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**IN THE MATTER OF THE CORONERS ACT (NORTHERN IRELAND) 1959**

**IN THE MATTER OF A SERIES OF DEATHS THAT OCCURRED IN  
AUGUST 1971 AT BALLYMURPHY, WEST BELFAST**

**INCIDENT 5  
THE DEATH OF MR JOHN McKERR**

**CORE ABBREVIATIONS USED IN THIS INQUEST:**

<b>MoD:</b>	<b>Ministry of Defence</b>
<b>HET:</b>	<b>Historical Enquiries Team</b>
<b>IRA:</b>	<b>Irish Republican Army</b>
<b>SLR:</b>	<b>Self-Loading Rifle</b>
<b>CCRIO:</b>	<b>Central Criminal Records and Information Office</b>
<b>RVH:</b>	<b>Royal Victoria Hospital</b>
<b>APC/Saracen:</b>	<b>A Six-wheeled Armoured Personnel Carrier</b>

<b>Sections</b>	<b>Paragraphs</b>
<b>I. Introduction</b>	<b>[1]-[7]</b>
<b>II. Setting the Scene</b>	<b>[8]-[11]</b>
<b>III. Family Testimonials</b>	<b>[12]-[13]</b>
<b>IV. Pathology</b>	<b>[14]-[18]</b>
<b>V. Ballistics</b>	<b>[19]-[27]</b>
<b>VI. Civilian Evidence</b>	<b>[28]-[69]</b>
<b>VII. Engineering Evidence</b>	<b>[70]-[75]</b>
<b>VIII. Additional Witness Evidence</b>	<b>[76]-[78]</b>
<b>IX. The Police Investigation</b>	<b>[79]-[81]</b>
<b>X. Military Logs</b>	<b>[82]-[84]</b>
<b>XI. Other Material</b>	<b>[85]-[90]</b>
<b>XII. Conclusions from the evidence</b>	<b>[91]-[120]</b>
<b>XIII. Verdict</b>	<b>[121]</b>

## *I. INTRODUCTION*

[1] This is an account of the evidence and my conclusions and verdict. I have considered all of the evidence heard between 15 and 20 December 2018 and additional evidence heard on 12 June 2019. I have also considered all of the papers and the written submissions of counsel. This text does not recount each and every aspect of the voluminous material I have considered and so it should not be assumed that where some detail is not specifically mentioned I have not considered it. I have considered the totality of the evidence in reaching my findings.

[2] In the introductory chapter I set out the law governing inquests in Northern Ireland which I have applied. I have heard this inquest as a judge sitting as a coroner without a jury, with the agreement of all parties. I have kept in mind the investigative obligation imposed by Article 2 of the European Convention on Human Rights. I have applied the balance of probabilities as the standard of proof. As I also said in the introductory section, the standard of proof is one thing but the state of cogency of the evidence is another as this case relates to events 50 years ago. The court is mindful that memory is affected by the passage of time and so accounts must be examined carefully before findings can be made. In accordance with my obligations in law I have, upon assessing all of the evidence I have seen and heard, tried to reach a verdict on the core issues. Where I have not been able to reach a conclusion I have explained why.

[3] Mr John McKerr was 49 years old at the date of his death. He was a father of eight. He had been a soldier with the Royal Engineers. At the time when he died in 1971, Mr McKerr lived with his wife and four of his children and two grandchildren at 26 Andersonstown Park West, Belfast.

[4] On the morning of 11 August 1971 Mr McKerr was carrying out minor repair works at Corpus Christi Church where he was employed as a joiner by P&F

McDonnell Ltd. He was shot that morning and taken to the Royal Victoria Hospital ("RVH"). He had told his family he might stay with the priest due to trouble in the area and the curfew and so his family only realised he was shot the next day. Mr McKerr survived in hospital for a short time but he died of his injuries on 20 August 1971.

[5] An inquest took place on 25 May 1972 and reached an open death verdict. In correspondence of 6 September 2011 the Attorney General referred this case for a further inquest and in doing so he wrote as follows:

"I note that the Police report concerning Mr McKerr's death which is on the coroners file states that 'Mr McKerr was shot in the head by a sniper.' It is notable that, despite the fact that the army were in the area of Ballymurphy Road at the time of the shooting, there is no indication that any enquiries were made with military personnel concerning Mr McKerr's death. It is, I think, significant that the coroners file contains no statement from any military witness and there is therefore no evidence that the possibility that Mr McKerr was killed by military personnel was seriously contemplated, much less properly investigated.

I further take into account the fact that a number of members of the public have given accounts of having witnessed a soldier apparently firing from the area of the junction of Ballymurphy Road and Westrock Drive towards the area of Corpus Christi Church and that these witnesses are available to give evidence to the inquest.

Having taken into the account the above matters, and in particular the apparent lack of investigation of the possibility that Mr McKerr was shot by a soldier, I am of the opinion that the circumstances of Mr McKerr's death are such as to making the holding of an inquest advisable."

[6] The how, when and where of this death is not contentious. Rather this inquest has focussed on whether it can be established who shot Mr McKerr. His next of kin assert he was shot by the British Army either from a location at the junction of Westrock Drive and Ballymurphy Road or from Corry's Yard. The Ministry of Defence ("MoD") asserts that the core question cannot be determined.

[7] No military witnesses gave evidence to me about this death. However, a number of civilian witnesses did give evidence about what they observed at the relevant time. I also heard ballistics and pathology evidence which I will discuss in more detail. I had the benefit of engineering evidence from Mr Brian Murphy and also maps and 3D imaging of the area. Finally, I have been greatly assisted by the submissions of counsel for the next of kin and MoD.

## *II. SETTING THE SCENE*

[8] This incident occurred at a time of upheaval in Northern Ireland. By 1971 the Troubles had been running for three years. Nearly one hundred people had died in the early part of 1971. Monday 9 August 1971 marked the introduction of internment and saw 342 people arrested across Northern Ireland. This resulted in civil unrest and further deaths. A Historical Enquiries Team ("HET") report, which has been made available in this inquest, states that:

"In the midst of this almost unbelievable violence, on the morning of Wednesday 11 August 1971, John McKerr

went to his place of work, Corpus Christi Church in Westrock Drive, West Belfast. The church had recently been built and was completed in June that year. Mr McKerr had been engaged in maintenance work since the completion and had continued to attend to his task even though the area is described at the time as being chaotic with constant gun battles taking place.”

[9] All of that said, on the morning in question there was a funeral in Corpus Christi for a young man, Michael O’Hare, who had drowned a few days before in the Falls Road baths. There are no particular reports of shooting in the area and there were pedestrians on the streets, some of whom were going to the funeral.

[10] To obtain a sense of the area in 1971 I have utilised maps and photographs, two of which are annexed to these findings to assist the reader. First a map of the area is reproduced courtesy of TBM consultants (**Annex 5.1**). This is an Ordnance Survey map from 1971 which shows Corpus Christi Church positioned off the Whiterock Road and the nearby Ballymurphy Road. Across from the church and beyond the houses in Westrock Drive is a large area unidentified on the map but known to us as Corry’s timber yard. Attention has been drawn to the gap between the houses at 73-95 Westrock Drive and Corry’s Yard. The focus of this case has been on the immediate vicinity of the church, Corry’s Yard and the junction of Ballymurphy/Whiterock Road. The houses are numbered in that area and can be seen on the map with a particular focus on numbers 67-72 and their back gardens, which are delineated on the map. The photograph also shows that there is a footpath in front of the church and railings. I also reproduce a contemporaneous photograph which shows the front of Corpus Christi Church in or around 1971, supplied by Mr John Teggart (**Annex 5. 2**).

[11] I have visited the scene and while it is changed I have been able to observe that this is an area of dense housing along a number of streets. Placed in the centre of this community was the church.

### *III. FAMILY TESTIMONIALS*

[12] Before hearing the formal evidence Mr McKerr's family provided some personal testimonials. His daughters Anne Ferguson and Mo McKerr were able to do this. Ms Ferguson also made a formal statement which I refer to later. Mr McKerr was a married man and a father of eight. During the testimonial I heard about the pain this death has caused to the family and that this was exacerbated by how the family found out about the death in the newspaper and how they say there was misreporting about their father.

