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(subject to editorial corrections)**

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IN THE CORONERS COURT FOR NORTHERN IRELAND

IN THE MATTER OF AN INQUEST INTO THE DEATH OF
MARIAN BROWN

Before: His Honour Judge McFarland, Recorder of Belfast

Introduction

[1] This inquest concerns the death of Marian Brown. She was born on the 7 October 1954 and died on the 10 June 1972 at Roden Street, Belfast.

[2] An inquest into her death was conducted on the 4 July 1974 and an open verdict recorded. The Attorney-General for Northern Ireland directed on 16 July 2013 that a new inquest be held.

The law relating to the holding of inquests

[3] The inquest was heard by me sitting as a Coroner without a jury. Section 18(1) and (2) of the Coroner's Act (Northern Ireland) 1959 provides –

“(1)If it appears to the coroner, either before he proceeds to hold an inquest or in the course of an inquest begun without a jury, that there is reason to suspect that –

(a) *[repealed]*;

(b) the death occurred in prison; or

(c) the death was caused by an accident, poisoning or disease notice of which is required, under or in pursuance of any enactment, to be given to a government department, or to any inspector or other officer of a government department or to an inspector

appointed under Article 21 of the Health and Safety at Work (Northern Ireland) Order 1978; or

(d) [*repealed*];

(e) the death occurred in circumstances the continuance or possible recurrence of which is prejudicial to the health or safety of the public or any section of the public;

he shall instruct the Juries Officer to summon a sufficient number of persons in accordance with the Juries (Northern Ireland) Order 1996 to attend and be sworn as jurors upon such inquest at the time and place specified by the coroner.

(2) If in any case other than those referred to in sub-section (1) it appears to the coroner, either before or in the course of an inquest begun without a jury, that it is desirable to summon a jury, he may proceed to cause a jury to be summoned in accordance with the said sub-section."

This permits a Coroner to have a jury summoned in cases falling outside the categories set out in section 18(1). As a consequence, and without objection from the parties represented before me (the next of kin, the Ministry of Defence and the Police Service of Northern Ireland), I decided not to summon a jury in this inquest.

[4] Rules 15, 16 and 22(1) of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 provide as follows -

"15. 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.

16. 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 provided that nothing in this Rule shall preclude the coroner or the jury from making a recommendation designed to prevent the recurrence of fatalities similar to that in respect of which the inquest is being held.

22. (1) After hearing the evidence the coroner, or, where the inquest is held by a coroner with a jury, the jury, after hearing the summing up of the coroner shall give a verdict in writing, which verdict shall, so far as such particulars have been proved, be confined to a statement of who the deceased was, and how, when and where he died."

[5] The details relating to the findings required by Rule 15 are straightforward and not the subject of dispute. Marian Brown was the child of James and Teresa Brown and was born on 7 October 1954. She was unmarried and 17 years and 8 months and employed as a stitcher. She was pregnant at the time of her death. She was walking from her own home at 15 Stanhope Drive, Belfast to her sister's home at 7 Donegall Avenue, Belfast and at approximately 01.00 in the early hours of Saturday, 10 June 1972 she was at the junction of Roden Street and Grosvenor Road, Belfast. She was struck by a number of bullets, one of which passed through her neck horizontally. This bullet caused a severing of the spinal cord and would have resulted in immediate loss of consciousness and collapse, with death following rapidly thereafter.

[6] The main issue to be considered by me relates to the circumstances in which the bullet causing her death came to be discharged. Members of an army patrol (acting as agents of the State) had cause to discharge bullets in the vicinity of Marian Brown. Before the inquest began it was apparent that an agent of the State may have been responsible for firing the round that caused the death. Whilst the European Convention on Human Rights, as enshrined into United Kingdom law by the Human Rights Act 1998, did not apply at the time of the death, the timing of the Historical Enquiry Report and this inquest, means that the procedural requirements of Article 2 of the Convention applied to the inquest. Article 2 provides -

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his

conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

a. in defence of any person from unlawful violence;

b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

c. in action lawfully taken for the purpose of quelling a riot or insurrection.”

[7] It is therefore incumbent on me, as a Coroner to consider the broad circumstances in which the death occurred.

[8] The law and procedure under which Coroners consider matters relating to these types of inquests are well established. Rule 16 of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 is quoted above at [4] and this prevents attribution of any civil or criminal liability.

[9] Colton J in Re Deery [2017] NI Coroner 1 summarised the law in relation to the requirements of an inquiry into the broad circumstances of death at [8] and [9] in the following terms –

“[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] The inquest is to take the form of an inquisitorial fact-finding exercise. Colton J in Re Deery referred in detail to the correct approach to the burden and standard of proof. At [11] – [12] he stated -

“[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’.”

