Neutral Citation No: [2026] NICoroner 11 ***Judgment: approved by the court for handing down (subject to editorial corrections)****	***Ref:*** **ROO13031** ***ICOS No:*** ***Delivered:*** **22/04/2026**

IN THE CORONER'S COURT IN NORTHERN IRELAND

IN THE MATTER OF AN INQUEST TOUCHING UPON THE DEATH OF NOAH DONOHOE

APPLICATION TO DISCHARGE A JUROR

ROONEY J (Sitting as Presiding Coroner)

Introduction

[1] An application has been brought by the PSNI to discharge one of the jurors. The juror will be referred to as "Juror X." The application is supported by other Properly Interested Persons ("PIPs") to include the DfI and Daryl Paul. The next of kin ("NOK") resist the application.

[2] Due to the urgency of this matter, I will provide an ex tempore ruling.

Background

[3] On Thursday 16 April 2026, Mr Lunny KC, senior counsel on behalf of the PSNI, observed Juror X, after sitting down, gave a thumbs up gesture "to her right." Mr Lunny frankly admitted that he was unable to say whether the gesture was made to the NOK or to a person or persons in the public gallery. The gesture was also witnessed by Mr Lunny's instructing solicitor.

[4] Mr Lunny indicated that his observation of this gesture from Juror X gave him "cause for concern" in that the gesture demonstrated a signal of partiality and lack of independence. Mr Lunny immediately raised the issue with coroner's counsel, Mr Coll KC, who in turn reported the matter promptly to me.

[5] When the jury were excused, I requested the attendance of the jury keepers in my chambers to enquire whether they had witnessed anything untoward in relation to the jury members and specifically whether they had witnessed Juror X giving the "thumbs up" gesture to anyone in the court. The jury keepers stated that they had

neither observed the gesture nor saw any matter of concern which they considered necessary to draw to my attention.

[6] Shortly afterwards, one of the jury keepers returned and asked to speak to me in private. The jury keeper was concerned about the content of a conversation with Juror X on Wednesday 15 April 2026. I directed the jury keeper to immediately provide me with a statement detailing their recollection of the conversation with Juror X.

[7] The statement reads as follows:

> "On Wednesday 15.4.26, I answered the telephone in the jury assembly room. It was a call from Juror X. She informed me that she [words redacted] and she would attend tomorrow. As she sounded very ill on the phone, I commented that if she was still sick tomorrow, she should let us know. [Juror X] replied that she would be in as she did not want to lose her place and she'd already done 11 weeks. *She also stated that as she was the only mummy on the trial, she did not want to let that girl down*. I brought this information to the judge's attention because as jury keepers, we have been asked to monitor the jurors' behaviour and report anything that might seem untoward." [emphasis added]

[8] Mr Lunny submits that both the gesture and the highlighted words, namely "she was the only mummy on the trial (and) didn't want to let that girl down" evinced potential bias by Juror X in favour of the NOK. Mr Lunny submitted that reference to "that girl" was plainly Fiona Donohoe. Mr Lunny further argued that, if we were dealing with a criminal trial, any expression by a juror that they "didn't want to let the defendant down" would unquestionably have led to the juror to be discharged. Mr Lunny also stated that the use of the word "trial" was subject to a reasonable interpretation that Juror X was of the opinion that the inquest proceedings were part of an adversarial process involving competing parties.

[9] Mr Lunny drew the court's attention to the fact that on 23 March 2026, Ms Murnahan KC, on behalf of the DfI, had raised a concern about the behaviour of one of the members of the jury during Insp Cuan Bell's evidence. The juror was identified as Juror X. The juror was observed physically reacting to Inpector Bell's evidence in a way that, it was submitted, was not objective or appropriate. The specific concern was that a juror must not display any partiality and that each juror must assess all the evidence from an entirely independent and impartial perspective. Having considered the submissions made by the PIPs, I decided not to single out Juror X and to issue a general direction and warning to the whole jury that they must remain independent and impartial at all times regarding their assessment of the evidence and final deliberations. None of the PIPs disagreed with that approach.

[10] Mr Skelt KC, senior counsel on behalf of Daryl Paul, provided further support to the PSNI submissions that Juror X should be discharged on the basis that, for the reasons given, there was a real possibility of bias on the part of that juror. Mr Skelt also submitted that, in light of the underlying circumstances, the court should apply the test for "apparent bias" as stated in *Porter v Magill* [2001] UKHL 67 and application of this test did not require the court to seek an explanation from Juror X.

[11] Ms Campbell KC, senior counsel on behalf of the NOK, urged the court to accept that the "thumbs up" gesture was open to a number of possible interpretations. Ms Campbell empahsised there was nothing to suggest any inappropriate communication and, indeed, Mr Lunny had accepted that he was unable to say whether the gesture was aimed at the NOK, a person or persons in the public gallery or, indeed, another jury member. Whilst accepting that Mr Lunny had observed the gesture, Ms Campbell commented that it was not witnessed by a jury keeper. Consequently, a court should be slow to discharge Juror X regarding this evidence.

[12] In respect of the statement made by the jury keeper and the words that "she was the only mummy on the trial (and) didn't want to let that girl down," Ms Campbell argued that it cannot be assumed that Juror X was referring to Fiona Donohoe. Ms Campbell submitted that Juror X could also be referring to the other female member on the jury.

[13] In the circumstances, Ms Campbell submits that the court can be assured that there is no risk of bias in relation to Juror X.

[14] Ms Campbell drew the court's attention to a number of authorities, to include *R v Skeete* [2022] EWCA Crim 1511, *R v Kellard [*1995] 2 Cr App R 134 and the ruling of the coroner in *McCaughey and Grew*. I have considered these authorities, although I make the observation that each decision is fact specific.

[15] Ms Campbell suggests that, rather than discharging Juror X, there are an number of options available to the court. Firstly, I could provide firm directions to the jury that they must at all times act in an independent and impartial manner in their consideration and assessment of the evidence. Secondly, adopting the approach followed in *Skeete,* I should consider that Juror X can remain true to her oath and decide the case according to the evidence. Thirdly, in agreement with Mr Skelt, it would not be appropriate for Juror X to be asked questions regarding whether she made the alleged gesture and the statement made by the jury keeper, and if so, to provide an explanation.

Test for bias

[16] In *Porter v Magill* [2001] UKHL 67, the House of Lords considered the question of bias in relation to courts generally, and approved the test derived from

Re Medicaments (No.2) [2001] 1 WLR 700, namely would a fair-minded and informed observer conclude that there was a real possibility that the [juror] was biased (see Lord Hope at para [105]).

[17] In *Flaherty v National Greyhound Racing Club* [2005] EWCA Civ 1117 at para [27], the Court of Appeal stated that the test for apparent bias involves a two-stage process:

> "First the court must ascertain all the circumstances which have a bearing on the suggestion that the tribunal was biased. Secondly, it must ask itself whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the tribunal was biased … An allegation of apparent bias must be decided on the facts and circumstances of the individual case including the nature of the issue to be decided: see *Locabail (UK) Limited v Bayfield Properties Limited* [2000] 2QB 451, 480 para 25. The relevant circumstances are those apparent to the court upon investigation; they are not restricted to the circumstances available to the hypothetical observer at the original hearing."

[18] The same two stage test was also applied by the Court of Appeal in *Re McQuillan [*2019] NICA 13 at [151]:

> "[…] From *Porter v Magill* and from these authorities it is clear that the test is a two stage test. First the observer must be informed by ascertaining all the relevant facts which have a bearing on the suggestion either one way or the other that the decision-maker has the appearance of bias. Second the observer must be fair-minded so that question becomes whether all those facts would lead to an objective conclusion that there was a real possibility that the decision-maker is biased."

Application of the test for bias

[19] It is common ground that the critical question for determination is whether the fair-minded and informed observer, having considered the facts, would conclude that there is a real possibility that there was actual bias or an appearance of bias on the part of Juror X.

[20] The application of the *Porter v Magill* test to the facts of the present case necessarily involves the elaboration of the said test as stated by the Court of Appeal in *Re McQuillan* and in *Flaherty v National Greyhound Racing Club*. It is my decision

that, in relation to the gestures made by Juror X, the circumstances would not lead a fair-minded and informed observer to conclude that there was a real possibility of actual bias or the appearance of bias in respect of Juror X.