[13] The family highlighted Mr McKerr's military career, which they said he was proud of. He had been a member of the Royal Engineers. He had boxed for his regiment and he was a member of the Royal British Legion. The family also explained that Mr McKerr lost his right hand after sustaining an injury during World War II. For his work he used a stainless steel prosthesis which looked like a small hammer. The family said their objective was not punishment but the truth and they wanted to set the record straight about their father.

### *IV. PATHOLOGY*

[14] An autopsy was carried out by Professor Marshall on 20 August 1971. Professor Marshall recorded the cause of death as:

“Laceration, bruising and oedema of the brain associated with fractures of the skull and complicated by meningitis due to a missile wound of the head.”

[15] Professor Marshall said that the character of the head wounds is consistent with a missile being a bullet. He said that other injuries found on the face and left hand were probably caused when he collapsed and that they were trivial, healing and of no consequence in the death. He also said:

“He had received a perforating missile wound of the head. The missile had entered the right side of the scalp just above and behind the right ear and it had left the head a few inches further forward having fractured the skull and torn a ragged area out of the right side of the brain.

There was an oval deficiency, 7x2½cm, horizontally on the right side above the ear. The posterior end was formed by part of a fairly neat hole, 8mm diameter with bevelling of the margins. The fracture in the inner table being the larger. From this hole, fractures extended into the anterior, middle and posterior fossae.”

[16] Further pathology evidence was obtained from Dr Swift (report of 20 May 2018) and Dr Cary (report of 15 October 2018). Helpfully, an agreed note was filed following a meeting of these two experts. This is dated 23 November 2018 and reads as follows:

“1(a) John James McKerr died as a result of complications arising from a single gunshot wound to the head.

(b) The wound behind the position of the right ear was the entrance wound.

- (c) The more forward placed wound to the right side of the head was the exit wound.
  - (d) It is agreed by both Dr Swift and Dr Cary that the appearance and internal description provided by Professor Marshall could have been caused by a single low or high velocity ballistic projectile.
2. Dr Swift and Dr Cary agree that it is not possible to indicate the position from which Mr McKerr was shot based upon the pathological findings.
  3. Dr Swift would also wish to correct an incomplete sentence within his report opinion number 3, a typo, the complete sentence should read “it is likely that he would have been rendered unconscious on impact with death ensuing rapidly in the absence of resuscitation and medical treatment.”

[17] Professor Marshall confirmed that he had read this agreed note and he took no issue with it. In relation to a more specific view about positioning, Dr Cary observed:

“I agree with the simple proposition that it is not possible to indicate the position from which Mr McKerr was shot there being a wide range of possibilities in order to achieve both entrance and exit on the right side of the head. In relation to the witness evidence I would prefer to opine on any final view of the actual matrix once the evidence has been adduced and come up to proof.”



[18] Thus, the pathologists agreed Mr McKerr was shot and died as a result of a gunshot wound which entered his head from behind around the right ear. They could not, perfectly understandably, say anything further about where this had come from.

## V. *BALLISTICS*

[19] Three ballistics experts were called to give evidence, having submitted comprehensive reports to the court. They are Paul Olden, Anne Kiernan and Mark Mastaglio. Helpfully, an agreed note of this evidence was prepared which reads as follows:

- “(a) The wounds appear consistent with the entry and exit of a fired bullet or part of a bullet.
  
- (b) The projectile appears to have struck the right side of the head (slightly behind and above the ear) then exited from the head slightly further forward.
  
- (c) The single elongated hole found in the skull implies that the projectile had travelled tangentially (i.e. at a shallow angle) in relation to the skull’s surface at this site.
  
- (d) The report and images suggest that the bullet may have briefly passed through the skull to cause damage to the surface of the brain, before exiting. This would imply a slightly less shallow impact angle than would be the case if the bullet had not passed through the skull.

- (e) There is nothing in the report to suggest the presence of 'soot' or 'powder tattooing' around the entry wound. Although the presence of such features would indicate a shot fired from a very close distance, their apparent absence is of limited value given the surgical interpretation for this wound.
- (f) It is not possible to reliably assess whether the bullet had ricocheted or fragmented before striking Mr McKerr.
- (g) PO and MSM view - It is not possible to reliably assess whether the wound was caused by a 'high velocity' bullet such as that fired from a 7.62mm SLR (L1A1 rifle) or by a 'low velocity' bullet such as 9mm Parabellum.

AK view: Based on her practical experience of seeing tangential wounds to the head caused by high velocity bullets, the wound described by Professor Marshall and shown in the photograph (depicting the brain tissue damage) is most likely caused by a 'high velocity' bullet, such as that fired from a 7.62mm SLR, but is unlikely to have been caused by a 'low velocity' bullet such as a 9mm Parabellum.

- (h) From the wound ballistics it is not possible to make any useful assessment of the particular location of

Mr McKerr, or the firer when the shot was fired. Their relative locations cannot be usefully assessed without knowing which way Mr McKerr was facing, or the orientation of his head, when the shot was fired.”

[20] This note is extremely helpful but it also demonstrates the uncertainties that remain because of the inefficacy of the historical examination and the variables at play. The written evidence was complemented by substantial oral evidence from each of the three ballistics experts from which the following emerged. I start with Mr Olden who gave some extremely helpful evidence to me in a very comprehensible way. He explained that acoustic echo may account for people hearing numerous shots. He also simply explained the differences between high and low velocity injuries. In summary he said a 7.62mm bullet would come from a high velocity gun such as an Self Loading Rifle (“SLR”). A 9mm bullet from a low velocity gun such as a pistol or sub-machine gun. He was clear that 9mm was not consistent with an SLR.

[21] Mr Olden explained that different forms of ammunition have different energy. He explained the process of cavitation. In particular, he said this could come from high and low velocity weapons. He said two factors dictate the nature of a wound: the energy and the rate at which the energy is lost after striking through bone. With a rifle, he said the impact was high but after a short distance energy is lost causing cavitation.

[22] Mr Olden was extremely cautious about giving any firm view as to whether the wound was caused by a high or low velocity weapon. He said this was because the pathology evidence could not be more specific regarding the nature of the wound probably because the pictorial evidence came after surgical intervention.

[23] When pressed through questioning about where the shot may have come from, Mr Olden was also cautious given the variables at play.

[24] In terms of whether this was a ricochet or direct hit he said a neat wound would point more to a direct hit. He ruled out the 'smoking gun' description as did the other ballistic witnesses.

[25] Ms Kiernan was prepared to go further in her evidence regarding the high/low velocity debate. She said she based her opinion on her experience of examining wounds, particularly head wounds to soldiers in Iraq/Afghanistan. She also said that the handwritten pathology notes pointed her in the direction of this wound being sustained as a result of a high velocity weapon due to the damage to the brain. Ms Kiernan was also prepared to opine as to where the shot came from, effectively preferring the option of a soldier on the ground near the church rather than Corry's yard.

[26] Mr Mastaglio was clear that if Mr McKerr was walking normally and not turning his head, a shot from Corry's yard would not cause the injury. He thought there were too many variables to say whether it was a high or low velocity weapon. He did accept that it was more likely a direct shot than a ricochet.

[27] An important issue which all of the witnesses were questioned about was the position from where the shot came. It was put to each of them that the evidence suggested Mr McKerr was walking towards Westrock and away from the direction of the Ballymurphy Road. It was the consensus that if walking in that direction without moving his head he could not have been shot from Corry's yard and the bullet came from his rear right hand side given where it entered. So for the shot to have come from Corry's yard Mr McKerr would have had to turn his head some way around. Ms Kiernan also provided some sight lines from Corry's Yard through the gap in houses at 73-95 Westrock Drive, however all witnesses referred to the

unknown variables of the height of houses and walls associated with the houses at Westrock Drive.

## **VI. CIVILIAN EVIDENCE**

[28] I received statements regarding identification of the body and other matters which are uncontroversial. One comes from Brian Patrick McKerr, Mr McKerr's son (now deceased). Also Detective Sergeant JD Wilson (also deceased). Both statements were admitted under Rule 17. Other such evidence was from Vernon Glover, the ambulance control operator, Constable Mounce, police mapper, DC Andrew Irwin, police investigating officer. This evidence was factual and confirmatory and non-controversial.

[29] Further details are found in William Carlisle's deposition, which was made for the original inquest on 25 May 1972. This statement gives a flavour of the scene on the day in question. He was stationed at Central Ambulance Depot, Broadway. He said that at 11:13 hours on 11 August 1971 he was dispatched to collect a shooting victim in Westrock Drive. He said that on approach "there were a number of small barricades in the area but we were able to get through them. While driving to Westrock Drive I heard shooting in the area."

[30] He then described taking the injured man away and he said that "we got in and out as quickly as possible because of the trouble."

[31] Elizabeth Thompson provided a deposition to the inquest in 1972 and she also gave evidence to me. Ms Thompson is a doctor and she described admittance to the RVH at 11.00 that day and subsequent treatment until she certified death on 20 August 1971 at 2:30am. Dr Thompson said Mr McKerr was admitted to intensive care at 12:45pm on the day in question.

[32] I now turn to the civilian evidence which has been presented in this inquest. There are eleven witnesses some of whom are deceased (Fr Harper, Maureen Heath) and so their evidence was admitted by way of Rule 17 and could not be tested. Other witnesses came to give evidence and one civilian witness was medically excused (Mr Connolly). The civilian accounts were not taken at the time, however they have emerged from a range of sources, principally interviews with Paul Mahon around 1999 and interviews by Laura McMahan for Relatives for Justice in and about 2010. It is also clear that some of the witnesses have been involved in community discussion of events.

[33] I bear in mind that only a fraction of this is contemporaneous. However, a stand-out piece of evidence is from the time. As will be apparent, it assists me in some respects. It is from Fr Harper, who was conducting the funeral in Corpus Christi Church when Mr McKerr was shot. Fr Harper is deceased and so his statement was read in by agreement. The salient parts of this evidence are as follows. In his statement, which was given in his deposition and presented to the coroner at the inquest in 1972, Fr Harper stated as follows:

“On Wednesday 11 August 1971 there was a funeral in the Church. I was conducting the Service. Mass was at 10am and the funeral service took place immediately after it. The remains were brought to the front door of the Church to be collected by the Undertaker, who was delayed on his arrival because of barricades in the streets. While waiting I spoke to John who had been working that day. After our conversation he left the Church. It was about 10:45am when John left. All the people at the service were waiting outside the Church for the arrival of the Undertaker. The last I saw of John was him walking through the people.”

[34] Fr Harper therefore said that the shooting took place after the funeral. In his deposition he said he heard two shots followed by two more cracks. He said "I don't know if the latter two cracks were shots or just echoes of the first two shots." He then described "complete panic" among the people gathered at the church. He described the difficulties in getting an ambulance after attending to the man spiritually. He did not recognise the man at the time and he concluded his statement by saying "I have no idea who shot him and it was only later I learned that the man shot was John McKerr."

[35] Fergal McDonnell filed a deposition for the original inquest and he also gave evidence to me. He confirmed that he employed Mr McKerr in August 1971 and on 5 August 1971 he was commissioned to Corpus Christi Church to carry out maintenance work. Mr McDonnell confirmed that on 10 August Mr McKerr phoned the office from the church to order material. He was told it would be delivered as soon as possible and the next thing Mr McDonnell heard was that Mr McKerr was shot and had died.

[36] In his statement for this inquest dated 18 September 2018 Mr McDonnell described Mr McKerr as an excellent joiner. He also pointed to the fact that John McKerr had a disability in that he did not have the lower part of one arm. He said that "when working John would've attached a specially made hammer to his arm. I have heard that whoever shot him thought he had something in his hand - I surmise it was in fact his hammer."

[37] Ms Sarah (Sheila) McCalliskey gave evidence. She did not make a statement at the time, which she said was because of the situation at that time that she was traumatised and that "no-one would believe me." Her first account was in 1999 to a researcher called Paul Mahon. She also provided a short undated written statement and then she made a statement to the Coroners Service of 28 May 2018.

[38] Ms McCalliskey was 25 at the time and said that she witnessed events in the following respects. She said a young man called Martin O'Hara had died by drowning so she was going to the funeral with her mother on the day in question. She walked along Westrock Drive to Corpus Christi Church. She said that there were a large number of paratroopers in the area. They had, she said, "put rubber bullets through windows and doors of people's homes" and subjected her grandfather to verbal abuse. She said that she heard shooting near/going into the church which she thought was from Corry's yard though she did not see it. She thought that it was the Army. She said the funeral could not get out of the Church because of the shooting.

[39] Ms McCalliskey did not actually see Mr McKerr being shot but she gave evidence to me that on making her way home she saw a soldier in the back garden of a house - she marked this on a map and identified the house as 69 Ballymurphy Drive. She said in evidence that the soldier was kneeling head down, with smoke coming out of his gun. She said that she called him a "murdering bastard" to which he made no reply. When asked to describe him she said she saw he was white and had dirty fair hair.

[40] Mr Francis Corr gave evidence to this inquest and referred to a number of sources of information as follows. He said he had first made a statement to the Frank Cahill Centre in the 1980s, although the written source material was not available. He also referred to speaking to people at the Sinn Fein Office, Falls Road, and at Corn Exchange. Again that material was not available. However, the first recorded interview is that of 5 November 2010 with Laura McMahan of counsel. A handwritten statement dated 8 December 2012 was also available. This was a statement taken by Mr Des J Doherty, solicitor. Finally, Mr Corr referred to two statements made to the Coroner's Investigators dated 8 May 2018 and 6 December 2018.



[41] In his evidence Mr Corr explained that he had moved into the area in 1970 and so he did not know many people at the time of these events. He said that he was walking from the Ballymurphy Road to Westrock Drive on the day in question. He said he was with his wife around lunchtime/early afternoon. He said that there was a man walking on the pavement near Corpus Christi Church who was unarmed, acting in a normal way. He said the man drew up alongside him and his wife and he heard a shot and the man fell. He said he grabbed his wife to run to the safety of an alleyway. In doing so he said he saw a black soldier in the garden of a house wearing a red beret which he associated with the Parachute Regiment. He said the soldier pointed his rifle at him. He could hear someone shout "murdering bastard" at the soldier. Then, he went to help Mr McKerr and he said he held his head.

[42] During the course of his evidence Mr Corr said that there was a black soldier and whilst he did not see him fire the shot at Mr McKerr he thought it might have come from Corry's yard as the Army were there and he had subsequently heard gossip to that effect. Mr Corr did not relate the shooting specifically to the funeral. When pressed during questioning, Mr Corr accepted that the soldier might have been camouflaged.

[43] When giving evidence Mr Corr was asked to mark a map and photos to give some idea of the positions. He marked the position of the soldier as at 67 Westrock Drive garden and his position and that of Mr McKerr down from the railings of the church at Westrock Drive. He also marked the soldier's position on a photograph. These markings differed slightly but broadly placed the soldier in Westrock Drive.

[44] Mr Corr said that he did not make a contemporaneous statement as he kept himself to himself. He said that he could give more detail in 2012 as he had been brought back to the location by those questioning him. Mr Corr had also witnessed other shootings of Father Mullan and Francis Quinn which are part of the Ballymurphy sequence.

[45] Eilish Meehan's evidence emanated from a statement provided to the Coroner's Investigator which is dated 24 September 2018. She did not make a statement at the time but she was interviewed by Paul Mahon in 1999 and the transcript of that was also provided. Ms Meehan is a witness to other events in the Ballymurphy sequence.

[46] In her evidence Ms Meehan explained that she was 19 years old at the time. She lived close to Corpus Christi Church at 17 Springhill Avenue which was at the top of the street facing the church. She said she went out to buy cigarettes at a shop on Westrock Drive. She knew Mr McKerr. She said she was walking behind him that day when she heard a shot and saw Mr McKerr fall. She assumed this shot came from Corry's yard. She did not recall seeing two other people on the pavement close to Mr McKerr. She saw no soldiers or armed personnel in the vicinity. Ms Meehan said she went into shock after the event. She gave some evidence also about the difficult circumstances at the time, including a cousin's home being ransacked and the presence of the Army on the street. Even at 47 years removed, Ms Meehan maintained that Mr McKerr's death "sticks out" although she could not be 100% precise about what happened.

[47] Robert Russell also gave evidence at the inquest having previously been interviewed about events and having filed statements as follows. At the outset it should be noted that Mr Russell accepted in his evidence that he was not well disposed to the British Army. He freely accepted that he had a criminal history and had escaped from the Maze prison during the Troubles.

[48] Mr Russell is the only witness who gave evidence that he directly witnessed the shooting of Mr McKerr. He said he was 13 years old at the time. When pressed as to why he had not given an account until 1999 he said he had kept his head down given the times they were in and his own brother had been shot two days before.

[49] In terms of his accounts of this event Mr Russell remembered events happening when the funeral cortege had actually left or was leaving Corpus Christi Church and was on the Westrock Drive. In essence he said he witnessed a black soldier on his hunkers with a rifle on the left hand corner of Westrock Drive. He said that there was another soldier in the road, an officer who had a side arm. He said when the officer spoke he said "shoot that bastard there" (slightly different wording from the interview). He said he saw a man locking up the gates of Corpus Christi Church after the funeral. The next thing he recalled was that the black soldier took aim and shot dead the man locking up the gates.

[50] There were inconsistencies in Mr Russell's accounts from 1999, 2010 and 2012 as to whether he actually saw the man fall or the aftermath. These became apparent during questioning. In evidence Mr Russell said that he did not actually see Mr McKerr fall. He said this confusion may have come from what a cousin told him. He did not remember seeing people walking near to Mr McKerr.

[51] During his evidence Mr Russell maintained that there were paratroopers on the streets in this area around Westrock Drive and Ballymurphy Road junction and that he had witnessed an incident at the home of a man called Tommy Irvine.

[52] A number of other witnesses provided statements or gave evidence about the scene and what was happening in the general area around the time that Mr McKerr was shot. One was Tommy Ireland. While this witness thought he had made a previous statement there was no evidence of this and so he relied on a statement provided to the Coroner's Investigator dated 13 November 2018. This witness said that on the morning of 11 August 1971 he left his home at 28 Rodney Drive around 8:00/8:45am to go to the funeral of his friend Martin O'Hare who had died. He was aged 21 at the time. He said that he did not know Mr McKerr but his father did. He said he was walking along Westrock Drive having taken a short cut known locally as the Giant's Foot. He was on his own. He said he was near some pre-fab bungalows when he heard someone say "get in, get in, get in" as there appeared to be shooting

coming from the right hand side from the direction of Corry's yard. He said that he went into the house of Tony Parker, having been warned to take shelter and he stayed there for about 20 minutes.

[53] This witness said that after this interlude he then walked along Westrock Drive towards Corpus Christi Church. He said it was eerily quiet. He said he heard one crack and a man fell outside the Church. In his statement he said "I don't know what direction the shot was fired from I would surmise it was Corry's yard based on what was said earlier."

[54] Mr Ireland then explained that he remembered a priest coming out to tend to the man and that there was a lady standing at her door facing the church who appeared to be watching the whole thing. He could not recall the lady tending to Mr McKerr. After this he said soldiers came in an armoured car and that there were two in particular he recalls who were standing one on the right one on the left. He went on into the church to the funeral.

[55] In his evidence Mr Ireland described seeing a wounded (gunshot to shoulder) youth about 15 years of age in the church. He said that the funeral was swift and he left without anyone walking with the coffin as everyone wanted to get away. He said by this stage Mr McKerr was away in an ambulance.

[56] I afforded another civilian witness anonymity and so he gave evidence under the cipher C2. He said that he had not made a statement before so his first account was that contained in the statement of 5 December 2018 to the Coroners Service. He was 24 at the time and he said he lived in the area in the home opposite 67 Ballymurphy Drive. He said he was upstairs in his own house looking out the window with his father. He said he had a perfect view of what was happening and in particular he recalled "Paras" across the road at No. 67 and No. 72. He said he knew the soldiers were Paras from the wings parachute emblems on their uniforms.

[57] In summary C2 said that “as we stood and watched, one of the soldiers at number 67 turned and faced the soldiers at number 72. He lifted his right arm and gave the thumbs up sign. Then there was a gun shot. I would say it sounded like a rifle shot, but I cannot be 100% sure.”

[58] C2 could not remember military vehicles in the area. He gave evidence that one of the soldiers who had been in number 72 was making his way up Westrock Drive when a priest came running and shouting at the soldier and an argument ensued. He did not see Mr McKerr.

[59] A witness, Paul Connolly, was excused from attending the inquest for medical reasons, however his statement was admitted in evidence. This is a statement of 8 November 2018 which exhibited a map and notes of an interview with Laura McMahon in 2010. He also filed a short statement of 18 December 2018.

[60] Mr Connolly was 23 years old in 1971. In his first account made in 2010 Mr Connolly recalled being at the front of his house at 91 Ballymurphy Road while the paratroopers were walking in formation down his street in the direction of Corpus Christi Church. He recalled seeing one paratrooper, a black man, take aim towards the entrance of the church and fire one shot. He stated that this soldier was at the front of an armoured vehicle which was parked at the end of his street. Mr Connolly later learned that John McKerr had been shot dead at the gates of the church. Mr Connolly stated that there were no gun shots preceding the soldiers’ actions. He stated that the soldier who fired the shot, and the others soldiers walking in formation, carried on walking down the street.

[61] In his statements to the Coroners Service Mr Connolly said that he did not know Mr McKerr. He also confirmed that his mother (Joan Connolly) had been shot two days before and his father was organising the funeral. He said that he was standing in the front garden of his home when he witnessed events. He said that the

soldier was black, 100 yards from his position and he was wearing a beret from the parachute regiment.

[62] A statement was admitted, along with associated documentary and video evidence, from Maureen Heath as she is now deceased. The evidence comprised a transcript of an interview with Paul Mahon dated 20 April 1999, a transcript of an account and You Tube video of this account given at an event at St Mary's College in August 2008, and a transcript of an interview between Mrs Heath and Laura McMahan of 17 August 2009. There is also mention of Charles Heath who was Mrs Heath's husband and who appears to have been with her at the time. However, this is effectively a joint account.

[63] Maureen Heath lived at 73 Westrock Drive in 1971. That address is right across from the church. In her interviews Ms Heath said that she heard a shot around 10am when she was putting on her coat to go out. She says she looked out the window and she saw Mr McKerr who she described as looking over, looking up towards Corry's yard. She said that at this point he was "coming up at the railings of the chapel here, by this opening here, Corry's Timber Yard went along here, I looked over and another shot rang out and the man just dropped flat on his face." She said he was on the pavement and she went over to help.

[64] Mrs Heath said that whilst attending to Mr McKerr there was "a big coloured soldier standing at the back of me with the gun just pointed."

[65] In her Mahon interview Mrs Heath referred to soldiers arriving after the ambulance and one soldier pointing his rifle at her. She then described having an altercation with an officer and being told to calm down as she was remonstrating that Mr McKerr needed help.

[66] In her final interview in 2010 Mrs Heath described Mr McKerr turning around after the first shot. When asked did she have any sense of where the shot came from

she said no. She also described his false arm as he had let her into the church to pray with others earlier that morning.

[67] Mr McKerr's daughter Anne Ferguson also gave evidence to this inquest. Her statement is dated 11 December 2018. In this Mrs Ferguson explained that her father had an army background in the Royal Engineers and that he lost his right hand in the course of that service.

[68] Ms Ferguson described the effect of the aftermath of events. She said that her mother worked at the Royal Victoria Hospital at the time and that was where her father was being treated. In particular she recalled that when her father was in the intensive care unit of the RVH "I spoke to a nurse on the ward and asked if my father was able to survive the wound. I recall that the nurse told me that it was hard to say and that they had removed a bullet which was given to the police." Mrs Ferguson explained how the family found out about her father's death from a newspaper article, the details of which were inaccurate. Mrs Ferguson said that a policeman apologised about this and said it was due to troubles and barricades in the area (Mrs Ferguson disputed this).

[69] Mrs Ferguson also said that around the time there was an article in the Belfast Telegraph saying Mr McKerr was attending an Irish Republican Army ("IRA") funeral when shot - she said this was particularly upsetting for the family and it was retracted, with a small published apology. She said that "my mother was very practical and when my father died his war pension stopped and she was struggling to bring the family up so she did not pursue an investigation and was of the opinion that it was in the hands of God now."

## **VII. ENGINEERING EVIDENCE**

[70] Finally, I turn to the evidence of Mr Brian Murphy, Consulting Engineer. He gave helpful evidence as to the scene utilising Ordnance Survey maps and photographs.

[71] Mr Murphy's report is dated 19 October 2018, however he added to that after a site visit on 7 December 2018 following an initial visit to the site on 15 October 2018. In his report, by comparing the current topography and the Ordnance Survey plans from 1971 Mr Murphy summarised the similarities and differences in the locus by way of the following bullet points:

### **"Similarities**

- The road layout of Ballymurphy Road is the same in terms of width, orientation and gradient.
- The houses in Ballymurphy Road are the same (particularly Nos. 91 and 69).
- The junction of Ballymurphy Road with Westrock Drive/Springhill Drive remains the same.
- The junction of Springhill Avenue with Springhill/Westrock Drive remains the same.
- The road layout of Springhill Avenue is essentially the same. (There is a new parking area outside the current Nos. 4 and 6 Springhill Avenue.)
- The boundary wall at Corry's Timber Yard is in the same place as before. Indeed, the breeze block construction would appear to be the original wall.

### **Differences**



- Westrock Drive has been renamed Springhill Drive.
- A new road (with houses) has been introduced at Springhill Grove to the west of Corpus Christi Church.
- The original Corpus Christi Church has been demolished and rebuilt slightly to the north east of the original.
- New houses have been built in Springhill Avenue although the road layout remain substantially the same.
- The houses in Westrock Drive and Springhill Avenue have been replaced with more substantial buildings.
- There are houses at Sliabh Dubh View and Sliabh Glen in what was formerly Corry's Timber Yard. Access to this area is separate and from the Springfield Road."

[72] Mr Murphy then refers to various eye witness reports and at paragraph 6.4 he makes the following comments:

- “(a) A number of witnesses place their vantage point precisely. Mr Connolly was at 9 Ballymurphy Drive. Charlie and Maureen Heath were at 73 Westrock Drive and Mr Russell marked his position on a scale plan and mentioned he was 5 yards away from the gunman.
- (b) Other witnesses are not placed as precisely in the available information. Francis Corr was somewhere in the vicinity of the chapel railings on the Westrock Drive. Fr Harper ran to the deceased

on the footpath to the right of the gates of the church and tended to a man lying on the footpath on the same side as the church. Sheila McCalliskey had just come out of the church.

- (c) The lateral position of the deceased is not precise. A number of witnesses are clear that he was on the footpath near to the railing but not how far along the railings.
- (d) The position of Mr Connolly is removed from that of all the other witnesses who were placed in various positions in Westrock Drive.
- (e) Mr Corr is the only witness who places the gunman in a garden of a house. The house is presumably No. 69 Ballymurphy Road.
- (f) Frances Corr, Paul Connolly and Robert Russell all describe the gunman as being a black man. Sheila McCalliskey indicated that he was white whilst the Heaths do not address the colour of the gunman.
- (g) In interview Maureen Heath agreed with her interviewer that the deceased man was to her left as she looked out at Westrock Drive and from her vantage point at 73 Westrock Drive. This would seem to be incorrect as this would place the deceased as being considerably further along

Westrock Drive than the other witnesses would indicate.”

[73] Mr Murphy confirmed the source of the photographs, which he said were taken by the RUC in the area in relation to another incident which occurred on 17 September 1972. He pointed out that from these:

- “The properties in Springhill Avenue were three storied buildings.
- The property at 80 to 86 Springhill Avenue was effectively four stories on the side closest to Corry’s wall. This property had shops on the ground floor.
- There is a photograph (photo 6) which shows the road parallel to Corry’s wall. This photograph is framed in such a way that it does not show the area at the south western corner of Corry’s yard. It does show the continuation of the wall towards the east.”

[74] Mr Murphy also noted that there was no mention of an observation post in Corry’s Yard at the relevant time. I pause to observe that when this point was raised documentation emerged of a record of an observation post in Corry’s Yard – around the time of another incident in 1972. This is a matter I will return to.

[75] What also was apparent from the evidence is that Mr Murphy could not be exact about the heights of buildings at the relevant time, in particular the wall around Corry’s Yard. He did say there was a line of sight from Corry’s Yard to where Mr McKerr was placed.

### ***VIII. ADDITIONAL WITNESS EVIDENCE***

[76] A witness came forward late in this inquest. He is a civilian witness, Sean Gerard McKearney. He compiled a statement dated 29 May 2019 and gave oral evidence to me on 12 June 2019. This man was 11 years old at the time. He was in a car with his family that day going to the funeral of Mr O'Hara at Corpus Christi Church. He said he came forward to give evidence following an appeal by families at an event at a local GAA Club. He also said he had seen media about the inquest and a film and he frankly accepted that may have influenced his recollection. He was a child at the time and he again accepted that he was not clear on some details.

[77] Mr McKearney did not see the shooting. However, he said that he remembered that a military Saracen was blocking the junction of Ballymurphy Road/Westrock Drive that day so that his father had to mount the pavement to get his car into the car park at the church. He said he was mesmerised by Mr McKerr who was walking towards him with his right arm missing, pinned up by a sleeve in his jacket. He was sure Mr McKerr was walking towards the church going in the direction of Ballymurphy Road/Westrock Drive junction. He thought no one was near him when he fell. He said soldiers came and said he had a gun so he thought Mr McKerr was shot by members of the Parachute Regiment whom he saw in the area at the time.

[78] In his statement and evidence Mr McKearney also recalled going to the O'Hara wake and looking out a window into Springmartin with binoculars where he saw three men on a sofa cleaning a rifle. Also downstairs he said he saw a blood stained pair of boy's trousers and people were talking about the shooting that had occurred the night before.

### ***IX. THE POLICE INVESTIGATION***

[79] A police report for the Coroner dated 24 August 1971 recorded the following:

“The deceased was repairing a door in the Corpus Christi Church on 11 August 1971. He ceased work when a funeral service ended. As he walked along Westrock Drive he was shot in the head by a sniper. He was removed to the RVH and died on 19 August 1971.” (The latter date is an error.)

[80] There is also a formal police report of 3 May 1972. This stated no one had been made amenable for the shooting. A further report for the inquest said there did not appear to be evidence from where the shot was fired. This report said there was no military activity in the area and the deceased was not engaged in any violent activity. It stated however that there was “a state of extreme unrest” with numerous shooting incidents and this seems to be a case of Mr McKerr being shot by a stray bullet.

[81] DC Irwin was the police officer in charge of the investigation. He also confirmed in his statement that he made inquiries but no one was made amenable. He states he spoke to a potential witness who said she was in the area at the time and saw the body but DC Irwin said the woman did not hear shooting and refused to make a statement.

## **X. *MILITARY LOGS***

[82] As regards Mr McKerr’s death I also asked for military logs at the relevant time in particular because a point was raised that he could have been shot from Corry’s Yard and also the MoD has raised the point that he could have been shot by UVF gunmen rather than military. The following entries are recorded:

**“2 Para log for 11 August 1971:**

Serial 32 0713      2 men reported to have been seen over wall of Curries Wood Yard (sic). Both armed. Sub-unit to investigate.

Serial 33 0745      One of my sub units is under fire from flats near Curries Wood Yard (sic). Can G1 (2 Queen's A Coy) give assistance

34 0755              Sniper fire now stopped (serial 33)

36 0825              Our OP reports 3 men firing from Curries Wood Yard (sic) towards St Peters School.

38 0920              There is a nail bomb and three incendiary devices in Curries Wood Yard (sic)

41 1004              There is a large fire in Curries Wood Yard (sic)

51 1126              Fire in wood yard seems to be starting again

52 1127              Two men came out of Curries Woodyard (sic) moving towards school yard and Beechmount area

**2 Para ops report for 11 August 1971**

0713                  Snipers were reported in Corries Wood Yard (sic) engaging 1 Para during their clear up operation in Ballymurphy. The area was searched but they were not found. Later three men were seen leaving the area and made their way to Beechmount, it was not confirmed that they were armed and they were not apprehended

Witness "ACoy 2 Queen's"

1755                      Shots were fired at troops from the area of Corries Wood Yard (sic). Patrol investigated and flushed out some men who made good their escape into the area of Mica Drive.

**39 Brigade Log for 11 August 1971**

136 0630                1 Para report-sniper in area of Whiterock crossroads

163 0756                1 Para report-explosion-nail bomb found-Ballymurphy Crescent/Drive junction

Sniper fire-factory 200-300 yards (west of) Whiterock Drive

172 0830                1 Para report -(from V5-2 Para Sup Coy)3 men coming out of Corries Wood Yard(sic) 1 wounded,2 running across Whiterock.