General comments concerning the inquest

[11] Evidence in the inquest was heard in June 2017. At the conclusion of the oral evidence the next of kin made an application to me to consider ordering an exhumation of the remains of Marian Brown. This necessitated seeking further written evidence from the five pathologists and the ballistics expert who had given evidence. In light of that evidence and after consideration of the application, I declined to order an exhumation by a ruling made on the 21 September 2017.

[12] Final written submissions were received from the next of kin and the Ministry of Defence in November 2017, with oral submissions in December 2017. Further clarification was sought in relation to possible outstanding disclosure matters in February 2018.

[13] Before dealing with the evidence in this case I consider that it is important to put on record my gratitude to Mr Philip Henry of counsel and Ms Cathy McGrann solicitor who appeared on behalf of the Coroners’ Service. I was also greatly assisted by Ms Fiona Doherty QC and Mr Desmond Fahy instructed by O’Muirigh Solicitors who appeared for the next of kin, and Mr. Kevin Rooney QC who appeared for the Ministry of Defence and Mark Robinson who appeared for the Ministry of Defence and the Police Service of Northern Ireland, both instructed by the Crown Solicitor’s Office. Finally it should be recorded that the work carried out by the investigator to the Coroners’ Service, Ms Amanda Logan, often at short notice and with a degree of urgency, has been invaluable.

[14] I propose to deal with the matter in the following fashion: first, by considering the circumstances in which the soldiers opened fire, and in particular if that was in response to other rounds being discharged by other parties; secondly, I

will then consider whether it can be determined what type of bullet killed Marian Brown and whether that bullet was discharged by a particular weapon, or type of weapon, and who discharged that weapon; thirdly, should I consider that Marian Brown was killed by a bullet fired by a soldier, whether the use of force was justified, which requires asking whether the soldier held an honest belief that the use of force was necessary and thereafter whether the level of force used was no more than was absolutely necessary. I will also consider whether the investigation into Marian Brown's death was adequate and whether the use of such force and the operation in which it was used, were planned regulated and controlled in such a way as to minimise to the greatest extent possible, any risk to life.

[15] In my analysis of the evidence I will apply the principles relating to the burden and standard of proof which I have set out in paragraph [10] above. In brief, that will mean that there is no burden of proof on any party in relation to the first two matters - the circumstances in which the soldiers opened fire and the source of the bullet that killed Marian Brown. If I consider that Marian Brown was killed by a bullet fired by a soldier, then a burden is placed on that soldier if he can be identified, and the Ministry of Defence, whether or not the soldier can be identified, as at the time each member of the patrol was an armed soldier on duty and therefore an agent of the State, to justify the discharge of the bullet in the circumstances pertaining at the time.

[16] Many of the witnesses gave evidence at the July 1974 inquest. Others made police statements (received by either civilian or military police) but did not give oral evidence in 1974. Some witnesses did not make any police statement at the time. The original Inquest depositions have been made available. It is clear that in 1974 the Coroners' Office had prepared draft depositions based on the police statement made by a witness. The signed depositions included script amendments. These would have been made by Mr. Elliott, the Coroner, and presumably in response to any additions, or departures, to or from the police statement made by the witness whilst under oath or affirmation at the time. The then practice would have involved the Coroner or a clerk reading back the amended statement to the witness who would then sign the deposition and adopt it as his or her formal evidence. For witnesses giving evidence for the first time at the 1974 Inquest, a deposition would have been prepared from their oral evidence and then signed at the Inquest. I discussed the processes involved in the 1974 inquest with counsel who appeared before me. All agreed on the procedure that was likely to have been followed in 1974. Whilst I had the statements made to the military police and the depositions or the draft depositions available to me, I did not have the statements made by civilian witnesses to the police.

Effect of Delay on Evidence

[17] Before starting to deal with evidence, it is worthwhile considering the comments of Horner J in Re Jordan [2016] NICoroner 1 at [76] - [79] relating to memory.

“[76] It is well recognised that delay of itself can cause injustice. This is because human recollection is fallible and it becomes, in general, more unreliable with the passage of time. This has been remarked upon in countless judgments. Any reasonable person knows that the separate recollections given today of an incident 25 years ago by two observers, no matter how vivid the happening, are likely to be very different. Further these recollections are likely to be very different from any recorded at the time. It is a universal truth recognised by many authors from Proust to Friel. I commented upon this in McKee (Michael) v The Sisters of Nazareth [2015] NIQB 93 at paragraph [8].

[77] In R v John Robinson [1984] 4 NIJB MacDermott J said at paragraph 15:

“In this respect the accused’s evidence is clearly wrong and I ask why this is so. Is he lying or his recall faulty? The shooting incident occupied a time space that could better be measured in seconds rather than minutes and events were occurring much more quickly than it takes to describe them. It was a period of high tension and, he believed, high danger for the accused. