Although the DPP did not intend to delegate his functions to the PSNI in this respect, the error of law

> identified above had the practical effect that he (unlawfully) did so.
>
> [51] As a result, I will quash the respondent's 'decision' as set out in the PPS correspondence of 11 October 2023 and remit the matter to him for further reconsideration. In light of the case presented on his behalf in these proceedings, unless the Director determines that some further investigative step should in fact now be taken which gives rise to some additional evidence, it appears almost inevitable that the DPP will direct 'no prosecution' on the basis that the evidential test has not been met. As explained above, however, in doing so he would be required to provide at least some reasons to the applicant for this decision. For this reason, the applicant's complaint is not, as the respondent submitted, academic."

The second judicial review

[23] Thereafter, as Scoffield J predicted, the PPS issued a no prosecution decision with reasons. The relevant decision-making letter is dated 19 April 2024 from Assistant Director, Mr Martin Hardy. The applicant sought a review of this decision. On 25 March 2025 the PPS upheld the initial decision not to prosecute in a letter from Assistant Director, Ms Lynne Carlin. That is the final decision that is impugned in these proceedings.

[24] During the course of these proceedings an application was made for discovery of public interest immunity ("PII") materials containing military logs, which it was thought were missing and which the coroner had indicated were not made available to the inquest. Following receipt of the proposed respondent's skeleton argument in November 2025, the applicant lodged a discovery application in respect of this material and other relevant PII materials.

[25] The above sequence of events led to a pause in the hearing of the case. Ultimately, it transpired that the applicant's solicitor was in possession of the military log and other relevant PII materials since the time of the inquest and that the coroner had made an error in his ruling as to the existence of the military log. We will return to the significance of this error in due course.

[26] In any event, the interlocutory application was withdrawn. However, it prompted the proposed respondent to file three further affidavits from Ms Carlin dated 24 October 2025, 27 October 2025 and 21 January 2026 dealing with issues raised by the applicant as to the logs and additional material sent to the PPS to consider.

[27] Given the litigation history which we have just explained it is necessary to consider the decision making in the round, starting with Mr Hardy's original decision then the decision to uphold the decision after review explained by Ms Carlin in the second decision making letter and in her three affidavits.

[28] We have had the benefit of reading substantial papers including the statements of M and Q, their evidence to the inquests that took place, statements of other soldiers, the comprehensive judgment of the coroner and all underlying material as well as the extremely comprehensive written submissions of counsel which have been supplemented by oral submissions. We have, therefore, been fully equipped with all relevant material in order to make a decision on the challenge cognisant of article 2 of the European Convention on Human Rights ("ECHR") obligations.

The parameters of this challenge

[29] The Order 53 statement seeks the following primary relief:

(a) An order of certiorari quashing the decision of the proposed respondent not to prosecute Officers M and Q.

(b) A declaration that the decision not to prosecute Officers M and Q is unlawful and/or ultra vires.

(c) A declaration that the decision not to prosecute Officers M and Q amounts to a breach of the applicant's rights under article 2 of the ECHR.

The grounds of challenge fall under three main headings as follows.

Ground 1: Breach of policy

[30] As to this ground, the applicant contends that she is entitled to rely on the PPS Code for Prosecutors which requires all evidence to be reviewed. The argument is advanced that the PPS failed to review the following important information:

(i) The after-caution account and transcripts of the evidence of Officer A.

(ii) The statements and transcripts of the evidence of Officer B.

(iii) The statements and transcripts of the evidence of Officer C.

(iv) The statements and transcripts of the evidence of Officer D.

(v) The statements and transcripts of the evidence of Officer E.

(vi) The statements and transcripts of the evidence of Officer F.

(vii) The investigating officer's report produced by DS McBurney.

[31] In addition, the applicant maintains that the PPS failed in its obligations by not interviewing M and Q under caution. In adopting this approach, the applicant asserts that the PPS has breached its duty to take all appropriate steps to ensure that the case is properly investigated, to request additional evidence and to enable a fully informed decision as to prosecution to be taken.

Ground 2: Illegality

[32] The applicant contends the impugned decision is unlawful drawing in aid article 2 of the ECHR as discussed in *Dillon's Application* [2024] NIKB 11. The argument is advanced that article 2 ECHR entitles the applicant to an independent and effective investigation into the deceased's death, so in failing to consider all available evidence and failing to request the PSNI to obtain a first-hand account from M, Q and Officer AA, the PPS has violated the applicant's rights under article 2. A corollary of this argument is an alleged breach of the duty of inquiry.

Ground 3: Material considerations/irrationality

[33] This ground is an overlap with ground 1 in that the applicant contends that the impugned decision is vitiated by the respondent having failed to take into account the following material factors or considerations, namely the material set out above at [31] (i)-(vii).

Ground 4: Irrationality

[34] Finally, the applicant contends that the impugned decision is irrational in the *Wednesbury* sense in the following respects:

(a) In failing to review all available evidence; and/or

(b) deeming it unnecessary to obtain first-hand accounts from, and interview Officers M, Q and AA before determining that the test for prosecution was not met. The PPS has acted in a manner in which no reasonable decision-maker properly directing itself in relation to its duties, would have done in the circumstances.

[35] The aforementioned grounds of challenge distil into a claim that the PPS did not properly consider all relevant material in reaching the impugned decision, failed in its duties by not interviewing M and Q and reached a decision which, on the basis of the facts, no reasonable prosecutor could make.

Applicable legal test

[36] This is a judicial review challenge of a no prosecution decision which is guided by authority most recently contained in *Re Duddy and others* [2022] NIQB 23. Keegan LCJ summarised the law at para [63] as follows having considered well-established jurisprudence in this jurisdiction and in England & Wales:

> "[63] … Following from the above, we in this court distil the following:
>
> (i) Prosecutorial decisions are not immune from judicial review but the review must bear in mind the nature of the decisions at issue.
>
> (ii) Absent mala fides or dishonesty there must generally be a clear error of law or breach of policy.
>
> (iii) There is a possibility that cases may also hinge on an error of fact, however that will also be in rare cases and the error of fact must be stark and material.
>
> (iv) There is a significant margin of discretion available to the prosecutor in reaching a judgment in a particular case.
>
> (v) Decisions may also be quashed on satisfaction of the traditional judicial review ground of irrationality or unreasonableness.
>
> (vi) The court cannot exercise a merits-based review or quash a decision which is a matter of reasonable judgement on the part of the prosecuting decision maker."

[37] In addition, we have been asked to consider article 2 ECHR obligations. In this case no temporal limit issue arises in relation to the application of the ECHR. Whilst it could be said that the inquest itself has discharged the article 2 procedural obligation to conduct an investigation into the death of the deceased we acknowledge that in *Dillon and others*, Colton J found that article 2 protections arise where potential or alleged offending strikes at the heart of the state's ability to conduct an effective investigation into a death involving a state agent, by reason of either destruction of important evidence or wilful perjury in the course of investigations. This was in the context of considering section 41 of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 conferring

immunity on Officers M and Q and whether that was in breach of the applicant's article 2 rights. This decision was upheld by the Court of Appeal in [2024] NICA 59. Although the matter is currently before the Supreme Court, we will therefore proceed on the basis that article 2 is engaged.

[38] In this context a question arises whether we should conduct our own proportionality review given the engagement of article 2. As this court has indicated in the recent decision of *Nugent* [2026] NICA 16 the reliance placed upon *Shvidler and Dalston* [2025] UKSC 30 is misplaced as this case, like the *Nugent* case, does not concern a proportionality balancing exercise. In *Nugent*, what was in issue 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.

[39] We are not engaged in a direct merits appeal against the PPS decision. However, given that article 2 is engaged and a breach is alleged, we must thoroughly scrutinise the PPS decision making and reasoning to determine whether any ground of challenge could rationally have been considered arguable, that is under public law ground challenges or under article 2. We are equipped to do so by examining the underlying written materials and the written arguments in reaching our decision.

[40] It is regrettable that decisions in this matter have taken so long. Such a protracted process is not conducive to good administration. It also extends the end point which must be reached in every case. This is the last stage in a long litigation history concerning the death of the deceased. The decision we are reviewing is, of course, ancillary to the main finding of the coroner which was that he could not reach a concluded view on whether the lethal force used by Officer A was justified. The ancillary matter of potential prosecution of M and Q is pursued because the applicant maintains 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. That is the context in which this case arises.

The applicant's case

[41] The arguments made by Ms Quinlivan KC were comprehensively set out in writing and advanced by her with the assistance of underlying materials during the hearing. The submissions have understandably had to pivot from an opening position which was that the PPS had not considered a cumulative body of evidence which supported the applicant's case to a submission that the PPS having now looked at the material had failed to appreciate the significance of the body of evidence. Para [41] of Ms Quinlivan's skeleton argument summarises that position and the argument made that there is credible evidence that:

(i) HMSU officers deployed on the ground were, on a number of occasions, ordered to carry out stops on vehicles, which instructions were subsequently aborted.

(ii) A log was created on the day, and Officer Q was responsible for compiling the HMSU log. In fact, Officer Q was responsible for manning the control desk during the operation. Officer M was the HMSU liaison officer who would have communicated by radio with HMSU officers on the ground. Officer Q's only role was to monitor and log radio communications from the desk to HMSU officers on the ground.

(iii) The instructions were of a kind that the officers would expect to be noted in a HMSU log by Officer Q:

(a) Officers who gave evidence confirmed that the log would have been used in the debrief in order to enable officers (who had not completed detailed notebook entries) to provide a sequence of events and timing of events;

(b) Officer M himself expressly asked to see the log in order to enable him to answer questions from counsel for the next of kin. He clearly expected that the log would assist him and was not confined to the events which just immediately preceded the shooting; and

(c) Officer H confirmed as per Officer M's account in 2012, that the log would be read through at the debrief to provide the sequence of events.

(iv) Officer Q accepted that he would have logged transmissions to go out and intercept the Orion which were subsequently aborted.

(v) Officer C was of the view that the sequence of events he described was read to officers by Officer M at the debrief from the log. Officer C, in describing the debrief, stated that Officer M "just went through the sequence of events from what I imagine was the TCG log", suggesting that the log was available at the debriefing. Therefore, he confirmed that it was his view that "the log probably started from when surveillance first went out on the ground accepting that this would be some time before 3 o'clock." No HMSU officer departed from Officer C's explanation.

(vi) The log available at the inquest did not contain these instructions. The HMSU radio log available to the inquest was a three-page document which commenced with an entry at 17:03 hrs from Callsign 14 (the Operations Room at TCG) to all units which stated Blue Sierra C283 GNK mobile. There are no entries for the period 13:00 to 17:00 hrs despite the fact that HMSU officers had been deployed from 13:00 hrs, having been directed by TCG to provide

support for military surveillance in relation to a possible movement of munitions in West Belfast. Moreover, 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 2012 inquest for there being no notes prior to this time, despite there being ongoing activity all afternoon, was that the log started with the instructions to stop the car. That is plainly not the case, as instructions had been given to stop the car previously, police officers had started acting on those instructions, and those instructions had then been rescinded.

(vii) The log was kept on foolscap sheets of paper which were then torn out of the notebook apparently and stapled or otherwise bound together for future use. They were retained with all papers relating to the operation. The sheets were not numbered sequentially or bound in a manner that would make doctoring the log difficult.

(viii) Officer Q lied in evidence insofar as he claimed that there was nothing of relevance prior to 17:03 hrs. It was noted by Horner J, that that does not square with the intelligence about the vehicle and the instructions given prior to 17:03 hrs.

(ix) Officer Q lied in evidence when he has said that the operation only went live at 17:00 hrs. As noted by Horner J, on at least two earlier occasions that afternoon, or perhaps three, instructions were given to effect stop and no record of instructions is placed on the log.

(x) Officers Q and M lied in evidence when they claimed that the HMSU log was a reactive and/or response log as opposed to a surveillance log. It was noted by Horner J that this was inconsistent with what had actually happened. Even when call signs have been tasked to do something but then subsequently stood down nothing was recorded.

[42] In support of her arguments, Ms Quinlivan relied on various transcripts of evidence to the inquests in 2012 and 2016, which are summarised in the skeleton arguments, primarily the evidence given by Officer C in 2012 and 2016, the evidence given by Officer A to the inquest in relation to log keeping, and the evidence given by Officer F in relation to log keeping. We will not reproduce all of the relevant portions of these transcripts in this judgment save to say that we have thoroughly scrutinised them as part of our consideration having reflected on the submissions in writing and what has been said orally to us.

[43] In assessing the strength of the applicant's arguments we have also considered the coroner's decision particularly where he deals with HMSU and TCG logs. In para [142] of his ruling the coroner says:

> "[142] … It is surprising there is no TCG log."

[44] Following this, in a key section, the coroner goes on to reference the content of the HMSU log at para [143](ii) which he says he found unsatisfactory in many respects as follows:

> "(ii) The HMSU log was unsatisfactory in many respects:
>
> (a) It was kept on foolscap sheets of paper which were then torn out of the notebook apparently and stapled or otherwise bound together for further use. They were retained with all papers relating to the operation. The sheets were not numbered sequentially. A log would sometimes be kept in a bound volume which, especially if it had numbered pages, would have made doctoring the original record that much more difficult. It is most unfortunate that the logbook was not kept in a numbered and bound volume.
>
> (b) The notes commenced at 5.03 with the blue Sierra entry. The explanation given at the 2012 inquest for there being no notes prior to this time despite there being ongoing activity all afternoon was that the log started with the instructions to stop the car. That is plainly not the case.
>
> (c) In October 2012 Officer Q had said that the operation only went live at 5 o'clock. "The log was started because the direction was given that they may stop the vehicles." However, on at least two earlier occasions that afternoon, or perhaps three, instructions were given to effect a stop and no record of those instructions was placed in the log.
>
> (d) At the hearing in 2016 Officer Q said that there was nothing of relevance prior to 5.03. Again, that does not square with the intelligence about the Orion and the instructions given to the Call Signs prior to 5.03. He then claimed that the HMSU log was a "reactive log" as opposed to a surveillance log. He was then asked about some of the activities of the Call Signs which should have been recorded and he said, "I don't believe it happened." Officer M also drew attention to it being a response log. He said that an –

> 'HMSU log starts whenever they were tasked actually to do something.'

The problem with that explanation is that it was inconsistent with what had happened. The Call Signs had been tasked to do something but then subsequently stood down. Yet nothing was recorded. I found Officer M's answers evasive and unconvincing on this issue. At one stage he said:

> 'They [the Call Signs] were tasked out, My Lord, to be in a position that if they were requested to put in a stop on a vehicle they were out and ready but the tasking never come [sic]."

(e) In any event, if a purpose of the log was to help establish a chronology as to what had happened at any subsequent debrief, which was one of the reasons offered for keeping the HMSU log, the reactive/response log as defined by Officers Q and M was worse than useless omitting as it did important pieces of key information.

(f) Mr Macdonald QC pointed out that before any "tasking" had taken place that afternoon Officer M had asked in answer to one of his questions to see the log to assist him in answering it. When challenged as to why he wanted to see a log which recorded reactive responses only Officer M claimed that he had confused the log with the debrief notes. Officer M then tied himself up in knots explaining the blue Sierra and "both" in the next entry. He claimed that this referred not to the Orion and the Sierra but to the Orion and another car entirely, a Cavalier which had never been mentioned before in the log."

[45] Additionally, at para [144], the coroner said the evidence of Officers M and Q on the logbook issue was inconsistent and contradictory. Specifically, he records that he found "their explanations as to why it commenced at 5:03 were entirely unconvincing." At para [145], the coroner goes on to say:

> "[145] I am unclear as to whether there was a separate TCG log and indeed any Military Surveillance log. I am, however, satisfied that there was a much fuller HMSU log than the one produced by Officers Q and M for this inquest. I consider that it is likely that there were earlier entries prior to 5.03 on different sheets and that these had been removed and probably destroyed. The relevance and importance of Officers Q and M seeking to edit the documentary evidence I will discuss later."

[46] Another core para is [147] where the coroner said:

> "[147] I have been searching for reasons as to why M and Q would not have passed on that information to the Call Signs out on duty that day. It is clear from the evidence Officer M was under pressure and required to work excessively long hours. On this occasion he may simply have made a mistake and forgot to convey this important piece of evidence to the Call Sign crews. Certainly, neither M nor Q made the case that this information was passed to Officers A, B, C, D, E or F. But I did not believe Officer M when he said that he did not know who DP2 was or that he was unaware of DP2's participation in the events at the Whiterock Leisure Centre. I can see no earthly reason why D/Inspector AA would not have communicated this information to Officer M. Indeed, it is likely that D/Inspector AA got it from Officer M. Either Officer M passed the information to D/Inspector AA having received it through a radio transmission or they both heard the information at the same time. The absence of any log entries before 5:03pm is a direct consequence, I conclude, of the decision of Officers M and Q to hide the fact that DP2's identity was known to them earlier in the afternoon and recorded in the log."

The PPS decision

[47] Next, we turn to the PPS decision making. The original no prosecution decision of 19 April 2024 contains the core reasoning at paras [22]-[24]. Summarising those paragraphs, reliance is placed upon the police analysis that there was nothing that would support the allegation of earlier HMSU log entries and that the military and HMSU logs effectively operated sequentially.

[48] In a significant section engaging with the findings of the coroner's ruling, Mr Hardy states:

> "The information was intelligence communicated directly to him by means of a handwritten action sheet and was not received by way of a radio transmission. The information was not derived from military surveillance and military surveillance was deployed unsuccessfully in order to try to confirm that the information had been received."

[49] Para [24] of Mr Hardy's letter also answers the question why Officers M and Q were not interviewed after caution in respect of this matter. As to this the PPS relies on the fact that the police did not consider that there was a proper basis to do so. The letter goes on to state that consideration has been given to whether police should be asked to review this position and concludes that.

> "However, in the particular circumstances of this case, where the officers have been questioned about the relevant events in detail under oath, and in the absence of any new evidence, it is considered highly unlikely that questioning under caution would produce further evidence capable of supporting a prosecution case."

[50] The ultimate conclusion reached by the PPS was there was insufficient evidence to provide a reasonable prospect of proving to the criminal standard that earlier entries on the HMSU log existed and were removed by either Officer M or Q or both acting together, or that Officer M or Q or both had knowledge of the identity of DP2 which they sought to conceal at the inquest. Accordingly, the PPS position was the evidential test for prosecution is not considered met.

[51] A review request was made accompanied by a detailed written argument from the applicant's counsel.

[52] The review decision is dated 25 March 2025. It is a comprehensive decision. In summary it articulated the PPS view that there is not a reasonable prospect of proving that further logs existed. Also, the review considered the coroner's views and, ultimately, found that the evidence could not ground a prosecution.

[53] The outcome of the review decision led to pre-action correspondence and the dissemination of further material by the applicant's solicitors to the PPS. This is dealt with by Ms Carlin in her three affidavits which complete the picture and explain the decision reached.

[54] Ms Carlin in her first affidavit deals with the complaint that relevant material was not taken into account in the decision-making process in her first affidavit. At para [15] she says:

> "[15] I have since carefully considered all of the additional evidence upon which the applicant relies. Having done so, I have concluded that there is nothing in these materials which would alter my decision in this matter in any way. The applicant contends that this 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. This is not new evidence. It is accepted that there was earlier movement of the vehicles in that there were communications between the control room and the officers on the ground. The impugned decision proceeds on the basis that there was earlier activity in relation to the operation. Both Officer M and Officer Q accepted this in their evidence to the inquest. The fact that earlier activity took place is therefore uncontroversial, the additional evidence relied upon does not advance this proposition, which is established by the other evidence considered.
>
> [16] The further question for consideration was whether those communications and movements would have been captured as part of the HMSU log maintained by Officer Q. 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 I was considering what could potentially be proven to the criminal standard."

[55] In this affidavit, Ms Carlin also refers to additional material shared with the PPS by the applicant's solicitor after the judicial review was commenced. She confirms that she considered the evidence of Officers V and H. She goes on to explain her consideration of the military surveillance log and its impact at para [10] of her second affidavit in the following terms:

> "[10] As part of my considerations in conducting the review, I personally reviewed the military surveillance log and other PII materials held in this case. I can confirm that the contents of those materials does not support the proposition that there must have been earlier entries in the HMSU log which were later removed or edited. 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. In fact, 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. As Mr Hardy put it, the military surveillance log and the HMSU log operate sequentially in time, with the military log covering activity up to 5:03pm and the HMSU log commencing at that time with tasking to HMSU. These materials therefore work against the proposition that there were previous log entries and actually support the accounts of M and Q and I took this information into account in reaching the conclusion that there is not a reasonable prospect of proving such log entries ever existed.
>
> [11] In this regard, my assessment on this issue was formed by reference to materials which were not taken into account by Horner J in reaching his conclusions on this issue."

[56] The third affidavit of Ms Carlin expands on this matter in a significant way. At para [7] she says:

> "It has since transpired that the applicant has been in receipt of the entirety of the PII materials in this matter, with PII redactions, since the time of the inquest. This includes the military surveillance log. The applicant made the PPS aware of the fact that it was in receipt of two bundles of PII materials on 11 December 2025 and shared those materials with the PPS. They are one folder of police material and one folder of MOD material. I have since cross-referenced the two bundles of material held by the applicant with the sensitive material considered by me in reaching my decision. I can confirm that the applicant is in receipt of all the police PII material, with redactions applied. I can confirm that none of the redactions are relevant to the issue at hand, namely, whether or not earlier entries in the HMSU log had been deleted/removed. I can confirm that the applicant is in receipt of the vast majority of the MOD PII material, save for two documents. One of the documents which is contained within the MOD PII material which I reviewed, but which was not within the applicant's PII material as provided to the PPS was the HMSU debrief notes. It has since been confirmed that the applicant's legal

> representatives that these notes were disclosed to the applicant in the course of the inquest. They are exhibited to the applicant's grounding affidavit at pages 111 to 122 of Exhibit FS1."