182 0915                2 Para report-answering query from Ops HQNI-there was some shooting from wood yard at Springfield Road,3 men ran down towards St Paul's school and were then lost.

183 0920                2 Para report - Springmartin interface Corry's Timberyard - 1 nail bomb and 3 incendiary devices found

188 0940                2 Para report - Corry's timber yard - 1 nail bomb and 3 incendiaries

202 1030                ATO report - (0930) 3 pipe bombs and 1 nail bomb each with ½ lb jelly in Corry's Yard. They had been there for about 8 hours.

## HQNI Log for 11 August 1971

33 0920      39 Bde report - 3 men ran from a timber yard in Springfield Road fired a few rounds then disappeared. No fire returned and no casualties."

[83] The logs do not provide any direct assistance as to activity around Corpus Christi Church. There appears to have been men seen at Corry's Yard and a fire there and incendiaries there but there is nothing specific in the logs which relates to the time of the funeral/Mr McKerr's shooting. The 2 Para log records activity in the area from 0713 to 1127.

[84] In relation to Corry's yard itself, it seems clear that an Army observation post was erected there in 1972. The MoD is keen to stress this utilising a book entitled 'Seize then the hour - a history of James P Corry & Co.' It is undoubtedly correct that an observation post went up in 1972, however as the next of kin point out in submissions the Army were also in the vicinity of the yard around this time. The book referenced by the MoD refers to troops and officers being billeted in Corry's Yard offices during March and April 1970. Also Mr T Roger Corry refers to the yard being attacked by Republicans. I have been referred to some other Army logs which point to the yard being used by the Army at times whether or not there was an observation post. For instance, on 9 August 1971 2 Para Watchkeepers log records 2 soldiers located in Corry's Yard coming under fire from Springhill.

### ***XI. OTHER MATERIAL***

[85] I have also been provided with Mr McKerr's Army material (Army service book and field medical record) from the Royal Engineers which refer to him as "a good type of soldier, sober and reliable."



[86] The MoD has provided a contemporaneous account from an Irish Times newspaper clip of 12 August 1971 which reads:

“Later yesterday morning, a middle aged man, John McCrudden(sic), was shot dead as he left the Corpus Christi Church in Ballymurphy, after attending a funeral. The shot appeared to come from a nearby factory. A witness to the killing, Mrs Maureen Heath of 73 Westrock Drive, said that the fire came from the premises of PJ Corry, timber merchants. ‘I heard the shot and at first I thought the man had thrown himself to the ground. Then I went over. The bullet went through the middle of the forehead, the whole stuff was hanging out of his head.’ A priest gave the dead man the last rites. People in the area spoke of a Protestant UVF man being responsible.”

[87] The MoD asserts that the UVF may have been responsible for Mr McKerr’s death. They rely on the newspaper article I have mentioned above. However, there is no other evidence that the UVF were involved in this particular death. The evidence of witness X places the UVF in a different location which does not square with the facts of this case. I have also read some media reports, in particular an article from the Guardian newspaper in 2014, which refers to an “unidentified sniper” in relation to Mr McKerr’s death. Again, there are questions in relation to how Mr McKerr could have been shot from the positions said to have been taken up by the UVF.

[88] No one has suggested that Mr McKerr was shot by the IRA and I have heard no evidence to that effect.

[89] The MoD has also referred to Central Criminal Records and Information Office ("CCRIO") papers regarding the attempted murder of a soldier during construction of an observation post at Corry's Yard in April 1972.

[90] I have been referred to the statements of soldiers A-I made to the Royal Military Police – found in the inquests of Mr Corr and Mr Lavery. Soldier A refers to another soldier returning sniper fire at around 0715 on 11 August 1971 and reporting that the sniper was killed at Westrock Drive. Soldier H also refers to an exchange of fire at that time. These are not directly on point but in my view they do support the claim that there was military activity/a military presence in the area that day.

## ***XII. CONCLUSIONS FROM THE EVIDENCE***

[91] In my introductory remarks I have made general observations which apply to each inquest. Specifically, I refer to the difficulty in establishing facts after nearly 50 years and the dangers of false or embellished memories. Also, in this case much of the evidence from civilians was not made contemporaneously. Accounts developed after questioning from various sources in the context of the family trying to find out what happened. Inevitably there will have been discussion in the local community about these events and so I am alive to conscious or subconscious contamination, confabulation and the creation of memories. I understand the frailty of human memory over time. I also make allowances for inconsistencies between witnesses and lack of fine detail given the passage of time.

[92] Mr McKerr's inquest has the added difficulty that the investigation at the time was a very limited one and there was no evidence collected or witness statements taken by the military. This fact must make this case extremely painful for the family of Mr McKerr who had the trauma of finding out about his death in the paper, who were also distressed by rumour and suspicion about him and who now want to

establish the truth. This failure to investigate at the time has also made my task extremely difficult.

[93] This case is also unusual in that the responsibility for the death is wholly at issue. It is unlike other cases where there is an acceptance of force and the issue is justification of force. This is a different type of case. The core question is whether, looking at the facts, I can establish that the British Army shot Mr McKerr. In my introduction I have referred to the standard of proof which is on the balance of probabilities and I apply that standard to the facts of this case.

[94] My verdict is informed by the evidence I have heard and a consideration of all the papers. Where I have preferred evidence it is not to say other witnesses have been dishonest in any way. I simply have to make an assessment. I commend all of the people who stepped forward to assist me and I make my assessment of them as follows. As I have said, I have not heard any military evidence and so I am left without any explanation from the military as to what happened. That does not mean that the cause of this death remains incapable of determination.

[95] Some matters are not so problematic and I start with those. First, let me say that I have no hesitation in stating that Mr McKerr was an entirely innocent man. He was going to/from work when he was indiscriminately shot on the street. Both Fr Harper's evidence and Mr McDonnell's evidence are corroborative of the fact that Mr McKerr was working and I cannot see that this has been contradicted by any other evidence I have heard. I accept the evidence of Mr McDonnell that Mr McKerr was behaving entirely normally on the day in question. Mr McDonnell painted a wholly authentic picture of Mr McKerr as a working man who did his work and then left the church grounds before the funeral was to come out.

[96] Also, it is quite clear but important to state that Mr McKerr had no associations with the IRA. I have obtained his death notices which corroborate this. I note that he was a proud military man and so to have any such aspersions cast on

his character must be particularly painful for his family over the years that have passed. I can at least allay that rumour and suspicion once and for all.

[97] There is no evidence to say that he was armed or behaving in anything other than a normal way. The military have no evidence to contradict this fact and belatedly the MoD has conceded this point in written submissions. So, I can confidently say that Mr McKerr was an innocent man and he was not acting in any suspicious way which would explain why he was shot.

[98] Turning to the evidence as to when this shooting occurred I start with the record that is closest in time to the event. Although Fr Harper is deceased, he provided a statement at the time. I have no reason to think it is inaccurate and in my view this statement provides the most reliable account as to the background and timing of the event. In particular, this statement convinces me that the event occurred after the funeral which was at 10.00. To my mind this is the most likely scenario anyway and it explains why there were so few people on the street as the congregation were in the grounds.

[99] In my view the other witnesses who gave evidence about this, principally Thomas Ireland, Maureen Heath and Robert Russell, are mistaken. The timing given by Fr Harper also fits with the deposition of William Carlisle who was dispatched at 11.13 in an ambulance. There is some variation between this time and that of Dr Thompson who said that admittance to the RVH was at 11.00 which was unexplained. In my view, the most likely time frame for the shooting is between 10.45 and 11.00 relying on the account of Fr Harper. It follows that I find as a fact that the shooting of Mr McKerr occurred as Fr Harper described i.e. after the funeral when people were outside waiting for the undertaker. Fr Harper also confirmed that Mr McKerr had left when Fr Harper heard shots. Fr Harper did not see anyone shooting but he said that he heard two shots, which I will return to.

