

**IN THE MATTER OF AN INQUEST INTO THE DEATH OF
MANUS DEERY**

COLTON J

Introduction

[1] This inquest concerns the death of Manus Deery. He was born on 24 November 1956. He died on 19 May 1972 aged 15 as a result of injuries received when he was struck by fragments of a bullet fired by Private William Glasgow. The bullet was fired from an observation post on the Derry City walls (Operation Post “Kilo”). The walls overlooked the Bogside area and in particular the Meenan Square area where Manus was present with a number of others when he received his fatal wound.

[2] The inquest was heard by me, a High Court Judge, sitting as a Coroner without a jury. The inquest is governed by section 18 of the Coroner’s Act (Northern Ireland) 1959. Section 18(2) confers a discretion on the Coroner to have a jury summoned in cases falling outside the mandatory categories set out in section 18(1) (this does not apply in this case). On 27 June 2016 I heard submissions from the interested persons in this matter on the question of the exercise of this discretion. I subsequently gave a written ruling to the effect that I should not summon a jury in this inquest and that it would therefore be heard by me alone sitting as a Coroner.

[3] Rule 15 of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 governs the matters to which inquests shall be directed. This rule provides as follows:

“The proceedings and evidence of an inquest shall be directed solely to ascertaining the following matters, namely:

- (a) Who the deceased was;
- (b) How, when and where the deceased came by his death;

- (c) ... The particulars for the time being required by the Births and Deaths Registration (Northern Ireland) Order 1976 to be registered concerning the death.”

[4] Rule 16 goes on to provide that:

“Neither the Coroner nor the jury shall express any opinion on questions of civil or criminal liability or in any matter other than those referred to in the last foregoing rule.”

[5] In this particular inquest there is no difficulty in determining the questions who the deceased was; when and where the deceased came by his death or in recording the particulars required by the Births and Deaths Registration (Northern Ireland) Order 1976.

[6] The substantial issue to be considered by the inquest relates to “how” the death was caused. In this case the death was caused by an agent of the State and that being so an examination of “how” the death was caused must comply with the procedural requirements of Article 2 of the European Convention on Human Rights. The Coroner must look at “the broad circumstances in which the death occurred”.

[7] It is settled law that an inquest cannot attribute blame or make findings of civil or criminal liability. Nor can an inquest in Northern Ireland return a verdict of unlawful killing. An inquest is an inquisitorial fact-finding exercise and not a method of apportioning guilt.

[8] However as Stephens J made clear in Re Jordan [2014] NIQB 11 at paragraph [121]:

“An inquest which does not have the capacity to reach a verdict ‘leading to a determination of whether the force used ... was or was not justified’ would not comply with the requirement of Article 2.”

[9] The abundance of case law on this point makes it clear that in considering “the broad circumstances in which the death occurred” an inquest must be capable of leading to a determination of whether the use of lethal force was justified. This should also lead to the further consideration of whether the use of such force and the operation in which it was used were regulated, planned or controlled in such a way as to minimise to the greatest extent possible any risk to life.

[10] In relation to the applicable legal framework I also want to say something about the onus and standard of proof.

[11] In relation to the onus of proof in circumstances where Manus Deery was killed by an agent of the State, it is for the State to justify the force used. In relation to the standard in an inquest context any fact has to be proved to the civil standard, that is the balance of probabilities.

[12] Mr Justice Horner dealt with this issue in his recent judgment in the case of the inquest into the death of Patrick Pearse Jordan when he said as follows:

“[60] There has been extensive debate about the nature of the evidence necessary to satisfy the standard applicable, the balance of probabilities, in serious cases involving, as here, the intentional taking of human life. The matter is now well settled and I do not need to rehearse the debate. In Re CD’s Application [2008] UKHL 33 Lord Carswell giving the leading judgment in the House of Lords said that the proper state of the law was effectively summarised by Richards LJ in R (N) v Mental Health Review Tribunal (Northern Region) [2005] EWCA Civ 1605 at paragraph [62], where he said:

‘Although there is a single civil *standard* of proof on the balance of probabilities, it is flexible in its *application*. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability) but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities.’

Lord Carswell said at paragraph [28]:

‘It is recognised by these statements that a possible source of confusion is the failure to bear in mind with sufficient clarity the fact that in some contexts a court or tribunal has to look at the facts more critically and more anxiously than in others before it can be satisfied to the requisite standard. The standard itself is, however, finite and unvarying. Situations which make such heightened examination necessary may be the inherent unlikelihood of the occurrence taking place ...,

the seriousness of the allegation to be proved or, in some cases, the consequences which could follow from acceptance of proof of the relevant fact. The seriousness of the allegation requires no elaboration: a tribunal of fact will look closely into the facts grounding an allegation of fraud before accepting that it has been established’.”

[13] In conducting the inquisitorial fact-finding exercise in this inquest I do so against the legal background I have set out.

[14] I heard the evidence in this inquest between 17 and 28 October 2016.

[15] I received written closing submissions from the interested persons and heard oral submissions in support on 21 November 2016.

[16] I am indebted to the counsel who appeared in this case together with their instructing solicitors for their extremely helpful work in the preparation and presentation of this inquest. Mr Gerald McAlinden QC appeared with Ms Fionnuala Connolly for the Coroner. Mr Martin Wolfe QC appeared with Mr Mark McEvoy for the Ministry of Defence and Police Service of Northern Ireland. Ms Fiona Doherty QC appeared with Mr David Heraghty on behalf of the next of kin. I am also grateful to all the witnesses who attended the inquest.

Background information

[17] Before I turn to the evidence I heard in the course of the inquest I propose to set out some context. It is easy to forget how difficult circumstances were in Northern Ireland at the time of Manus Deery’s death. 1972 was one of the worst years for troubles related deaths. The excellent publication “Lost Lives” reports that

there were 496 such deaths during that single year - 258 civilian, 134 Army, 85 paramilitaries and 17 police.

[18] Derry City itself was no stranger to the effects of the Troubles. The events on "Bloody Sunday" which had such a traumatic effect on the city had occurred on 30 January 1972, a matter of months before the shooting of Manus Deery. The area where Manus was shot was effectively a "no go area" for police and security forces. IRA checkpoints in the Bogside area were a regular occurrence. Indeed in the course of the evidence I heard that the ambulance which came to tend to Manus encountered an IRA checkpoint en route. It was also clear from the evidence I heard that it was routine for men to be seen with guns in the Bogside area. Military witnesses gave evidence to the effect that members of the Army were regularly targeted by gunmen in Derry during 1972. Soldier B gave evidence to the effect that during his three month tour of duty he was the subject of incoming fire on 5-6 occasions. Mr Trevor Wilson who was then the Commanding Officer of Soldier B's company, 1 WFR, gave evidence that 1,113 shots were fired at his soldiers during their tour in Derry, who returned fire 479 times. He recalled that one soldier from 1 WFR was shot dead during that tour as well as one other soldier from an associated regiment. Lost Lives also refers to the deaths of other soldiers in Derry during that year. Mr Wolfe referred me to a table prepared from an analysis of operation briefs retained by the MOD relating to rounds fired from and fired at various Army locations on the city walls between 1 May 1972 and 18 May 1972, the day before the incident leading to Manus's death. The briefs show that shots were fired at the relevant operation post "Kilo" on 4-5 May 1972, 6-7 May 1972, 9-10 May 1972 and 13-14 May 1972. The shots on 4 and 5 May 1972 were fired from the area of Westland Street which is close to where Manus was shot. None of these attacks resulted in casualties.

Manus Deery

[19] It was into this background that Manus Deery entered his teenage years. Before reviewing the evidence in this case I think it important to set out something about Manus himself. As already indicated he was born on 24 November 1956. He lived at 36 Limewood Street, Derry with his parents Marianne and Patrick (now both deceased) and with his four sisters and five brothers. He had just commenced his first job two weeks before hand with Thomas French and Sons in their factory at Springtown. In his mother's deposition which was provided to the original inquest into this matter she described how on the evening of his death he came in from work at 5.00 pm when he had his tea and watched television with other members of the family. She describes him leaving to go, as was his custom, to a local chip shop in Meenan Park off Westland Street to meet up with his friends. She was not to see him alive again.

[20] I was particularly struck by the evidence of his sister Helen about the family circumstances. At that time she was aged 13, two years younger than Manus. As was common in the Bogside area at that time the Deery family was a large one with

ten children in total. They lived in a two up, two down house with a back yard. As children they played out on the streets. Whilst she was aware of all the turmoil around her as far as she was concerned she had a normal existence. She went to school, played truant, went to dances, socialised and did everything a normal teenager does. Whilst objectively speaking, and with hindsight, it may seem to the neutral observer that this must have been a harsh and difficult time for her. However, she displayed no sense of self-pity or dissatisfaction. She stressed that she was happy and content as a teenager. She was part of close knit and loving family and also of a close knit wider community. The same applied to her brother Manus. He was a bright “happy go-lucky” young man. He had found employment and was out socialising with his teenage friends on a Friday night. I was struck by her evidence to the effect that after Manus’s death the matter was never really spoken about within the family. Mr McAlinden asked her was there much conversation about Manus’s death after the inquest. She replied that “No we never spoke of Manus after his death. Home was kind of chaotic for a couple of weeks; just stopped ... His name was never mentioned then.”

[21] She went on to say that she herself did not take up the issue of Manus’s death until after her father died in 1995. Her mother had died two years before that. The holding of this inquest is in no small measure due to her determined efforts since that time to seek a proper investigation into the circumstances of his death.

[22] In pursuing that inquiry she made it clear that a burning concern for her and her family was the perceived stain on his character arising from his death. She wanted this inquest “to overturn that”. She said in relation to Manus “he is innocent and we need that declared ... We want vindicated as well.” At a later stage she said “She wanted his character brought back”.

[23] I will deal with the evidence in this inquest and my findings at a later stage. However at the outset it is important that I make the following clear.

[24] Manus Deery was a totally innocent victim. He was not involved in any unlawful organisation or unlawful activity on the night of his death. He did not pose a threat to soldiers or to anyone else. I have no hesitation or any doubt in making this clear. The outcome of this inquest, above everything else, must be seen to vindicate fully the character of Manus Deery.

[25] In this regard the belated acknowledgment that Manus Deery was guilty of no wrong doing by Mr Wolfe on behalf of the Ministry of Defence at the closing of this inquest on 21 November 2016 is to be welcomed and I hope was of some comfort to his next of kin.

The Scene

[26] Before summarising the evidence provided at the inquest I propose to say something about the scene where Manus met his death.

[27] Meenan Square is in the Bogside area of Derry City. It is located at the back of the Bogside Inn which fronts onto Westland Street. At the back of the Bogside Inn there was an open area which served as a car park and which could be used by service vehicles. This area lies between the back of the Bogside Inn and blocks of apartments which were located in Meenan Square. Crucially for the purposes of this inquest there is a covered archway which leads from the car park area which leads through to the back of Meenan Square. Throughout this ruling this archway is referred to as "the funnel". Its length from front to back was 6 metres ie 19 feet 8 inches. The width of the funnel was 12 metres in total made up of two sections, 6.5 metres and 5.5 metres. The total width was 39 feet and 4 inches.

[28] This area was visible from an army observation post which was located on the City Walls. Looking from that observation post one can see the Bogside Inn to the right, the car park to back of the Bogside Inn on the left and the apartments and funnel area at the back of the car park in question. The distance from the Walls to the area of the funnel was 192 metres.

The evidence

[29] I propose to provide a brief summary of the evidence provided at the inquest.

Medical, pathology and forensic evidence

[30] Dr Nagendra Chauhan gave evidence via a statement admitted under Rule 17 to the effect that she was a casualty officer at Altnagelvin Hospital on 19 May 1972. At 10.55 pm Manus Deery was brought to casualty reception. She examined him and saw that he had a large wound over his left occipital region and at 11.10 pm that evening she pronounced life extinct.

[31] An autopsy was carried out by Dr John R Press on 20 May 1972. His report of autopsy was admitted in evidence under Rule 17.

[32] He recorded the cause of death as:

- (a) Laceration of brain due to
- (b) Gunshot wound of head.

His opinion is set out as follows:

"The boy was healthy. There was no natural disease to cause or accelerate death.

Death was due to a gunshot wound of the head. Two fragments of a bullet had entered the left side of the

back of the head, had passed through the back of the skull and lacerated the brain. One fragment lodged in the brain whilst the other lodged between it and the skull. The brain injury caused his death.

The character of the entrance wound would indicate that the bullet was not travelling nose-on when it struck the head and had probably fragmented as a result of striking some object in its path. There was nothing to indicate the range or the direction from which it had been fired.

The report of the Forensic Science Laboratory shows that at the time of his death there was no alcohol in the body.”

[33] I received a statement under Rule 17 from a Scenes of Crime Officer, John Montgomery who went to the mortuary at Altnagelvin on 20 May 1972. He took swabs from the hands of Manus Deery for examination for recent use of firearms. He attended the post mortem conducted by Dr Press and received the following clothing and other items which were taken from the body:

- (i) Corduroy trousers.
- (ii) Tartan shirt.
- (iii) White vest.
- (iv) Denim jacket.
- (v) Pair of socks.
- (vi) Blue polo neck sweater.
- (viii) Pair of scissors.

[34] He also indicated that he received from Detective Constable Parks two particles of bullet and a sample of blood (in a statement Detective Constable Parks confirmed that he had received these from Dr Press). All of these items along with the swabs were taken by Mr Montgomery to the Department of Industrial and Forensic Science on Sunday 21 May 1972.

[35] I received a statement from a Mr Victor Beavis who was a member of staff at the Forensic Science Laboratories on 21 May 1972. He confirmed receiving the items from Constable Montgomery and his conclusions were as follows:

“The swabs ... were examined for lead residues. None was detected. ...

Item 14 is the base portion of the jacket of a bullet and is distorted. Fine rifling grooves are present although

I am satisfied that it has been discharged from a weapon having six grooves right twist.

Item 15 is a fragment of copper consistent with the inner container for the tracer composition from a tracer bullet.

I am satisfied that the fragments in Items 14 and 15 are part of a tracer bullet of calibre 7.6 NATO. I have compared the rifling marks on the fragment in Item 14 with the rifling marks of test fire bullets from a 7.62 NATO rifle submitted to the laboratory and I have found a considerable degree of similarity but because of the damage to the fragment in Item 14 a complete comparison was not possible."

Civilian Witnesses

[36] I heard oral evidence from seven civilian witnesses - Edward Divin, Noel Millar, Miles O'Hagan, Margaret McCauley (nee McCool), Kathleen Fleming (nee Deery), Noel Duddy and Kevin Myers.

[37] I also received a written statement from a witness Liam Muldoon under Rule 17.

Edward Divin

[38] Edward Divin was aged 15 at the relevant time and was a friend of Manus Deery. He confirms he was with Manus when he was shot. He made three statements in relation to the matter. The first was a statement apparently taken by a local solicitor for the purposes of the original inquest. The second was a statement made to the Historical Enquiries Team ("HET") on 17 July 2007 and the third was a further statement to the HET on 23 August 2011.

[39] All of these statements were introduced in evidence at the inquest and confirmed as accurate by Mr Divin.

[40] He describes meeting up with Manus at the shops in Meenan Park and he remembered going to a fish shop for some food where Manus had some chips. He describes speaking to Manus and other teenagers before entering the funnel area. The reason they were attracted to this area was because they heard Noel Millar talking to a drunk man who was identified as "Winkie Harkin", a local character. He had in his possession a coloured handkerchief with the words "Bloody Sunday" written at the top and he was offering to sell this as a souvenir. He thinks there were maybe 6 or 7 people standing in the funnel at the relevant time. Specifically he identifies Noel Millar, Liam Muldoon, Miles O'Hagan and Margaret McCool. He

was unclear about where he was standing in the funnel area. In his statement of 23 August 2011 which focuses specifically on where people were standing at the relevant time he said:

“We were all standing together at the back or rear of the funnel, standing next to a support wall. We would have been standing on the right hand side as you look in from the front of the funnel. Manus was standing next to the wall with Miles standing between Manus and myself to my left. We were facing looking out to the front of the funnel in the direction of the city wall. Margaret McCool was standing in front of me to my right and Liam Muldoon was standing next to Margaret on her right. They were both facing us and we were standing together just talking in a group.”

[41] In his oral evidence, whilst accepting that he was in the funnel and that Manus was standing next to the funnel wall, he indicated that he was towards the front of the funnel perhaps by a distance of half a foot or so. He did not recollect seeing a derelict car which the soldiers described as being present in the funnel and which was shown in photographs and television footage the following morning. His evidence was that he could see the observation post on the walls and that he recollected seeing a head or some movement appearing above the sandbags beside the post. He recalls that it was getting dark within the funnel. As the group were discussing the handkerchief he described hearing a bang and seeing sparks flying from the wall before being struck on the shoulder by an object which caused a laceration and bleeding to his left arm area. He heard Liam Muldoon shouting “Manus is shot” and he looked over to see Manus lying on the ground. He and Liam pulled him back from the funnel area about two yards into the shelter of the wall at the back of a lock up garage. He subsequently had his arm bandaged. He describes a chaotic scene after the incident with a number of people gathering round.

[42] He was absolutely adamant that Manus had nothing in his hands at the time he was shot. He was further adamant that there was no one at the front of the funnel and certainly no one in possession of a weapon or rifle or anything that could be mistaken for a weapon or rifle in the vicinity specifically at the front of the funnel. In his statement to the HET dated 17 July 2007 he said:

“On that night none of the young ones I was with had a gun. If we had seen anyone with a gun we would have legged it, guns always meant trouble then. I had been asked if I saw a gunman or anyone carrying a

gun that night. I can state quite categorically that I did not.”

[43] His evidence was that if a person with a gun had come across the front of the funnel he would have been in a position to see him.

Noel Millar

[44] Noel Millar was also a contemporary of Manus Deery and confirms that he was present in the funnel on the night that Manus was shot. Like Mr Divin he made a statement via a local solicitor for the purposes of the original inquest. He made further statements to the HET on 27 April 2007 and 27 July 2011. He adopted these statements as his evidence at the inquest in which he indicates that he approached the funnel from the Bogside Inn area where he engaged with a drunk man who was trying to sell a handkerchief which he alleged had been made in Long Kesh. Mr Millar described this man as Hunter Friel in his latter statements. In any event he describes Manus Deery, Ned Divin and Liam Muldoon coming into the funnel from the Meenan Square side and he describes them chatting at the back of the funnel. He had his back to the city walls facing Manus at the right hand wall as one looks from the city walls. He thought that from where he was standing you would not be able to see the observation tower. He did not recall seeing any derelict car in the funnel. He recalls hearing a bang and was aware of a light flash in the funnel. He was struck in the right cheek from fragments of the wall and has since discovered that a fragment of bullet has been lodged in his right hand. He may have been blinded temporarily by the flash but he became aware of Manus lying on the ground. He himself may have fainted at the scene and required some assistance in the aftermath.

[45] In common with all the civilian witnesses in this case he was categorical that Manus did not have a gun or anything else in his hand. Nor did any other person except the man who had the handkerchief. His evidence was that no one in the tunnel had a weapon, rifle or anything that could be confused as such. He had come in the front of the funnel and had been in the vicinity for at least half an hour. At no stage did he see any gunman in the funnel area either standing by the wall or otherwise.

[46] He also indicated that after the shooting, maybe the following morning or the day after, he noticed some damage to the wall towards the back of the funnel which he suggests was where the bullet had struck. This was consistent with subsequent descriptions of the strike point for the bullet.

Miles O'Hagan

[47] Miles O'Hagan was 14 years of age at the time of Manus's death and he too used to congregate with other local teenagers in the Meenan Square area. He was a friend of Manus at the time. He did not give evidence at the original inquest nor

was he approached by the police to make a statement. He has prepared three statements in relation to his recollection of the events on that night namely a statement to the Pat Finucane Centre dated 23 April 2001, a statement to the HET dated 17 July 2007 and a further statement to the HET dated 27 July 2011. In his evidence at the inquest he confirmed that the contents of these statements were correct.

[48] He recalls that there were quite a number of people in the area as it was a meeting point for young people. As well as himself and Manus he remembers Margaret McCool, Ned Divin and Liam Muldoon specifically. He recalls the conversation with a drunk man and the handkerchief. His evidence was that they were talking at the back of the funnel. In his statement of 17 July 2007 he felt that this would have been in full view of the city walls, although in his oral evidence he was unsure as to whether there would be a clear view of the city walls from the back of the funnel. In terms of the light he said that it was getting dark but felt that there was artificial light from the shops behind the funnel. He did not recollect seeing a derelict car in the funnel area which was described by other witnesses in the case. He recalls hearing the crack of a shot being fired and a flash coming off the funnel wall. He took cover and then saw Manus lying on the ground at the back of the funnel with his back outside the funnel and his feet inside the funnel. His feeling was that the bullet struck the wall about half way up the funnel. In one of his written statements he indicated that people used to come to the funnel and take photographs of where the bullet struck the wall. He confirmed that neither Manus nor any of his group were armed or had anything that could be confused as being a rifle or a weapon. He said that at no time did he see any person armed in the area in the time that he was standing there. It was his view that if a person had been at that location with a weapon, particularly at the front of the funnel he could not have failed to see him.

Margaret McCauley

[49] At the time of the shooting she was known as Margaret McCool. She was 15 and was friendly with Manus and his group of friends. She was not interviewed by the police but made statements to the HET on 29 April 2007 and 25 July 2011. She confirmed that she was with the group of people looking at the "Long Kesh handkerchief". She dramatically recalled leaning on Manus's shoulder to examine the handkerchief. Her estimation was that Manus was standing about 15 feet into the tunnel and to the right hand side if one was looking down from the city walls. She described hearing a piercing sound and Manus suddenly falling backwards on to the ground with his feet facing the city walls. She describes trying to help Manus and it was clear that he had been shot. She knew that he was fatally wounded and as she tended to him she said some prayers into his ear. She describes the light at the time as going dark, as if turning from day to night. She did not recollect seeing a derelict car. At no time prior to the sound of the shot did she see any stranger in the vicinity apart from the man with the handkerchief. She did not see anyone carrying a rifle or gun or anything which might even resemble the same. She confirmed that

they had been gathered together as a group for about 5 to 10 minutes. When questioned by Mr Heraghty she indicated that she was facing towards the walls and if anyone had been standing with a rifle at the front of the funnel she would have seen such a person.

Kathleen Fleming

[50] Mrs Fleming is a cousin of Manus and had gone to the funnel area on the night in question with her friend, the previous witness, Margaret McCauley. She made a statement to the HET on 25 July 2011 and confirmed in her evidence that the contents of that statement were accurate. She confirmed standing in the funnel with Margaret, Ned, Miles and Manus. She recalls looking at the embroidered handkerchief when all of a sudden she remembered seeing sparks coming out of the wall about head level and seeing Manus fall straight back to the ground. Her evidence suggests that the group were standing at the back of the funnel. She describes it as being about 15 feet from the entrance. She did not at any time see anyone carrying a gun at the front of the funnel and certainly none of her crowd was carrying any kind of gun or anything that could be mistaken for a gun.

Noel Duddy

[51] Mr Duddy contacted the Coroners' Service via the solicitor acting for the next of kin at the time of a reconstruction exercise carried out by the Coroners' Service on the city walls in May 2016. He subsequently made a statement to the Coroners' Service on 17 June 2016 in which he indicated that he was present on the night in question. He was aged 15 at the time. He said that he vividly remembered Manus making a signal towards the sanger with his hands as if to shoot the soldiers. He says that he told Manus to stop this or they would shoot him. He said that he was not sure if Manus was carrying anything at all and that he may have had a stick but he could not remember. Not long after, he heard a bang and saw a bright light and the next thing he recalled was seeing Manus lying on the ground. He indicated that he had "a distorted memory". In a subsequent statement on 6 July 2016 he indicated that he did not see any guns in the area at the relevant time. Mr Duddy then made a statement on 17 October 2016 explaining that he was unable to be certain about whether Manus had anything in his hands. In his oral evidence to the inquest he admitted that his memory was suspect and that really no reliance could be placed on the earlier suggestion that Manus had been gesturing towards the soldiers or that he had been carrying a stick.

[52] Mr Duddy's intervention in this inquest was most bizarre. Not a single civilian witness who gave evidence in the case said that they saw Mr Duddy at the scene when they were asked about this in the course of their evidence. At the end of his evidence it was accepted by all the legal representatives in this case that his evidence was so inconsistent and contradictory that it is of no value at all in this inquest. I agree.

Kevin Myers

[53] Mr Myers is a well-known journalist and commentator. In May 1972 he was the RTE correspondent for Northern Ireland based in Belfast but was working in Derry on the night of the shooting. His identification as a potential witness in this inquest arose from a broadcast he made to RTE on the day following the incident. The court had an opportunity to see the broadcast which was invaluable in terms of illustrating the locus of the incident. Mr Myers is seen speaking to the camera on the following morning at the back of the funnel where Manus was shot. In keeping with my earlier comments about what was normal for teenagers at that particular time it is notable that he is surrounded by a group of young people clearly excited to be on television. This of course is in marked contrast to the grim reality of what Mr Myers was reporting. The camera focuses on the funnel and also a clear gouge or mark in the right hand wall which is presented as the locus at which the bullet struck the wall before ricocheting and hitting Manus. Mr Myers could not recall precisely how he became aware of the mark and whether it was pointed out to him by someone else. However, it was his clear understanding that this was indeed caused by the bullet that had been fired from the observation post. More importantly in the course of the broadcast he indicated that he had been present at the time of the shooting and witnessed what had happened. In relation to location he confirmed that Manus was lying reasonably close to the gouge in the wall.

[54] Having become aware that Mr Myers had actually been present at the time of the shooting he was contacted by the Coroners' Service to ascertain his willingness to attend and assist at the inquest to which he readily agreed. I am grateful to Mr Myers for his attendance and the careful and considered evidence he gave at the hearing.

[55] Before turning to the evidence he gave he was also referred to a book he had written which was published in 2006 namely "Watching the Door; Cheating Death in 1970s Belfast". In that book he gave an account of the shooting of Manus Deery. In the course of his evidence he gave an interesting account of his work as a journalist in those difficult times. He explained how he contacted various people in the city on his arrival so as to inform himself of current events and issues in the area. On the night in question he had arranged to meet and have a drink with members of the Official IRA in the Bogside Inn. In general terms he confirmed on questioning from Mr Wolfe that at the time the Bogside was a no go area for the security forces. He accepted that it was common for members of the IRA to carry guns relatively freely in the area.

[56] However, on the night in question he is adamant that there was no sign of any weapons or guns in the Bogside Inn. The meeting in the Bogside Inn was not a formal press meeting but rather a social gathering. He describes at one stage in the evening going to the men's toilets when he was accosted by a drunk man accusing him of not giving sufficient support as a journalist to the Republican side. He decided to walk outside to get away from him. At that point he left via a back door

which from the topography of the scene I am satisfied at that time led to the area in front of the funnel at Meenan Square. He described hearing a large reverberation which felt like an explosion and he fell to the ground. He heard a woman shrieking and he could see Manus lying on the ground to his left. His first instinct was that this was a Loyalist attack of some kind so he went to go back inside the pub. He was only in there for a second or two when he came back out to see the location of the shooting. He went to where Manus was lying and he recalled seeing the bullet mark on the wall at that point. There were no signs of any weapons lying near Manus nor did he see anyone removing a weapon from the scene. There was nothing in the vicinity that could be mistaken for a weapon such as a stick or a branch of a tree. When he first emerged from the Bogside Inn he did not see anyone with a weapon in the vicinity. On questioning Mr Myers accepted that as a young journalist he may have originally tried to “over dramatise” his own role in the matter and he had to accept the possibility that he wanted to put himself centre stage. Thus in his broadcast he states that he reached the body only seconds after Manus was shot. On breaking down his evidence and taking it in stages he accepted that it would have been longer than that. However, having been taken through the sequence of events he indicated that he would not dissent from 15 seconds or 30 seconds between hearing the shot and coming over to where Manus’s body lay. He was “absolutely certain” it was well under a minute. He also accepted that in his broadcast he asserted that there was no gunman in the area but that it would have been more accurate for him to say that he did not see a gunman in the area.

[57] Mr Myers was measured and candid in his recollections of what took place. For example he admitted that he was surprised to learn that the incident occurred at 10.25pm as in his memory there was a greater degree of light than one would expect at that time. His memory was that there was light in the sky at the time and in particular that there was light appearing from behind where Manus was lying. The expert evidence would suggest that it was darker than Mr Myers recalls at this stage, although it may be that there was some artificial lighting from buildings behind the funnel. Like the previous witnesses in the case Mr Myers had no memory of a car being present in the funnel, although this had only been drawn to his attention when he saw the video in the course of the inquest. Indeed, he went further and admitted that had he been asked to remember whether the car had been present on the morning he prepared his broadcast he would not have remembered it either.

Liam Muldoon

[58] A statement was read from Liam Muldoon pursuant to Rule 17. He was a contemporary and friend of Manus and confirmed that he was in the location on the night in question. He specifically referred to meeting Ned Divin, Manus, Miles O’Hagan and Noel Millar. He supports the account of the conversation with a man and the handkerchief. In the course of that he recalls the moment when he heard a bang and thought that someone had hit the old car beside him with a stone. He is the only civilian witness that refers to the car. He says that it was beginning to get dark in the funnel but that when he heard the bang the whole place seemed to

light up and he saw sparks flying from the wall. In the ensuing chaos he recalls turning at one point and seeing Manus and Ned lying on the ground. He assisted in pulling Manus from the funnel with the help of Ned. He then describes a large crowd of people gathering. He says that "I didn't see anything in the hands of any of the boys that night". He made a statement which formed part of the depositions in the original inquest. He was unavailable to give oral evidence at this inquest.

Military and police witnesses

Private William Glasgow

[59] Private Glasgow was the soldier who fired the fatal shot. He died in 2001. The only account available from him was the statement he made to Royal Military Police which was made on the day following the incident on 20 May 1972. The statement was taken by a Mr Alec Evans who is also deceased and whose short statement was admitted under Rule 17. Private Glasgow's statement included the following account.

"At Londonderry on 19 May 1972 at 2200 hours I commenced sanger duty in OPK, which is situated on the city walls at the double bastion. Soldier "B" was also on duty in the sanger.

I was armed with a SLR to which was affixed a magazine containing 10 x 7.62 mm rounds.

About 2225 hours I was positioned inside my O.P. observing the area of Long Tower Street and Fountain Street, while Soldier B was observing the Bogside area through the telescope.

Soldier B then told me that he had seen a male person, armed with a rifle, at the rear of the Bogside Inn.

I then observed the rear of the Inn, through the telescope and also saw the male person armed with a rifle. He was standing inside an archway against the right wall, this archway being wide enough for a vehicle to pass through into Meenan Square.

He was facing me, the full length of his body being visible, although there was a derelict car to his right front.

He was definitely armed with a rifle, the weapon being carried in his right hand at the trail position.

I picked up my S.L.R. my weapon already being cocked when I commenced my stag, and aiming at the centre of the gunman's body about chest height, I fired a 1 x 7.62 mm traced round.

I observed my round hit the right wall of the archway directly in front of him at head height. It was at that moment that I made safe my weapon, so my eyes were away from the archway for a few seconds. I then reported the incident to my O.P's room by radio, at the same time observing the archway.

On looking at the position where I had seen the gunman, I saw about 10 civilians standing in the archway, some looking down to the ground. I could not see the gunman.

About four minutes later I saw a civilian ambulance arrive at the archway but I observed no one being put inside.

It then drove off with its blue light flashing. The people then left the archway and went towards the Bogside Inn.

When I fired at the gunman he was about 200 metres from my position. The light at the time was just failing but the gunman was easily visible. I cannot describe him except that he was dressed in dark clothing and was about 5 feet 3 inches in height and was of medium build. I have no doubts whatsoever he was carrying a weapon."

Soldier B

[60] Soldier B gave oral evidence at the inquest.

[61] The inquest had a copy of the written statement made by Soldier B to Mr Alec Evans of RMP made on 20 May 1972, details of an interview with HET in October 2011 and written responses via the Crown Solicitor's Office concerning the use of equipment at the time of the shooting on 28 April 2016.

[62] In his oral evidence Soldier B confirmed as accurate the contents of his statement on 20 May 1972 which was read as a deposition at the original inquest.

[63] Soldier B confirmed that he had been a private in the Army between 29 April 1969 and 9 May 1973. He did a tour of duty in Northern Ireland between 16 March 1972 and 9 June 1972.

[64] In relation to training his evidence was that prior to his tour in Northern Ireland he had been instructed in relation to the proper methods for searching both people and property. He did not recall any specific training in relation to the use of firearms in built-up areas although he had been extensively trained in the use of weapons and firearms. Mr McAlinden drew his attention to a note from the Colonel in charge of his regiment at the end of the tour in 1972 which suggested that the preparation for the tour did not fully cover the requirements of shooting in Northern Ireland, particularly in Londonderry where targets were often engaged at ranges up to and on occasions in excess of 300 metres. It appears that the training focussed on snap shooting at ranges not in excess of 150 metres and that the majority of range work was carried out on gallery or ETR ranges. In addition to the distances involved it was recommended that there was a need to provide training facilities for shooting at elevated or depressed targets. It was pointed out that shooting from sangers to depressed positions (as was the case in this shooting) placed restrictions on movement and vision. He was unaware of this recommendation but accepted that there was a difference in firing at a depressed target at a distance.

[65] Soldier B was asked at length about the equipment that was available in the sanger at the time in terms of telescopes, telescopic sights for the rifles being used and binoculars. This was the subject matter of the written correspondence from the CSO to which I have referred. A considerable amount of effort was expended by the Coroner's Service and the MOD in attempting to locate and identify the type of equipment that would have been in use at the relevant time. This material was used for the purposes of a reconstruction exercise on 17 May 2016. In addition the MOD provided a series of photographs taken in 1972 demonstrating various types of equipment that were used by the military at that time. Unfortunately, Soldier B simply had no memory of what was used in the sanger on the night in question and couldn't really assist on this important issue. What could be established from his evidence was that Private Glasgow did not have a telescopic sight on his rifle when he fired the shot. It is probable that Soldier B and Private Glasgow had available to them a telescope which was used when viewing the locus at Meenan Square from the city walls although it was impossible to identify the type, make or magnification provided by such a telescope. It should be pointed out that this contradicts the response provided by Soldier B to the MOD which was communicated in the letter of 20 April 2016 to the effect a freestanding telescope would not have been used but that he would have used binoculars. This issue certainly calls into question Soldier B's recollection of events which took place 44 years ago and on balance the reference in his statement in May 1972 to the use of a telescope is probably the more reliable account.

[66] In any event he confirmed that his duties on the night in question were to observe the Bogside area from the fortified sanger on the city walls and to watch out for particular vehicles or persons who were of interest to the security forces. He had been on such duty before. He explained that the duties were staggered and that he had been on duty probably since 2100 hours and that he was joined by Private Glasgow at 2200 hours.

[67] In terms of what led to the shooting his evidence was that he saw an adult run from the back of the Bogside Inn and go across the open ground towards Meenan Square. He indicated that he was carrying "what appeared" to be a rifle in his left hand at the trail position. He describes the object as "long and thin". The person entered an archway and halted against the right-hand wall by a derelict car to his right front. This is what has been referred to throughout as the funnel. He observed all of this through a telescope.

[68] He then tells Private Glasgow what he saw, describes him coming over to his side and looking through the telescope. In his oral evidence he said that Glasgow said to him something to the effect "that looks like a person who has a rifle and the next minute he let a round go."

[69] In later questioning on this point he said that in fact Private Glasgow said that the man was "definitely armed" and indeed this is what is contained in his original written statement. He accepted that after this comment Private Glasgow did not hesitate, and that he raised his weapon and fired almost immediately. He indicated that on coming on duty Private Glasgow had his rifle cocked which he said was unusual and not his practice.

[70] In his statement Soldier B went on to say that he observed the shot fired by Glasgow "strike the wall in the archway by the gunman." However, he says that his own view of the archway was poor after Glasgow fired the shot because he had to look over Private Glasgow's shoulder at this stage.

[71] He was pressed on this account in the course of his evidence. He agreed that with the aid of the telescope he could see the entire length of the wall within the archway and to the back wall. He agreed that at all times the man he saw was carrying what he believed to be the weapon in the "trail position". He said that he did not see any gunman fall nor did he see any other people in the vicinity. Prior to this shooting he said the area was quiet and he only became aware of other people after the shooting and this actually came from Private Glasgow.

[72] In terms of what he could see he was adamant that the person who had the rifle could be seen with the naked eye even after he had stopped viewing the matter through the telescope.

[73] In relation to this shooting generally he was pressed on his understanding of the “yellow card”. This is the guidance which was issued to soldiers at that time which dealt specifically with the circumstances in which they could or should open fire without warning. He said he was fully aware of the contents of the yellow card and that its contents had been “drummed into him” in the course of his training. He agreed that at the time Private Glasgow discharged his weapon they were not under hostile fire. He agreed that when he saw the alleged gunman he was carrying what he thought might have been a rifle in the “trail position”. It was put to him that this was the position also described by Private Glasgow (albeit in his right hand as opposed to his left hand) before he discharged his shot. He agreed that the rifle had not therefore been raised beyond this position and that the person had not taken up an aggressive or attack position. He responded that this could change within seconds and that such a person needed to be “carefully watched”. Notwithstanding these admissions he asserted that in his view Sergeant Glasgow had acted within the yellow card guidelines. He was unaware that it appears someone within the Legal Services of MOD took a different position subsequently and this was never drawn to his attention.

[74] He was asked about whether or not this shooting had been communicated via radio in the sanger to company HQ. He felt that the matter had been reported by Private Glasgow. He accepted that in making such a report it would be normal to indicate whether or not there had been any sighting of a gunman. It was put to him that the communications log recorded at 2225 hours states “Shoot wait out” but that there was no mention anywhere in that log of any sighting of a gunman. He simply had no recollection of the call and felt that the call had been made by Private Glasgow.

[75] In terms of what happened after the shooting he said that he was taken off duty and went to a Portacabin on the Derry walls where he made a statement about what had happened. It was put to him that the statement recorded by the RMP appeared to have been recorded the following day, 20 May. In any event he was clear that he had only made one statement about the matter at the time.

[76] Soldier B gave evidence to the effect that he had never discharged his weapon during his tour of duty in Northern Ireland. His opinion of Private Glasgow was that he was the better marksman in terms of his grading but that he was not in any way an aggressive or hot-headed soldier.

Commanding Officer Trevor Wilson

[77] The inquest heard evidence from Mr Trevor Wilson who had been the Company Commanding Officer with C Company of which Private Glasgow and Soldier B were members at the time of the shooting.

[78] He provided a written statement a short time before giving evidence focussing on the nature and training of soldiers being posted to Derry, the yellow

card guidance, the nature of instructions issued to soldiers manning observation posts and events which took place immediately after the shooting.

[79] In terms of training he confirmed the evidence of Soldier B in relation to shooting training on the range which involved "snap targets" on the level as opposed to elevated or depressed targeting.

[80] His opinion was that the suggested lacuna in the training identified after the tour of duty was "overstated". He felt that the training was adequate and there was not a considerable difference between shooting at a target from 150 ft below you at a range of 200 metres and shooting at a target on the level. In terms of telescopic equipment available to soldiers at the time he gave evidence about instruments that were available for C Company at Brandywell but really did not add anything significant to the evidence on this point. He was of the view that in all probability a telescope would have been available to the soldiers in the sanger at the relevant time. He confirmed that soldiers in the sanger would have had a direct communication via radio or phone to what he described as the "operation room". In the event of a report of a soldier firing this would be passed on to the battalion log. The battalion unit would have an RMP constable and he would expect that there would be communication with the RUC in such an event.

[81] Mr Wilson confirmed that all soldiers were aware of the guidelines in the yellow card and were fully instructed on its importance and application. He was unaware that a note had been prepared on 21 June 1972 within the MOD Legal Unit to the effect that the shooting involving Manus Deery "would appear to be in breach of the yellow card." He had not been informed of this at the time. He was not involved in any investigation of this shooting nor did any issue arise as to any disciplinary proceedings against either of the soldiers involved. When questioned about the circumstances of the shooting he expressed the view that the soldier was within his rights to fire "unequivocally". He based this on the view that a person with a weapon could transfer from the "trail position" to a firing position within 1½ seconds.

[82] He confirmed that he had checked the personnel file for Private Glasgow and that he actually prepared the report on his file. He was described as an excellent shot and someone who had an "alert, inquisitive nature". His view on his shooting ability would have been based on his performance in training on the range.

[83] In relation to the opinion of the army Legal Services that there had been a breach of the yellow card he indicated that such a finding would be significant and one would have expected some form of follow up in that event. However he was never told about this and nor was he given any further follow-up information about the incident.

[84] A striking feature of Mr Wilson's evidence which is indeed consistent with the documentation produced in the aftermath of the shooting was that for the last 40 years he believed that the person who had been shot was indeed the gunman identified by the soldiers. It was only in the weeks leading up to the inquest that he discovered that this was not the case.

[85] In the course of his evidence Mr Wilson addressed the Deery family directly expressing his deepest sympathy for their loss. In my view this was a genuine and emotional expression by him of empathy and regret. It was a moving and eloquent testimony from him. I am told by Ms Doherty that Mr Wilson had a private meeting with the family after the conclusion of his evidence which was a matter of some considerable comfort to them and was much appreciated. In my view his conduct was admirable as was the grace with which the Deery family responded. If this inquest achieves nothing else then at least the meeting between Mr Wilson and the family vindicates the efforts that had been made to properly inquire into the circumstances surrounding Manus' death.

Other Evidence

[86] Manus' body was formally identified by his cousin James Melaugh at the mortuary at Altnagelvin Hospital on 20 May 1972 at 10.05 am.

[87] Mr Michael O'Connell was a Transport Controller employed by the Northern Ireland Hospital Authority on the relevant date and confirms that on the evening of 19 May 1972 he was on duty at Ambulance Control Room when he received a telephone call at 10.28 pm to the effect that there was a lad with gunshot wounds at the Bogside Inn. He then dispatched the ambulance immediately to the scene which was manned by John Mitchell and Robert Payne. I also received evidence from Robert Payne who at the relevant time was an ambulance driver employed by the Northern Ireland Hospital Authority. At 10.28 pm on that evening he went in an ambulance driven by a John Mitchell to the scene of the shooting. He attended to Manus at the scene and accompanied him to hospital. He left the hospital at 10.25 pm to go to the scene and arrived back at Casualty at 10.46 pm. He indicated that prior to turning into Westland Street he was stopped at an IRA checkpoint and was directed to the location of the shooting.

Police Witnesses

Detective Constable Edmund Parks

[88] I received a statement from Detective Constable Parks under Rule 17. He confirmed that he was a Detective Constable of the RUC attached to Victoria RUC Station Londonderry at the relevant time. He attended at Altnagelvin Hospital at 10.55 pm on 19 May 1972 where he saw the dead body of a young male person. On the following morning at 10.10 am he arranged for the identification of the body which was confirmed to be that of Manus Deery. He subsequently identified the

body to Dr Press Pathologist at the mortuary at Altnagelvin Hospital from whom he received two particles of a bullet and a sample of blood. These in turn were passed on to Constable Montgomery. He prepared a location map of the scene which was used in the course of the hearing and also confirmed that he was present when photographs of the scene were taken by Sergeant Penny.