[57] This affidavit of Ms Carlin goes on to analyse the significance of the military logs in some detail from paras [10]-[30]. Paras [10] and [11] encapsulate the PPS position as follows:

> "[10] The significance of the military log is only apparent when it is considered in conjunction with the other material as a whole. It is significant, firstly, in that it is clear that it is sequential to the HMSU log, which commences when the instruction is given to HMSU to stop the vehicle as it leaves Arizona Street. The military surveillance log terminates at this point at 17:14hrs.
>
> [11] When read in conjunction with the other materials available and, in particular, the statements of Officers A, B and E, it is clear that the focus of the operation is at Arizona Street on the day in question. This is a military surveillance operation and the HMSU's role is to provide support for this. This is also relevant in the report of DChSup McBurney. A redacted version of this report is in the bundle held by the applicant."

Consideration

[58] The PPS have determined that no prosecution is sustainable on the basis that there is insufficient evidence that M and Q could be successfully prosecuted for interfering with log records or lying about them. Unfortunately, the coroner's ruling is wrong in a material respect in relation to the logs as he records that some were missing. This error is extremely unfortunate as the logs had in fact been made available and were shared after a PII process. Furthermore, the error made invariably means 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.

[59] By contrast, the PPS have now had the benefit of considering all of the logs and all of the relevant material including the material that the applicant has highlighted as relevant set out above. This has come about through a convoluted process of sharing of information by the applicant who has been assiduous in highlighting the relevant evidence for consideration. The burden should not be on the applicant to do this.

[60] We are 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. This is something that needs to be corrected in future cases not least to avoid the delay and costs of protracted judicial review proceedings. However, now that the PPS have conducted a comprehensive decision-making process, we must consider the outcome of that decision-making process as it stands.

[61] The applicant has suggested that the prosecution has acted improperly in terms of the filing of the affidavits sworn by Ms Carlin. We reject that argument. As we have already said, it is unfortunate that these matters were not grappled with at an earlier stage in a comprehensive accessible way. Nonetheless, the PPS decision maker has acted appropriately and in accordance with the duty of candour in putting all of the relevant material before the court.

[62] The core question is whether the PPS fell into a legal error in determining whether there is 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.

[63] In that regard we have carefully considered Ms Quinlivan's arguments summarised at para [41] herein. Properly analysed there is not much dispute about the points that are made about what was recorded and who was involved in recording the relevant information. However, that is not really the point. The issue is why there was no recorded information in the HMSU log in the lead up to the death and whether there has 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.

[64] In that regard, we are satisfied that the substance of the military surveillance logs and all of the evidence has now been fully considered by the PPS. As to the debrief, the coroner made no adverse finding on the question of whether Officer V who was central to the debrief conducted by HMSU officers and so this issue cannot be relitigated. Thus, no arguable case with a reasonable prospect of success can be sustained that the PPS has left material considerations out of account, breached policy or failed in the duty of inquiry. Those grounds of challenge all fail.

[65] What we are left with is essentially an irrationality challenge. In *Duddy* the Divisional Court discussed the high threshold required for such a challenge to succeed. Para [153] of *Duddy* dealing with a discontinuance decision said:

> "In addition, just as a more intense review may be appropriate in 'no prosecution' cases, rather than in respect of decisions to prosecute, it may also be appropriate to scrutinize even more closely the rationale for a discontinuance decision where the hopes and

> expectations of injured parties or their families have been raised by a carefully reasoned prosecution decision in the first instance. In this context, and where nothing material had changed as we have discussed above, we consider that the decision crosses the threshold of irrationality where it simply does not add up or, in other words, there is an error of reasoning which robs the decision of logic: see *R v Parliamentary Commissioner for Administration, ex parte Balchin* [1996] EWHC Admin 152.

[66] The circumstances of this case are obviously very different. In *Duddy*, a decision to prosecute had been made and then discontinued based on the decision in *A & C* [2025] NIKB 31, which ruled certain military statements inadmissible. There was a difficult legal analysis to be conducted as to why A and C applied to the circumstances surrounding the proposed prosecution of Soldier F.

[67] In this case, what we are dealing with is the PPS analysis of evidence related to the logging of police actions on the day in question in order to decide if two officers have acted criminally. Critically, as Mr McGleenan stressed, that is in a context where intelligence was centrally involved on the day in question in an effort to thwart a terrorist attack. It is 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.

[68] In addition, we are satisfied that Ms Carlin has presented a balanced and rational position on behalf of the PPS in dealing with the question whether the additional evidence highlighted by the applicant 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. In this regard, in her second affidavit she says this is not new evidence which is correct. Then she concedes that there was earlier movement of the vehicles in that there were communications between the control room and the officers on the ground. Next, she highlights the fact that the impugned decision proceeds 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. However, she concludes that "the fact that earlier activity took place is therefore uncontroversial, the additional evidence relied upon does not advance this proposition, which is established by the other evidence considered." This outcome followed because in her view "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." Ms Carlin also states that "this is relevant to the overall assessment of the evidential picture about the alleged destruction of logs, bearing always in mind, the fact that [she] was considering what could potentially be proven to the criminal standard."

[69] The third affidavit filed by Ms Carlin consolidates the PPS position as in that she explains her view that 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. She states that 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. In fact, 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, Ms Carlin states 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.

[70] We understand the 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. 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.

[71] In addition, we remind ourselves of what we said in *Duddy*.

> "(i) Particularly where a PPS review decision is exceptionally detailed, thorough, and in accordance with policy, it cannot be considered perverse.
>
> (ii) A significant margin of discretion is given to prosecutors.
>
> (iii) Decision letters should be read in a broad and common sense way, without being subjected to excessive analysis.
>
> (iv) 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."

[72] 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. Hence, we ask the question has the PPS acted irrationally?

[73] Having considered all of the relevant material and arguments and having thoroughly scrutinised the impugned decision, we are not persuaded that the PPS has acted irrationally for the following reasons. Ms Carlin's analysis of the evidence is comprehensive on how the logs operated. Even if Ms Quinlivan is right that the logs were not sequential this case needs to be viewed in the round and in context. Ms Carlin has now considered the relevant evidence including the statements and the transcripts, and she has made an evaluation of them. This is not a matter with which we should interfere as the assessment made is a matter of reasonable judgment. We agree with the PPS submission that Ms Carlin's written reasons and affidavits outline the evidence she took into account and the rationale for her decision. Read in the round with the affidavit evidence the decision discloses no error of fact or law nor any breach of policy.

[74] We have also considered the argument raised that it may have been better to interview M and Q and AA. The PPS have decided that that was not necessary given the extensive evidence set out in transcripts of evidence provided at the inquest. The case is made that in the particular circumstances of this case, where the officers have been questioned about the relevant events in detail under oath, and in the absence of any new evidence, it is considered highly unlikely that questioning under caution would produce further evidence capable of supporting a prosecution case. On analysis whilst there are valid competing views on this issue, we 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 one with which a reviewing court should be slow to interfere.

[75] The complete body of evidence should have been considered at a much earlier stage in the forensic way that Ms Carlin considered it. However, it is not determinative of the application 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 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.

[76] Following the hearing we have also received and considered a fourth affidavit of Ms Carlin dated 22 April 2026 exhibiting police and Police Ombudsman of Northern Ireland ("PONI") material as the court enquired about this. The applicant's counsel filed a short response reiterating the delays in decision making in this case which we acknowledge. However, the comments and opinions contained in the exhibited documents support the PPS view that the prosecutorial test is not met in this case. Specifically, we note that the police report concludes that "equally none of the documents suggest that earlier HMSU logs existed but had been destroyed or deliberately withheld." Also, the PONI conclusion was that "Having reviewed the police report and counsel's opinion we do not believe we need to take any further action on this matter. It does not appear that either of the officers may have committed a criminal or misconduct offence."

Conclusion

[77] Therefore, we conclude that no arguable case for judicial review with a reasonable prospect of success is established on any of the grounds of challenge. In any event, had we decided that the leave threshold had been met we would have dismissed this judicial review on the full merits, having had available to us, all of the relevant information.

[78] Accordingly, we refuse leave and dismiss this application for judicial review.