[100] Fr Harper's placement of Mr McKerr after the shooting is down the footpath to his right on the same side as the church. The preponderance of the evidence is to the effect that Mr McKerr fell outside the railings on the footpath and that he was walking in the direction of Whiterock, away from Ballymurphy Road. So he must have turned right when he came out of the church gates. This is also the evidence of Mr Corr, Ms Meehan and Mr Ireland. These witnesses marked maps of the position, which with some variations show this area. I accept that witnesses, including Mr Corr, were a little unsure and changed the position but I draw no adverse inference from that in the circumstances.

[101] The most compelling account as to location I heard was from Ms Meehan. She was a young woman at the time who lived nearby. She knew Mr McKerr. She was going to the shop to buy cigarettes. Ms Meehan candidly said that she could not be 100% certain of fine details but that these events stayed with her. She placed the point where Mr McKerr fell as on the footpath at a point across from the gap between 95 and 73 Westrock Drive. I find that that is most likely and it all also tallies with Mr Corr saying that he and his wife went for cover down past No. 72 Westrock Drive. It is impossible to be more exact but on the balance of probabilities I am satisfied as to the location as I have said.

[102] The pathology evidence is clear that Mr McKerr was shot once by a bullet which entered his head from behind on the right side. Some witnesses, including Fr Harper, speak of two shots. During questioning the ballistics experts said that acoustic echo may account for one shot sounding like two shots. I am satisfied that this explains the discrepancy in evidence. In any event I am not convinced that much turns on this as if there was another shot it did not hit Mr McKerr.

[103] I am also satisfied that this was not a close range shot. The ballistic experts have said that there is nothing to suggest the presence of soot or powder tattooing around the entry wound. They go on to say that this may be of limited value given

the surgical intervention. However, there is no eyewitness account of a shooting at close range and so I am satisfied that this shot was fired from some distance.

[104] I have considered the dispute among the ballistics witnesses in relation to whether the shot was from a high or low velocity weapon. The majority view is that this is uncertain whilst Ms Kiernan was prepared to say it was most likely high velocity. Having considered the ballistic evidence I am inclined to the view that it cannot be said with certainty whether this was a high or low velocity weapon and so both options are open. I understand Ms Kiernan's position, which is based on her view of the medical notes regarding cavitation to the brain. Ms Kiernan explained to me that she formed her view of that from experience in Afghanistan. However, Ms Kiernan is also hampered by the limited evidence of the original wounds.

[105] There are a number of unknowns in this case which make me prefer the majority view. I rely on Mr Olden's opinion which accords with Mr Mastaglio that while he accepted the effect of cavitation resulting from a 7.62 bullet there is a need for caution particularly because the pathologist refers to laceration which may suggest actual contact with the brain by the bullet. The witness said that there is not a clear cut distinction between the effects of the two types of bullet. The ultimate conclusion of these two witnesses was that it is not clear cut enough to make a definitive call one way or another. I think that makes sense as they both say that they did not see the original entry wound themselves or photographs of the original entry wound. So that is the expert evidence I prefer.

[106] This finding leaves open the possibility of a shot from the Army or from some other source. I accept that the Army had standard issue SLR's which fire 7.62 bullets and low velocity weapons which fire 9mm bullets. The question then is who was in the area at the relevant time. I have heard substantial evidence from the civilian witnesses that the Army were present. I accept that this is probably accurate given the circumstances although there is no clear record as to when the Army arrived in the specific location. There is also some difference between witnesses as to whether

there were military vehicles in the area but I am not convinced that much turns upon that.

[107] The logs also reference sniper activity and incendiary devices in the area on the day in question. This includes gunmen being seen. Although none of the recordings actually refer to the specific time when Mr McKerr was shot it is reasonable to assume that there was some presence in the area that day. The account given by Witness X relating to suggested UVF involvement in the events at Ballymurphy does not accord with the location of Mr McKerr's death. There is one other reference to local talk of UVF involvement from a press report at the time.

[108] The civilian witnesses have variously described or inferred that Mr McKerr was shot by a British soldier. However, there are some issues with the quality of the evidence which I will explain. First, I start with Mr Russell's evidence as he is the only witness who says he actually saw a soldier shoot Mr McKerr. Mr Russell was 13 at the time. In his first account in 1999 he said that the shooting happened when the funeral was leaving the church. This is against the weight of the evidence that the funeral had not left the church as there were delays in the undertaker arriving. Mr Russell said that he followed down the road and saw a black soldier around the junction of Ballymurphy Road/Westrock Drive who got an order to "shoot the bastard" and then he "shot some person who was locking up the gates of Corpus Christi after the funeral had left and shot him dead."

[109] Mr Russell also referred to large numbers of paratroopers in the area and in his 2010 interview he said they went into Tommy Irvine's house and beat his wife. There is nothing to substantiate this and I do not rely on this evidence. In the 2010 interview Mr Russell also departed from parts of his 1999 account. Whilst giving oral evidence the inconsistencies became even more apparent and convinced me of the inherent weaknesses of this account. Fundamentally, the accounts do not accord with any of the other evidence and to my mind they came across as contrived and exaggerated and accordingly this evidence cannot be relied upon.

[110] Some other evidence infers that a soldier shot Mr McKerr. Sarah (Shelia) McCalliskey's evidence is not consistent with others as she describes two bouts of shooting, one as she was going into the funeral and one after, when she was standing on the church porch. She said that she saw Mr McKerr fall at the railings. She gave evidence that on her way home she saw a soldier sitting beside the junction of Ballymurphy/Westrock Road in the back garden of 67 Ballymurphy Road. She said she saw smoke coming out of the gun and assumed that he had shot Mr McKerr. This account of the smoking gun has been discounted by the ballistics experts. Ms McCalliskey thought the soldier was a white man as she had a conversation with him. Of course she did not see the soldier in number 67 actually shoot at Mr McKerr. Overall, I am not convinced that this evidence can be relied on.

[111] I consider that Mr Corr was genuinely trying to assist me but there are also uncertainties arising from his evidence. Some of this became apparent while he gave oral testimony. First, he could not be certain where Mr McKerr was positioned when he was shot. Second, he could not say whether the shot came from Corry's yard or the Whiterock Road. Third, he accepted that the soldier may have been camouflaged rather than black. Finally, he did not suggest that the soldier who pointed his gun in his direction actually shot Mr McKerr. All of these concessions are entirely understandable and creditable given the passage of time.

[112] However, the most troubling aspect of Mr Corr's evidence is that he did not mention what he knew about Mr McKerr's death during a series of interviews he gave nearer in time to the actual events. He lived in the area at 85 Ballymurphy Road and he said he was interviewed on numerous occasions. He said the first statement was in the Frank Cahill Centre in the 1980s. The second statement was at the Sinn Fein Offices. During those interviews Mr Corr was able to give details about the deaths of Mr Quinn and Fr Mullan but he separated this incident out and did not mention it. That is despite the fact he was beside Mr McKerr, held his head when dying and saw the soldier. He said it only came back to him when he was



shown a map at the Sinn Fein Centre which had a mark where Mr McKerr was killed. This means that I cannot be entirely sure that Mr Corr has such a clear and authentic memory of events as he thinks.

[113] I found Ms Meehan's account to be the most believable. She gave evidence in a forthright way and without any exaggeration, and in a sense her evidence sums up this sad case. Ms Meehan simply said that she saw Mr McKerr on the street and that she saw him fall. She thought that the shot had come from the direction of Corry's yard but she said she could not be 100% precise about what had happened. This evidence had a ring of authenticity given the uncertainties about what happened to Mr McKerr which run through all of the evidence in this case. It is important to note that Ms Meehan did not see Mr and Mrs Corr who said they were there. Another important feature of this evidence is that Ms Meehan did not see military in the location at the relevant time.

[114] I am persuaded that Ms Heath did witness events, particularly as she is named in the contemporary newspaper account. I query the actual details of that account, however this does not mean I entirely disregard the other evidence from Ms Heath. She clearly lived nearby and so I consider it entirely believable that she went to help Mr McKerr who she saw walking in and about the church railings and who she saw fall. She cannot actually say who shot Mr McKerr but she clearly saw soldiers in the area. I accept her account as regards those aspects.

[115] I do think Mr McKearney was genuinely trying to help and I thank him for coming forward. I place some weight on his general recollections of being at the funeral and his father having to mount the pavement to get through. That sounded authentic to me. Other than that I think his account could not be said to be highly accurate given the passage of time and the fact he was a child. I cannot rely on this evidence any further for specific details.