Sergeant Ross Penny

[89] Sergeant Penny confirmed taking photographs of the deceased in the course of the post-mortem conducted by Dr Press. On 25 May 1972 he took three photographs of the scene of the shooting under the directions of Detective Constable Parks. These photographs related to the locus of the shooting. The first photograph was taken from the city walls where the sanger was located pointing in the direction of the Bogside Inn and Meenan Square and in particular the funnel area where Manus was shot. The second photograph was an enhanced version of the same view providing a clear illustration of the funnel area. In relation to the magnification offered by this photograph his evidence was that this was probably about 2½ times standard lens magnification. The third photograph was taken from inside the sanger in the same direction as photograph 1. It also became clear that although Sergeant Penny had no memory of taking the photographs he probably took another three photographs which showed the sanger within the walls. In his oral evidence he confirmed that he was not asked to take any photographs of telescopes or rifles. Any photographs he took were at the direction of the investigating officer.

Detective Inspector McNeill

[90] At the time of Manus' shooting Mr McNeill was a Chief Inspector based in Victoria Street Station. He was referred to a report he prepared into the fatal shooting of Manus Deery. The report indicates that Manus has been killed by a ricocheted bullet that had been fired from an army rifle. He was aware that a local solicitor was in the possession of a number of statements from alleged witnesses to the shooting but these had not been made available at that stage. He had copies of the statements taken from Private Glasgow and Soldier B. His suggestion was that "on the strength of the statement of soldiers "A" (Private Glasgow) and "B" that Private Glasgow, in his own mind, was justified in firing in the circumstances. He suggested however that it was for a higher authority to decide whether or not a prosecution should be considered on these facts. There is an addendum to the report indicating that he had received statements from Noel Millar, Edward Divin and Liam Muldoon but that "they add nothing to the story as we now know it except that they state that Deery was unarmed when he was shot."

[91] His oral evidence focussed on the adequacy of the investigation into this shooting.

[92] In general terms he pointed out that it was not unusual for a person of Constable Parks' rank to carry out an investigation into a fatal shooting. This was

due to the level of violence in the city at that time. Detective Inspector O'Neill pointed out that he himself was responsible for preparing the inquest papers into the Bloody Sunday killings.

[93] He was referred to a report from Detective Constable Parks dated 22 June 1972 expressing the opinion that having considered the evidence available "that the soldier was justified in firing at an identified gunman as it was likely, had the deceased had a weapon, he in all probability may have been about to use it for an unlawful purpose". It is clear from the content of that report that Mr Parks was under the impression that the deceased was indeed the intended target.

[94] In the course of his evidence he accepted that the system whereby soldiers were not interviewed by investigating RUC officers was flawed.

[95] He was unaware of the memo from the Legal Services Unit in the MOD dated 21 June 1972 to the effect that Private Glasgow's shooting was in breach of the yellow card. He admitted that had he been aware of the views expressed by the army legal team that this would have influenced his opinion and would have resulted in him recommending a prosecution.

[96] In terms of criticism of the investigation it was pointed out that there had been no examination of the weapon which was discharged, no examination of any telescopes or equipment used by the MOD, no re-interview of the soldiers, no attempt to interview the civilian witnesses or indeed identify or speak to other civilian witnesses who were referred to in the statements provided (in this regard Detective Inspector O'Neill pointed out that civilians were generally reluctant to speak to the police). Mr Heraghty put it to Mr O'Neill that he had simply accepted the MOD statements as being truthful. When questioned by Mr Wolfe he assisted in terms of clarifying that RUC officers would have been in the same building as the army's operation room and would have been in a position to have been informed of any communications received from the soldiers.

[97] In his report Detective Constable Parks indicated that the evening of 19 May 1972 was a clear and bright one.

Expert Evidence

[98] The inquest received expert evidence and reports from Dr Bell, an Astronomer by training, who has specific knowledge and expertise on twilight illumination conditions and Mr Brian Murphy a Forensic Engineer. Both witnesses also attended at a reconstruction exercise on 17 May 2016.

[99] Before commenting on the specific evidence of the experts I acknowledge the very considerable industry and effort of both to provide helpful evidence to assist the inquest. However, regrettably their evidence is of limited value because of the very significant changes in the topography that have taken place in the intervening

44 years and because of a lack of direct evidence in relation to lighting conditions on the night of the shooting.

Dr Stuart Bell

[100] Dr Bell provided a written report dated 25 September 2015 and followed this up with a further report on 25 August 2016 after the reconstruction exercise on 17 May 2016. It was hoped that he would be able to provide information on the visibility that both the soldiers at the wall and the children at the funnel might have had of each other from their respective positions at Derry's walls and Meenan Square. He was very much hampered in this exercise by the significant changes in topography since the date of the shooting. These differences are well set out in the first report from Mr Murphy dated 24 March 2015 and in summary are as follows:

- Numbers 11 to 35 Meenan Square no longer exist. This section included the funnel area which is central to the case.
- There were a series of buildings known as Columb's Well which were present at the time immediately beneath the walls which have been demolished in the intervening years. The remaining buildings at Meenan Square namely numbers 1 to 9 had flat roofs at the time of the shooting but they currently have substantial pitched roofs.
- The dimensions of the Bogside Inn have changed and in particular a flat roofed structure which was visible in the police photographs at the time of the shooting has been replaced with a substantial pitched roof.

[101] In terms of the potential light at the time, Dr Bell's evidence was that the shooting took place very close to the end of "civil twilight". Assuming clear weather conditions, illumination levels at the end of civil twilight are such that the ability to perceive detail with the naked eye is diminishing and the ability to perceive colour may also be affected. Larger features are still discernible. From the point of view of those in Meenan Square, the soldiers would have been seen in outline against a darkening sky background. It is likely that little detail would be visible to them. The soldiers on guard duty would be looking down on Meenan Square where illumination would probably be reduced by the presence of the surrounding buildings. At a distance of approximately 200 metres it is unlikely that the soldiers would be able to distinguish much in the way of detail with the unaided naked eye. He went on to say that "indeed it may not have been possible to distinguish much more than a collection of indistinct figures in Meenan Square." In his subsequent report post the reconstruction he elaborated that it was very difficult to give meaningful evidence on the central issue of the view available to the soldiers in the light at the time. This is because there simply was insufficient evidence as to the extent of any street lighting which was probably minimal in 1972. Furthermore, the

question of cloud cover would be clearly relevant. He felt he was unable to make a clear statement as to what the soldiers on duty in the sanger could have seen. He also refers to the issue of dark adaptation. Given that Soldier B had been on duty for more than an hour he may have been fully dark adapted when he was observing Meenan Square whereas the dark adaptation of Private Glasgow may not have been as good.

[102] In addition any view would also depend on the extent of magnification provided by any telescope used by the soldiers.

[103] Despite Dr Bell's efforts it was difficult to come to any real conclusions on what the soldiers could actually see. He accepted on questioning from Mr McEvoy that the further back a person was in the funnel area the more difficult he or she would be able to identify in Dr Bell's terms "certainly in any detail".

Mr Brian Murphy

[104] Mr Murphy provided three detailed reports for the inquest dated 30 March 2015, 5 October 2016 and 7 October 2016.

[105] Like Dr Bell he was greatly hampered by the very significant change in topography and lighting conditions. He did prepare a series of photographs taken both in daylight and at the end of civil twilight in an attempt to recreate the views available from the walls. However as was the case with Dr Bell's evidence it is difficult to draw any reliable conclusions as to what the various participants could see on the evening in question. He was able to give some important information. The distance from the city walls to the area of the funnel was measured at 192 metres. He felt that because of the elevation if one were to draw a hypothetical string from the ground at the funnel back to the shooting that that string would be about 195 metres long. He felt the angle of depression was quite shallow somewhere in the region of around 10-11 degrees from the horizontal. He gave important evidence that the length of the funnel from front to back was 6 metres i.e. 19 feet 8 inches. He gave evidence to the effect that the width of the funnel was 12 metres in total made up of two sections, 6.5 metres and 5.5 metres. This would be a total of 39 feet and 4 inches.

[106] He also gave evidence in relation to the mark on the wall which had been identified by Mr Myers in his RTE broadcast as the point at which the bullet had struck before ricocheting. By using the bricks in the wall he estimated that it was about 70 inches from the ground. He was specifically asked whether there was a line of sight from this mark to the elevated position from which the soldiers had shot and he said that there was. Again, he used the example of the hypothetical string which he said could be directly linked from the gouge mark and the observation post.

[107] Mr McAlinden asked Mr Murphy about the distance between the wall of the back of the Bogside Inn and the funnel. It was suggested that this was the area in

which a person would be in view from the observation post. In other words this would be the distance in which the person described by Soldier B would be in view from emerging behind the Bogside Inn to taking up a position at the front of the funnel. Mr Murphy's evidence was that this would be a distance of 15 metres i.e. just over 49 feet.

Documentation

[108] In the course of the inquest a large volume of documentation was identified. I propose to set out the key documents which featured in the course of the hearing.

MOD Log Sheet Entries for 19 May 1972

- | | | |
|------|---|--------------------|
| 2225 | Shot wait out. | BDE informed. |
| 2238 | AMB just gone to Bogside Inn connect serial 136. We believe there is a man with GSW. | RUC informed. |
| 2240 | We have received a phone call from the Bogside saying the army have shot a 14 year old boy who is in a bad way. Please do not stop the Amb at BR. | BDE info. BR info. |
| 2315 | Provos have released that a SF shot a 14 yr old in back this was received 2246. | |
| 2317 | The person who sustained the GSW, has died, he was Manus Deery of Limewood Street, injuries sustained in head. | BDE info. |

These were respectively described as serials 136, 138, 139, 141 and 143. The first two namely 136 and 138 were from K3 to OPS. The third and fifth namely 139 and 143 were from RUC to OPS. The fourth, serial 141 was from 8BDE to OPS.

[109] There is an MOD document dated 19 May 1972 which is very difficult to decipher but includes the following entry:

"Elements of WFR Fired 1 x 7.62 at a gunman in Meenan Square. Gunman seen to fall. No military casualties."

RUC Duty Officer's report dated 19 May 1972.

This document contained the following entries:

“10.39 pm on Friday 19 May 1972 one shot was fired by a soldier at a gunman observed outside the Bogside Inn, Leckey Road. No hit claimed.

At 10.43 pm Londonderry RUC received an anonymous telephone call stating that a 14 year old had been injured in a shooting.

Inquiries at Altnagelvin Hospital revealed that a 17 year old youth Manus Deery, Limewood Street, Londonderry, had been admitted to the hospital suffering from a gunshot wound to his head. He died at 11.10 pm.”

[110] Mr McAlinden points out that the 10.39 pm entry can probably be related to the serial 138 entry in the MOD log at 22.38 which refers to “RUC informed”. However the entries in that record do not include the detail about a gunman being observed or a shot being fired. It simply says “Amb just gone to Bogside Inn in connection with 136 and we believe there is a man with a GSW”. This was a matter commented upon by Ms Doherty in her closing submissions.

[111] There is reference to a plan prepared by Detective Constable Parks which marks the observation post where the soldiers were located, the point where the gunman was first seen at the rear of the Bogside Inn and the point where the gunman is alleged to have been when shot at. This proved problematic in that part of the Bogside Inn was not shown on this ordinance survey plan which pre-dated the construction in question.

[112] There is a reference to an entry in Hansard dated 25 May 1972 as follows:

“Ms Devlin asked the Minister of State for Defence if he will make a statement on the shooting of 16 year old Manus Deery on the night of Friday 19 May by a member of the Army.

Mr G Johnson Smith replied: At about 8.30 pm two soldiers in an observation post saw a person holding a rifle in Meenan Square. One of the soldiers fired an aimed shot at him. A crowd quickly gathered at the scene, and the soldiers were not able to see what happened to the gunman. Later that evening Manus Deery died shortly after admission to Altnagelvin Hospital.”

[113] On 21 June 1972 there is note made by the Army Legal Department to the RMP in the following terms:

“Although it is appreciated that the man who was shot at appeared to have a rifle, there is no evidence that he was about to use it for an offensive purpose and this case would appear to be a breach of the yellow card”.

There were two reports, one from Detective Constable Parks dated 22 June 1972 and one from Chief Inspector McNeill dated 27 June 1972 which have been referred to above in the discussion of the evidence.

[114] There is a letter from Chief Superintendent Logan dated 20 June 1972 in which he states as follows:

“Two soldiers are certain they saw a man with a rifle. He was in a position where he could fire at the soldiers on the city wall which is quite a common practice. The soldiers looked through a telescope before the shot was fired which shows an intention on the part of Soldier A to make sure that the man was armed. The statements of Millar, Divin and Muldoon which were not given to the police all state that Deery was unarmed. There is therefore a conflict of evidence between the soldiers and the three civilians who were chums of the deceased.”

[115] After the First Worcestershire and Sherwood Foresters Regiment completed the tour duty of Northern Ireland on 9 June 1972 a report from the Commanding Officer dated 28 June 1972 comments on the preparation and training for the soldiers in the regiment as follows:

“Shooting training. Distance and elevated position. This preparation did not fully cover the requirements of shooting in Northern Ireland particularly in Londonderry where targets were often engaged at ranges up to and on occasions in excess of 300 metres. There is an urgent need to provide training facilities for shooting at elevated or depressed targets. Many engagements with the enemy took place at targets up to 150 feet above or below the fire.”

[116] There is a letter dated 10 July 1972 from RUC Headquarters to the DPP in the following terms:

“Deery was shot by the military as he was alleged to be the person carrying the firearm and it was considered that he was about to use it for an offensive purpose. The statements of Soldiers A and B appear to justify the action which was taken. While there is a dispute as to what the real position was I believe the story told by the soldiers and I recommend no criminal charges against any person. Signed for the Chief Constable.”

[117] The matter was considered by the DPP’s office and there is a letter expressing the legal opinion of a member of staff of the DPP on 8 July 1972 setting out the background concluding that “on the basis of self-defence no reasonable jury would convict of homicide if it could be shown, or even perhaps suggested, that a soldier fired because he was apprehensive either of his own safety or the safety of some innocent person that he fired believing that to do so would or even might reasonably protect his own or that person’s life.” Therefore, no proceedings were recommended. On 21 August there was a letter from the Legal Registrar in the RUC Headquarters to the DPP referring to the statement of Edward Divin which is described as “most significant”. There is a discussion about the fact that the gunman was holding the rifle at the trail position and that the shooting was therefore premature. However, the author goes on to say that he was satisfied that in the circumstances the soldier’s action on this occasion was justifiable. It appears that on 19 November 1972 a decision was made for no prosecution.

[118] By letter dated 10 November 1972 the Deputy Assistant Director of Army Legal Services informs the MOD in London of the decision not to prosecute and comments “Manus Deery was shot by a member of ‘C’ Company 1 WFR in circumstances which could be described as being outside the yellow card”.

[119] An inquest was conducted on 31 July 1973 and an open verdict was recorded.

[120] It appears thereafter that civil proceedings were issued against the MOD for damages arising out of the death and counsel’s opinion for the MOD dated 25 October 1973 is disclosed and contains the following:

“It would be difficult to say with any certainty that Manus Deery was the person who was holding the rifle. Even if he was carrying a firearm, I do not consider that this shooting could be justified in law as the gunman had not been firing or about to fire at the soldiers or at other persons ... Obviously the circumstances in Londonderry particularly in the Bogside at the time of the incident were exceptional.

Nevertheless I see no basis on which this shooting could be justified in law.”

[121] There is a subsequent letter from MOD to AG in London on 14 January 1974 and a further letter dated 18 April 1974 when counsel’s opinion is discussed. A confidential memo dated 21 May 1974 reveals that an offer of compensation was made on an ex gratia basis. This was accompanied by a denial of legal liability by the MOD. Compensation in the sum of £1,685 appears to have been paid on 13 August 1974.

Discussion of the evidence

[122] There are obviously inherent weaknesses in relying on oral testimony in relation to events which occurred over 40 years ago. Add to this the fact that with the exception of Mr Myers the civilian witnesses from whom I heard were all aged 14 or 15 at the time. They were witnesses to a shocking and terrifying incident and it would not be at all surprising if their recollections of what took place were different and if their individual accounts varied when giving accounts over the intervening years. Mr Wolfe pointed to a number of obvious examples. As is clear from the summary I provided some of the witnesses who gave evidence were certain that there was no damaged car in the funnel in that location at the time of the incident, whilst others simply said they did not see any such car. This is despite the fact that they must have been standing a matter of feet away from it. The preponderance of the evidence points to the car being present at the relevant time. The witnesses do not give a comprehensive account of everyone who was present at the time. Thus Mr Divin did not see Kenny Deery (Kathleen Fleming) and in turn she had not seen the man trying to sell the handkerchief. Mr Millar did not see Mrs McCaughey. There were discrepancies about where precisely the group were standing at the time of the shooting. Mr Millar gave conflicting accounts of this but the preponderance of the evidence suggests that they were standing at the back of the funnel near the right hand wall as one looks from the city walls. Mr Myers’ evidence also points strongly towards Manus being located at the back of the funnel close to the right hand wall at the time of the shooting. This arises from his evidence about the gouge mark on the wall which I accept is the most likely point at which the bullet struck the wall and the fact that Manus was lying reasonably close to the gouge in the wall towards the back of the funnel, after he was shot. I have not referred to the evidence of Mr Duddy as I have already explained that it is entirely unreliable. Mr Wolfe does not suggest that any of these inconsistencies are surprising. He does not suggest that the witnesses have been in any way dishonest. His submission is that the witnesses who were in Manus’s company were capable of missing out on what was going on around them. In particular they could have missed the presence of a gunman in the vicinity for a variety of reasons. He points to the fact that they were at the very back of the funnel whereas the gunman described by the soldiers was initially in the open ground at the back of the Bogside Inn before taking up a place towards the front of the funnel. The light at the time was not good. Furthermore the movement of the people back and forth across the open ground at the back of the

Bogside Inn and into the funnel area was a common place occurrence and so it may be that the gunman described would not have attracted the attention of the young people. At the time of the shooting Manus and his friends were focused on the conversation with the man trying to sell the handkerchief rather than what was going on in the vicinity at the front of the funnel.

[123] Because of the circumstances which I have described I accept that I must be cautious and careful in analysing the evidence of the civilian witnesses in this case. Having done so I have come to the following conclusions.

[124] I disregard the evidence of Mr Duddy.

[125] I accept on the balance of probabilities that at the time Manus was shot he and his friends were standing at the back of the funnel area close to the right hand wall as one looks towards the funnel from the city walls. I accept that on the balance of probabilities there was a derelict car parked on the left hand side of the funnel as one looks from the city walls. Again on the balance of probabilities I accept that the gouge mark shown in the video evidence in Mr Myers broadcast is the location at which the bullet struck the wall before fragmenting and ricocheting causing the fatal wound to Manus.

[126] I have come to the conclusion that neither Manus or any of his friends possessed a weapon or rifle or any object that could have been mistaken for a weapon of any sort.

[127] The key issue of course is whether or not in fact there was a gunman present at all. The evidence in relation to the presence of a gunman comes from the two soldiers who were on the observation post.

[128] In terms of his oral evidence it was clear that Soldier B had difficulty in remembering much of the detail of what took place. He relied to a large extent on the contents of his written statement.

[129] On the key issue as to whether or not there was in fact a person in the Meenan Square area with a gun it is clear that he himself cannot positively say that this was so. The person he identifies was carrying "what appeared to be a rifle". It is also clear that his conviction that there was such a person is reliant on the positive assertion or confirmation from Private Glasgow that indeed the person was carrying a rifle. As indicated there was some ambivalence about this in his evidence but his final position was that Glasgow confirmed that the person definitely had a gun.

[130] Despite his assertion that he could see this person at the front of Meenan Square with the naked eye it does not appear that he saw the group of teenagers who were undoubtedly gathered at the back area of the funnel. This is surprising in the circumstances. It seems to me that they should certainly have been

visible via the telescope he was originally using. Furthermore, he was clear that he saw the bullet strike the wall in the archway "by the gunman". In my view the preponderance of the evidence points overwhelmingly to Manus and his friends standing close to the area where the shot struck the wall. That being so it is difficult to see how he did not see Manus and his friends when the shot struck the wall. He subsequently avoids the issue of what he may have been able to see after the shooting by indicating that he had to look over Private Glasgow's shoulder and that his view at this stage was "very poor". Overall, my impression of Soldier B's evidence was that he had little reliable recall of what actually happened on the night in question. I do not consider that he was a dishonest witness but on the key issue of the alleged presence of a gunman his evidence was of limited value.

[131] In light of this analysis it seems to me that the positive identification of a gunman comes down to the statement of Private Glasgow. I have already referred to the difficulty of coming to conclusions on the basis of the evidence of witnesses attempting to recall events which occurred over 40 years ago. However, this pales into insignificance compared with the difficulty of attempting to assess statements from witnesses who are now deceased. This is particularly so in the case of Private Glasgow. This demonstrates the imperfect nature of conducting an inquest into a death of this vintage. He only made one statement in relation to this matter. He was not challenged or probed on the contents of that statement. At a very basic level he was not asked why he felt the person he had identified as being armed with a rifle posed a threat given that he describes the weapon being carried "at the trail position".

[132] Subsequently, when statements were made available from civilians giving a different account than his, he was not questioned or asked about the matter further. Nor was he subsequently interviewed by the HET because of his death in the interim.

[133] I have been denied the opportunity of hearing evidence directly from Private Glasgow. It has not been possible to make an assessment based on any testing of his evidence.

[134] Having heard and read all the evidence in this case I have come to the conclusion that at the time the shot was fired there was no gunman in the vicinity of the funnel. Whilst it might be argued that there would be a reluctance on behalf of Manus's friends to admit that there was such a gunman present I have come to the conclusion that the witnesses were honest in their evidence and at least one of them would have been in a position to notice the gunman if he was present. Much was made about the distance between the back of the funnel and the front of the funnel but this was measured at only 19 feet. The children had been in the vicinity for a significant period of time prior to the shooting. Some of them were facing towards the city wall at the time of the shooting. However, the most important objective evidence in this regard is that of Mr Myers. Of all the civilian witnesses he was in

the best position to see a gunman if he was present. This gunman would have been in the direct line of vision between Mr Myers who had exited the Bogside Inn from the back into the car park in front of the funnel and was looking towards the area where Manus and his friends were at the time of the shooting. If there was a gunman at the front of that funnel area he most surely would have seen him. This is not the sort of peripheral or insignificant matter which he might have missed. Equally, I have no doubt that if Mr Myers had seen a gunman he would have said so without hesitation. His evidence convinces me that there was no gunman in the car park or at the front of the funnel as described by the soldiers at the time of the shooting.

[135] I have already commented on the evidence of the soldiers. I came to the conclusion that Soldier B was in fact uncertain as to whether there was a gunman present and in truth he was very much reliant on the positive assertion from his colleague Private Glasgow. I have indicated that I have not had an opportunity to test the evidence of Private Glasgow nor was it tested in the past. There are some further matters which give me concern about his evidence. I am surprised that none of the soldiers can give an account of what actually happened to the alleged gunman. I have already referred to what Soldier B said about this. Private Glasgow in his statement indicates that after he saw the round hit the right wall directly in front of the gunman he "made safe my weapon, so my eyes were away from the archway for a few seconds". After reporting the incident to his OPs room by radio it was only then he looked at the position where he had seen the gunmen when he records seeing 10 civilians standing in the archway but that he could not see the gunman. If the gunman was a significant threat that required the discharge of a round, one would have thought that the first concern would have been to ensure that the threat as perceived had been dealt with.

[136] Private Glasgow could only have seen this gunman for a very short period of time as he discharged his round almost immediately after Soldier B had drawn his attention to this person. The person was allegedly at the front of the funnel but as I have found the bullet struck the back of the funnel which is close to where Private Glasgow says the gunman was standing.

[137] In relation to the reporting of the incident the first log sheet entry at 22:25 simply says "shot wait out". There is no reference to a gunman and indeed the first reference to a gunman is not until 22:38 or 22:39 some 13/14 minutes later.

[138] It is also clear that from the outset it was the impression of the soldiers and indeed the investigating police that the identified gunman had in fact been shot.

[139] In any event even on the account of the soldiers the discharge of the round was unjustified. There was no evidence on their account that the gunman was about to use the rifle for an offensive purpose and at all times it was held in the "trail position". It cannot be seriously disputed that the discharge of this weapon, even on

the soldiers account, was in breach of the yellow card. There was no basis on which this shooting could be justified in law. The question arises as to whether or not Private Glasgow simply discharged his weapon at Manus and his friends without any honest belief about the presence of a gunman. It is difficult to think of a more serious allegation and before coming to such a conclusion I would need to look at the facts critically and anxiously. At the end of the day only Private Glasgow himself knew the answer as to his honest belief. The problem I have about coming to a conclusion on this issue is that I have not had the opportunity of hearing Private Glasgow nor has he ever been given the opportunity to answer such an allegation. Even in the context of my findings there are scenarios in which Private Glasgow may well have had such a belief. For example it may be that in the failing light, in circumstances where his colleague had suggested he thought he saw someone carrying what appeared to be a rifle and with the movement of people in the vicinity he genuinely thought that he saw a person with a rifle "in the trail position". In these circumstances I could not properly come to a finding that he had no such belief.

[140] As I have indicated even if he had such a belief the discharge of the weapon was unjustified in circumstances which were fraught with clear and obvious risk of causing death or serious injury, having regard to the presence of Manus and other young people in the vicinity which must have been clear to him even if not in the finest detail.

Planning, control and regulation

[141] This was not an "operation" in the sense that the shooting was pre-planned or prepared. On the night in question the soldiers were engaged on observation duty with a particular emphasis on identifying vehicles and persons of interest to the security forces.

[142] Nonetheless, in the course of those observation duties a soldier deliberately discharged a weapon at an identified target which has resulted in the fatality giving rise to this inquest. In those circumstances the court must examine how the use of weapons was regulated and organised by the State and whether it was done in a way so as to minimise to the greatest extent any risk to the life of the deceased in this inquest.

[143] In this regard it is clear that soldiers at that time were given specific training about the circumstances in which they could open fire without warning. The circumstances are set out in the "yellow card". Mr Wilson explained in his evidence that the terms of the yellow card "were emphasised daily" to soldiers during their time in Northern Ireland. He said:

"Every soldier was issued with, and required to carry a copy. Its terms were explained regularly by platoon commanders, sergeants and those posting soldiers on

duty. I believe the guidance contained within the yellow card was at the forefront of everyone's mind both before the battalion was deployed and during its operational tour."

[144] Soldier B also confirmed that he was fully aware of the yellow card in training before coming to Northern Ireland and that its contents had been "drummed into them". He was aware of the contents and terms of the yellow card and considered it applicable to him and his fellow soldiers.

[145] If applied correctly the yellow card provides an adequate and effective safeguard against arbitrariness and abuse of force. The difficulty in this case is that as I have found (and this is not really in dispute) Private Glasgow did not comply with its terms.

[146] I am concerned however that both the soldiers who gave evidence in this case were of the view that Private Glasgow had not in fact breached the terms of the yellow card. This gives rise to a concern about whether or not soldiers truly understood the significance and importance of the terms and that in practice they truly felt constrained by them.

[147] I do not consider that the issue raised after the tour of duty about better training in terms of shooting in urban environments and at depressed targets is of any real significance in this case. It does suggest that the MOD did appropriately review training in the light of its experience on the ground. I do not consider that this issue has any relevance in relation to the investigation of Manus Deery's death in this inquest.

[148] In terms of the regulation of the use of lethal force obviously an important element is the manner in which the use of such force is investigated by the State.

[149] In this particular case it is clear that the investigation was flawed. In considering this matter it is important not to view the matter or make a judgment with the benefit of hindsight. I recognise the extreme pressure under which security forces were acting at that time given the extent, degree and frequency of violent incidents which required investigation in Derry city at this time. It may well be the case that the police approach to investigations at that time lacked the sophistication one currently expects. There were specific obstacles faced by those investigating this incident which I discuss further below.

[150] A fundamental flaw with the police investigation was that at the material time Force Order 148/70 governed the investigation of complaints against military personnel. This meant that soldiers such as Private Glasgow and Soldier B were only interviewed by Royal Military Police rather than the RUC. As Mr McNeill explained in his evidence, the policy caused detectives on the ground serious

misgivings but they were obliged to work within its terms. This policy was subsequently cancelled by Force Order 131/73 when the primacy of the police role in conducting criminal investigations was reasserted.

[151] This approach has received judicial criticism - see Re Marie Louise Thompson's Application for Judicial Review [2003] NIQB 80. The PSNI does not seek to challenge that criticism. The soldiers in this case were only interviewed on one occasion. There was no follow up interviewing or questioning of them. This is despite the fact that on the face of it Private Glasgow's account of what happened did not comply with the terms of the yellow card. Private Glasgow was not asked to explain why he thought it necessary to discharge a round. He describes the firearm being held in the trail position. He was not asked why he thought the weapon was being used or about to be used for "offensive purposes". He was not asked whether he felt it was necessary to shoot to protect him, his colleague or other members of the public. Despite the fact that in June 1972 the Army legal service advice was that Private Glasgow's conduct had breached the yellow card no further questions were raised with him.

[152] Leaving aside the issue of the statement "on its face", the statements provided by the civilian witnesses at the time should have resulted in further enquiries and investigation. The contents of those statements should have resulted in further interviews of both Soldier B and Private Glasgow. Furthermore the contents of the statements should have led to identifying other potential witnesses to the shooting. In this regard I acknowledge that there was a perception that members of the public were not co-operating with the RUC at that time in Derry and indeed the statements which were provided were made available through a local solicitor.

[153] At the time of incident the police did not establish a crime scene. This is understandable given that the location at the time was a "no go area". However, even making allowances for the obstacle this created there was a failure to examine, retain and photograph the rifle used by Private Glasgow. Equally there was a failure to photograph, test or retain the telescopic equipment available to the soldiers and used by them at the time. It is clear that the police did not monitor TV coverage such as the report from Mr Myers which could well have provided invaluable information at the time of the investigation.

[154] Overall I am left with the impression that the investigating authorities too readily accepted accounts from the soldiers without critical analysis. Equally I am left with the impression that they too readily dismissed the accounts of civilians who challenged or raised issues about the accounts given by the soldiers at the time. It may be that some of this is explained by the background on-going violent events at that time but it does not excuse the lack of vigorous and independent investigation of the death.

[155] Indeed, it was too readily assumed that Manus Deery was in fact the gunman identified by Private Glasgow.

Anonymity

[156] At the outset of this inquest the identities of Private Glasgow and Commanding Officer Trevor Wilson had not been disclosed in the papers or to the next of kin. Prior to the commencement of the hearing I ruled that there were insufficient grounds to justify anonymity in respect of Private Glasgow. Commanding Officer Wilson did not seek anonymity and therefore his identity was disclosed.

[157] In respect of Soldier B I received a formal application on his behalf on 8 September 2016 seeking an order granting him anonymity and permission to give his evidence fully screened from the view of the family of the deceased, the public and representatives of the media, so that he would only be visible to the Coroner, to those members of the Coroner's staff who had legitimate reason to be present, and to the qualified legal representatives of properly interested parties who had been afforded representation at the inquest. He also sought specific arrangements to enable him to enter and leave the inquest venue before and after giving evidence in circumstances which afforded effective protection from public view, effective protection from harassment and reasonable respect for his dignity and right to privacy.

[158] In support of the application I received the following documentation.

- (a) A generic application and accompanying Annexes A-E;
- (b) Unredacted and redacted copies of a personal statement from Soldier B.
- (c) Unredacted and redacted copies of extracts from threat assessments.
- (d) PSNI security report.
- (e) Unredacted and redacted copies of medical evidence.

[159] I gave a written provisional ruling on the applications on 21 September 2016.

[160] In the ruling I set out the particulars of the application and the supporting material I received. I set out the background to the inquest and analysed the relevant legal principles and in particular I referred to the Court of Appeal judgment in the case of In the Matter of an Application by Officer C and Others [2012] NICA 47 and set out the relevant passages from the judgment of Girvan LJ. I then applied the relevant principles to the particular circumstances of this case and Soldier B. I came to the view that Soldier B was entitled to anonymity. I also ruled that he be granted permission to give his evidence screened from the public but I ruled that he

should not be screened from members of the family of the deceased. I originally permitted two members of the next of kin to be in a position to view Soldier B whilst he gave his evidence but I increased this to four members in the course of the inquest hearing.

[161] I also granted an order permitting arrangements to be made to enable him to enter and leave the inquest venue which would protect him from public view.

[162] I invited written submissions from the interested parties.

[163] On 25 September 2016 I received written submissions on behalf of the next of kin arguing that the application for anonymity and screening should be refused.

[164] I also received written submissions on behalf of Soldier B in support of the original application and submitting that Soldier B should be screened from the next of kin in the course of the hearing.

[165] These written submissions were supplemented by oral submissions on 4 October 2016.

[166] Having considered the written and oral submissions and a further medical report on Soldier B I decided to affirm my provisional ruling and the parties were informed of this by letter of 10 October 2016.

[167] After Soldier B gave his evidence Ms Doherty on behalf of the next of kin made an application that the order granting anonymity to Soldier B be removed. The main thrust of her submission was that since Soldier B was not resident in Northern Ireland or otherwise connected with this jurisdiction, now that he had completed his evidence, there was no justification for a continuation of the anonymity order.

[168] The basis for this submission relates back to the original assessment of the security threat to Soldier B in Northern Ireland. An assessment from the PSNI Security Branch indicated that "there is no specific intelligence held to indicate a threat to the subject at this time. However, there is a possibility that his personal security may be undermined should he be called to give evidence at the inquest in question. This may very much be influenced by the nature of the evidence he is giving, how this will be examined by the Coroner and whether or not it is considered 'controversial' in nature".

[169] The assessment provided from the Security Services was as follows:

"Soldier B is currently assessed to be at a LOW threat from NIRT in NI and GB, which reflects our assessment

of the threat to him from Dissident Republican terrorist groups. The definition of LOW is 'an attack is unlikely'.

Should Soldier B give evidence at the inquest without the benefit of screening the NIRT threat for Soldier B in GB will remain at LOW. However, we judge that, depending on the nature of his evidence at the inquest and if he is denied anonymity and screening, the threat to Soldier B in NI could in theory have the potential to rise to MODERATE; an attack is possible but not likely."

[170] Thus Ms Doherty argued that notwithstanding the nature of the evidence given by Soldier B, his risk in GB is low, that is an attack is unlikely. Since there is no suggestion that Soldier B resides in Northern Ireland or has any cause to come to Northern Ireland, the low threat level for him in GB could not properly ground the on-going grant of anonymity to him.

[171] This application was strenuously opposed by Mr Wolfe on behalf of Soldier B.

[172] I indicated to the parties that I would give a final ruling on this matter when delivering my verdict.

[173] At the outset I recognise that the question of anonymity is one which I should keep under review during the course of an inquest. I also recognise the importance of the principle at stake in that "open justice" requires that evidence in court should be given in public. I also recognise that this is an important issue for the next of kin.

[174] I do not propose to set out again the details of my ruling and subsequent affirmation which are a matter of record.

[175] In considering this application I have reviewed all the original material and in particular have focused on whether or not anything has occurred since the ruling that displaces the basis for that ruling or has shifted the balance away from the granting of anonymity. In this regard Ms Doherty focuses on the fact that Soldier B has given his evidence and has left Northern Ireland.

[176] Having heard the evidence of Soldier B there can be little doubt that it is controversial. In my original ruling I referred to the controversial background to this inquest and to the public campaign surrounding the death. In my view the evidence in this inquest and my findings are likely to reinforce that controversy. In relation to Soldier B specifically I am concerned that in the course of this inquest he was widely, prominently and erroneously reported as having ordered the shooting which led to the death of Manus Deery.

[177] I have come to the conclusion that whilst the risk to Soldier B may well be low it cannot be regarded as “fanciful or trivial” or “not present”. This risk together with the applicant’s personal circumstances including his subjective fears and the potential adverse impact on his health, his wife’s health and the impact on his family life should he be publicly identified justify the protective measure of granting him anonymity.

[178] Before coming to a final conclusion on this matter I have considered the overall effectiveness of the inquest itself. All of the witnesses were seen and heard by the next of kin and subject to cross-examination by their representatives. There was a public hearing, subject to the anonymity of Soldier B and his screening from the public, which led to an adverse finding against agents of the State. There has been a full investigation into the death of Manus Deery which has met the requirements of accountability and transparency.

[179] Accordingly, I refuse the application to remove anonymity and affirm my original ruling in respect of anonymity for Soldier B.

Events leading to the ordering of this Inquest

[180] Before I set out my findings I think it is important to set out how this new Inquest came about.

[181] Many years later the family of the deceased enlisted the help of the Pat Finucane Centre in an attempt to uncover the full facts surrounding the death of the deceased. There was a meeting with a number of families including the Deery family and NIO officials on 29 October 2001 in the Everglades Hotel. The minutes of that meeting have been disclosed.

[182] On 5 July 2002 Mr Des Browne, Parliamentary Under-Secretary of State for Northern Ireland wrote to the Pat Finucane Centre with reference to the time taken to deal with the issues raised by the families including the Deery family at the meeting on 29 October 2001. In relation to the Deery family the details provided were as follows:

“MOD informs us that opening fire was deemed to have been outside the rules laid down by yellow card ...”

This was the first occasion on which this information was disclosed to the family.

[183] On 2 August 2002 the Pat Finucane Centre wrote to the NIO in the following terms.

“Given that the MOD deemed the soldier who opened fire to have operated outside of the yellow

card instructions we wish to know if this resulted in any internal disciplinary measures being taken.”

At the same time as the NIO was looking into a number of controversial shootings the PSNI was doing likewise. Detective Inspector McKenna carried out investigations into a number of incidents including the shooting of Manus Deery and in his report dated 10 September 2002 he came to the conclusion that “there is nothing contained in the case papers to indicate that the soldiers acted in breach of regulations in force at the time”.

[184] Mr Des Browne MP, Parliamentary Under-Secretary of State for Northern Ireland replied to the earlier letter from the Pat Finucane Centre by letter dated 4 October 2002 in the following terms:

“The yellow card referred to in our previous correspondence is a set of guidelines and not a set of rules. It is not therefore guaranteed that a soldier acting in a way that did not correspond exactly to the guidance on the card was in breach of the law or had acted in any way that required disciplinary measures.”

[185] At this time the Pat Finucane Centre had also been engaged in correspondence with the DPP in relation to the decision not to prosecute anyone arising out of the death of the deceased. It queried whether the decision not to prosecute had been made in the knowledge that the MOD considered that Private Glasgow had acted contrary to the yellow card guidelines.

[186] The Assistant Director of the DPP’s office wrote to the Pat Finucane Centre on 16 April 2003 saying that “there is nothing in the information available to me to indicate that the direction of 19 November 1972 from this office was issued with the knowledge that it had been deemed by the MOD that Soldier A (as Private Glasgow was then described) had acted outside of the yellow card rules”.

[187] The Pat Finucane Centre pursued this matter with the PSNI and sought confirmation that the RUC police report which was sent to the DPP in 1972 dealt with the yellow card issue. In response to correspondence directed to it by the Pat Finucane Centre the PSNI wrote on 9 March 2004 in the following terms:

“As previously indicated to you the yellow card instructions form part of the investigation and a copy was submitted to the DPP with the file.”

[188] The Pat Finucane Centre also pursued this matter with the MOD and sought confirmation that the MOD had informed the RUC that it considered that Soldier A

had acted outside the yellow card rules. In response to correspondence from the Pat Finucane Centre, the MOD wrote on 2 April 2004, "I have requested various further searches to be made for any MOD record bearing on what was made available to the police investigation prior to the referral to DPP (NI), and had been able to uncover nothing that would suggest that the MOD expressed an opinion to the RUC that Soldier A fired outside the terms of the yellow card".

[189] Following the exchange with the NIO and Pat Finucane Centre in 2002, the MOD seems to have had some concerns about the approach being adopted by the NIO as is evident in a minute exchange with the MOD officials in 2004 which included the following:

"The 'breach' of the yellow card was related to the family by the NIO in 2002 after they failed to clear their draft SEC (HSF). The NIO output drew on the full background that we had provided and had been intended for internal use and consideration etc prior to any formal response made to the family. The NIO response was made with no consideration as to the sensitivity of the content.

The consistent MOD (and HMG?) line, of which you should be aware, is that 'yellow card' is for guidance and that he described action that might not be thought to conform to its guidelines as a 'breach of regulations' is not correct. I believe that the NIO and the family have been made aware of this distinction.

It has also been made clear in previous responses, that this matter was fully investigated by the civil authorities and presented to the DPP. He directed that there should be no criminal charges made and it was decided that there was no case for disciplinary action by the Army. It remains possible that the CO of the Bn took some action or discussed the matter with the soldiers concerned but we have no evidence that this occurred."

[190] This memo was signed MD Sawyer info - analysis five. There is an earlier note written by MD Sawyer info (exp) analysis dated 8 February 2002 which states:

"NI case noted. Yellow card. NIO. Informal disciplinary action."

[191] An HET investigation was then carried out and it reported on 6 May 2012.

[192] Following the HET report the solicitors for the family of the deceased wrote to the AG for NI requesting that he direct a fresh inquest and that inquest was directed on 14 June 2012.

Conclusion

[193] In reaching my conclusion and in assessing the evidence counsel asked me to look at the context in which this shooting took place. Mr Wolfe refers me to the on-going and repeated violence that was part of life in Derry at that time. Ms Doherty asked me to consider the report of the Bloody Sunday Inquiry into actions by soldiers in January 1972 where there were examples of soldiers giving false accounts in an attempt to justify illegal acts including unjustified shooting resulting in death. The risk inherent in relying on this sort of material is that there is a danger of coming to the wrong conclusions. Thus, I might determine it likely that there was a gunman present because of previous incidents involving persons shooting at soldiers in this area. On the converse I might conclude that soldiers have deliberately lied about a gunman in the area on the basis that this has been found to occur on other occasions. In coming to my conclusions I have relied solely on my analysis of the evidence provided in the course of this inquest, but always mindful of the context in which events took place.

[194] I have been provided with very helpful submissions from the interested persons as to the best format for my verdict. In reaching my verdict I have adopted the suggested structure from the next of kin which I consider best meets the requirements of this inquest.

Verdict

[195]

- (a) The deceased was Manus Deery of 36 Limewood Street, Derry.
- (b) His date of birth was 24 November 1956 and he was born at 36 Limewood Street, Derry.
- (c) Manus Deery was employed as a fitter.
- (d) His father was Patrick Deery, a farm labourer, also of 36 Limewood Street, Derry.
- (e) He died on 19 May 1972 at Altnagelvin Hospital.
- (f) The cause of his death was laceration of the brain due to gunshot wound of the head.

- (g) His death was caused by injury sustained when he was struck by fragments of a bullet fired by Private William Glasgow, a soldier.
- (h) The bullet fired by Private Glasgow struck a wall and the resulting fragments of the bullet struck Manus Deery causing his death.
- (i) At the time when the shot was fired Private Glasgow was at an observation post (KILO) at the double bastion on the Derry city walls.
- (j) Manus Deery was in a covered archway or funnel in the Meenan Square area of the Bogside, Derry.
- (k) The shooting took place at around 10.25pm.
- (l) Private Glasgow was a trained military marksman.
- (m) Neither Manus nor anyone close to him was acting in a manner that could reasonably have been perceived as posing a threat of death or injury to Private Glasgow or any other person.
- (n) There was no gunman in the vicinity of the archway or funnel in the Meenan Square area of the Bogside, Derry, but Manus and his friends were present in the archway and should have been visible to Private Glasgow at the relevant time.
- (o) Even if Private Glasgow had an honest belief that there was a gunman present, the force used was disproportionate to the threat perceived and therefore more than was absolutely necessary in the circumstances.
- (p) The rules of engagement for soldiers in force at the time of Manus Deery's death, namely the yellow card, were not adhered to by Private Glasgow.
- (q) For these reasons Private Glasgow was not justified in opening fire.
- (r) The investigation into the death of Manus Deery was flawed and inadequate.