[21] In *Helow v Secretary of State for the Home Department* [2008] UKHL 62, the House of Lords gave further consideration to the "apparent bias" test in *Porter v Magill*. Elaborating on the attributes of a fair-minded and informed observer, Lord Hope stated at para [2]:

> "The observer who is fair-minded is the sort of person who always reserves judgement on every point until she has seen and fully understood both sides of the argument. She is not unduly sensitive or suspicious, as Kirby J observed in *Johnson v Johnson* (2000) 201 CLR 488, 509, paragraph 53. Her approach must not be confused with that of the person who has brought the complaint. The 'real possibility' test ensures that there is this measure of detachment. … But she is not complacent either. She knows that fairness requires that a judge must be, and must be seen to be, unbiased. …"

[22] I am not convinced by the argument that, on the facts of this case, the hypothetical fair minded and informed observer test does not require an enquiry from the juror as to whether she accepts she made the gesture and agrees with the content of the statement, and if so, what is her explanation for same. In *Re Medicaments (No 2)*, the following guidance was given:

> "85. ... The court must first ascertain all the circumstances which have a bearing on the suggestion that the Judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased.
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> 86. *The material circumstances will include any explanation given by the Judge under review as to his knowledge or appreciation of those circumstances. Where that explanation is accepted by the applicant for review it can be treated as accurate. Where it is not accepted, it becomes one further matter to be considered from the viewpoint of the fair-minded observer. The Court does not have to rule whether the explanation should be accepted or rejected. Rather it has to decide whether or not the fair-minded observer would consider that there was a real danger of bias notwithstanding the explanation advanced.* Thus, in *Gough*, had the truth of the

> juror's explanation not been accepted by the defendant, the Court of Appeal would correctly have approached the question of bias on the premise that the fair-minded onlooker would not necessarily find the juror's explanation credible." [emphasis mine]

[23] Accordingly, pursuant to the dicta in *Re Medicaments (No 2)*, I considered it necessary to ascertain all the circumstances which had the potential to have a bearing on the allegations that Juror X was biased. Accordingly, I directed that questions be drafted to be put to Juror X enquiring whether she accepted that she had made the thumbs up gesture and, during a conversation with the jury keeper, she had stated that "she was the only mummy on the trial (and) didn't want to let that girl down." If Juror X accepted she made the gesture, further questions would be asked as to whom she made the gesture and what did she mean by the gesture. If Juror X accepted that the statement of the jury keeper was accurate, the further questions would be asked as to what she meant by her words that she did not want to let the 'girl' down and the identity of that girl.

[24] The final question to be asked was whether Juror X felt that she was able to continue and remain faithful to her oath or affirmation.

[24] I determined that the said enquiries with Juror X should be conducted in open court and that the exchanges should be recorded. Apart from Juror X, only the court clerk and a solicitor from CSNI would be present. After the process, the PIPS would have an opportunity to listen to the court recording and consider the transcript.

Further submissions by counsel

[25] Having listened to the recording, Mr Lunny submitted that the answers to the questions posed to Juror X reaffirmed his previous submission that the real possibility of bias test had been satisfied and that the only reasonable course was to discharge the juror. Mr Lunny highlighted two themes. Firstly, while a court should not expect jurors to be devoid of empathy and sympathy, on the basis of Juror X's emphasis that both her and the NOK were mothers that she "did not want to let the girl down", it was clear that Juror X's sympathy had clouded her judgment and objectivity.

[26] Secondly, according to Mr Lunny, Juror X's answers to the questions posed demonstrated that she was an advocate or a voice for the NOK on the jury.

[27] Mr Skelt added in support of his previous submissions that Juror X's responses to the questions revealed an overtly emotional involvement with the NOK which plainly gave rise to a cause for concern.

[28] Mr Skelt also submitted that a statement made by Juror X that she hopes that "everything is done right and that the [NOK] gets the right answer that she requires"

also gives cause for concern and the potential for the hypothetical fair-minded and informed observer to conclude a perceived risk of bias.

[29] Ms Campbell, having considered the recording and the transcript makes the following submissions. Firstly, it is clear from Juror X's responses that she has a deep seated sense of civic responsibility. Secondly, the court was entitled to take her answers at face value. Juror X had indicated her commitment to remain true to her oath, would remain impartial and return a verdict according to the evidence. Accordingly, a fair-minded and informed observer would conclude that this juror understood her responsibility as a juror. Thirdly, Juror X had expressly stated that Juror X's hope was that everything was seen to be done right and that the next of kin "got the right answers that she requires." Ms Campbell maintained that the proper interpretation of this statement was that Juror X wanted the inquest to arrive at the right answers. Fourthly, it was clear that Juror X took her duties as a juror very seriously.