[116] A number of the witnesses have said that they thought the shots came from Corry's Yard as that was "the talk of the town." Of course, local gossip does not equate to reliable evidence. However, witnesses such as Mr Ireland, Ms Meehan and Ms Heath all suggest this location and so I cannot simply ignore that evidence. All of these witnesses (save Ms Heath in the newspaper account) gave their accounts long after events and some accepted they had talked about and listened to conversations in the local area in the intervening time. When assessing this I also bear in mind the logistical issues given the location of where Mr McKerr fell and the fact that he was shot from behind. There is a line of sight from Corry's Yard and if Mr Mc Kerr turned his head as one witness said, Corry's yard is an option. The junction of Ballymurphy Road/Whiterock Drive is another possible location as are other locations behind Mr McKerr. I note that the MoD raised the absence of an observation post in Corry's Yard until 1972. However, I accept the evidence that the Army used that area prior to 1972. I cannot rule out a military presence in that location but equally I cannot rule out a paramilitary presence there. The evidence of a military presence around the Ballymurphy/Whiterock Road is stronger as that accords with the civilian evidence and it is consistent with the military logs.

[117] I note the police report which referred to a "stray bullet." I also note Mr McDonnell's testimony that it was said Mr McKerr's prosthesis was mistaken for something. So someone may have made a mistake. Or there may have been a stray bullet. These possibilities are not out of the question given the tense atmosphere at the time illustrated by the military logs.

[118] It is impossible for me to say where exactly any shot may have come from due to the weaknesses in the evidence which I have referred to. That is not the fault of the civilian witnesses by any means. It is simply a fact that the evidence is not consistent and clear and I am severely hampered by the inadequacy of the investigation at the time. There is also no direct evidence I can rely on as to who fired the fatal shot. I cannot decide this case on the basis of opportunity or presence

in the area. This is a serious issue which requires proof and I am simply not satisfied that I can make a determination on the balance of probabilities.

[119] However, there is an aspect to this case which I can comment upon and which is highly relevant in the context of the investigative obligation upon the State in relation to fatal shootings. It is shocking that there was no real investigation into the death at the time. Not one statement was taken from the military in the area. The scene was not sealed. The bullet was not recovered.

[120] I believe Mrs Ferguson when she said that she was told by a nurse that a bullet fragment was found at the hospital but nothing more came of that. This abject failing by the authorities to properly inquire into a death of a civilian on the streets has hampered me greatly as I cannot say with more certainty how this death occurred. This is the striking feature of this case which I record in the strongest of terms. This is my core finding. It is in itself a serious indictment of the State's failure to properly investigate the death of an innocent civilian. In light of the forgoing I have reached the following verdict.

### *XIII. VERDICT*

[121] The deceased was John Joseph McKerr of 26 Andersonstown Park West, Belfast:

- (a) Mr McKerr was shot on Westrock Drive, Belfast, on the pavement outside Corpus Christi Church around 10.45/11.00 on 11 August 1971.
- (b) Mr McKerr died of his injuries on 20 August 1971. He was 49 years of age, a married man and father of eight children.

- (c) Mr McKerr formerly served in the British Army as a member of the Royal Engineers. He had served in World War II and sustained an injury which meant he lost his right hand and used a steel prosthetic.
- (d) Mr McKerr was a joiner by trade and on 11 August 1971 he was working at Corpus Christi Church.
- (e) Mr McKerr was walking along the pavement outside the church when he was hit by a single bullet which entered the right side of his head behind the right ear, fractured his skull and tore his brain.
- (f) Mr McKerr was not doing anything which could have caused someone to think him a threat or which justified the use of lethal force against him. He was clearly unarmed.
- (g) There was no adequate investigation by the relevant authorities. This is a significant State failing and an abdication of responsibility. It is a matter of grave concern as the court has been hampered in reaching a more definitive finding in relation to the death of an innocent civilian on the streets.
- (h) On the available evidence the court cannot make a definitive finding as to who shot Mr McKerr and from where.

**Mrs Justice Keegan**  
**Coroner**

**11 May 2021**

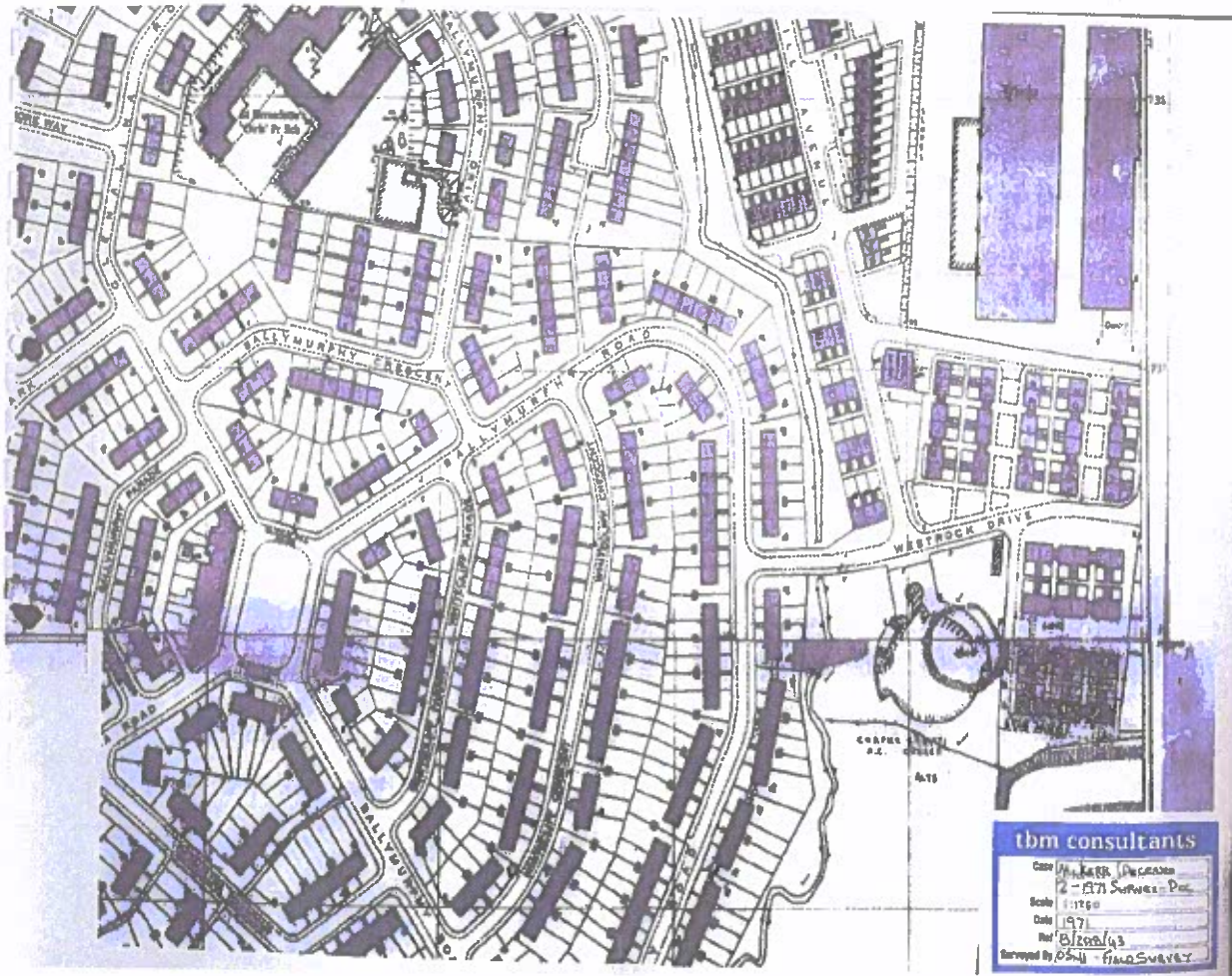
## **ANNEX 5**

### **INCIDENT 5: THE DEATH OF JOHN MCKERR**

**5.1 TBM Consultants /Ordnance Survey Map 1971**

**5.2 Photographs of front of Corpus Christi Church**

## **5.1 TBM Consultants /Ordnance Survey Map 1971**



**tbm consultants**

Case	11-1111-1111
Scale	1:100
Date	1971
Ref	11/1111/11
Surveyed By	1111-1111

## **5.2 Photographs of front of Corpus Christi Church**