Decision

[30] In relation to the application of the *Porter v Magill* test to the facts of the present case, I have taken into consideration the elaboration of the said test as stated by the Court of Appeal in *Re McQuillan* and *Flaherty v National Greyhound Racing Club*. I unreservedly accept the observation made by Mr Lunny and his instructing solicitor that a thumbs up gesture was made by Juror X. When questioned, Juror X stated that she could not remember giving such a gesture, but added that if she did, it was not done intentionally and was not aimed at any particular person. Juror X's credibility is plainly called into question. However, Mr Lunny candidly and fairly accepted that neither he nor his solicitor could not say whether the gesture was pointed at the NOK or any person in the public gallery. Therefore, it is my decision that, in relation to the gesture made by Juror X, the circumstances described would not lead a fair-minded and informed observer to conclude that there was a real possibility of actual bias or the appearance of bias in respect of Juror X.

[31] I turn now to the real possibility of bias test and the conversation between the jury keeper and Juror X. The particular focus inevitably is on the statement by Juror X that "she was the only mummy on the trial (and) didn't want to let that girl down." At first sight, I accept the assertion that the hypothetical fair-minded and informed observer could reasonably come to a conclusion that this statement evinced a clear intention to support the NOK and, therefore, a real possibility of apparent bias on the part of Juror X. Following questioning, Juror X accepted that she was referring to Ms Fiona Donohoe, the mother of Noah, and that the statement was accurate.

[32] However, I have listened carefully to the court recording of Juror X's answers to the questions raised and her explanations. For the reasons given, I have come to the following conclusions. Firstly, it is clear that Juror X identified herself as the only mother on the jury and, in the capacity of a mother, sympathised with Ms Donohoe

for the loss of her child. Whilst I accept that, on several occasions, Juror X referred to Ms Donohoe as "the wee mummy", I am not persuaded that her empathy and sympathy with the next of kin manifestly clouded her judgment. Sympathy and empathy for the NOK and the fact that she has lost her child, does not, per se, amount to a perception of bias. It is likely that other members of the jury also have considerable sympathy for Ms Donohoe.

[33] Secondly, Juror X agreed that she did say that "she didn't want to let that girl down" and that she was referring to Ms Donohoe when asked what she meant by this statement, Juror X provided a number of explanations, to include that she did not want the NOK to think that she was pretending to be sick or lazy. This is a clear reference to the fact that on Wednesday 15 April Juror X reported that she was sick, as a consequence the jury did not sit for the day. A further explanation provided by Juror X also feared that, if she did not return to the jury the NOK would perceive that, as a woman, she did not care. Juror X was conscious of the fact that there were only two females on the jury.

[34] During this statement, Juror X stated that she had been on the jury for 11 weeks and was concerned if she did not bother returning to the jury after she had reported sick, Ms Donohoe would not wish to see a "woman drop off" the jury. Consequently, it is clear that Juror X felt committed to remaining on the jury. However, in my judgement, her motivation was for proper reasons. An expression of concern for Ms Donohoe if one of only two women dropped off the jury does not, in my view, amount to actual bias or perception of bias in the objective assessment of the hypothetical fair-minded and informed observer.

[35] Thirdly, I do not accept Juror X's assertion that she hoped that "everything is done right and the [NOK] gets the right answers that she requires" gives rise to a cause for concern and displays a real possibility of bias. I accept the interpretation made on behalf of the NOK that Juror X has a deep seated sense of civic responsibility and that she wants the coronial investigation into Noah's death to get the right answers.

[36] Fourthly, the court is entitled to take Juror X's answers at face value. Juror X has stood by her oath and stated that she would remain impartial and reach a verdict on the evidence. In my judgement, a fair-minded and informed observer would conclude that this juror understood her responsibility as a juror.

[37] For the reasons given, in my judgement, the fair-minded and informed observer, having considered all the facts, would not come to the objective conclusion that there was a real possibility that Juror X was biased.

[38] Accordingly, I refuse the application that Juror X should be discharged. However, I make the observation that this has not been a straightforward decision. It is my view that my previous warnings to the jury regarding the requirement to remain independent and impartial, not to display any bias or prejudice, to remain

true to their oath and to reach conclusions based only on the evidence should be re-emphasised to Juror X.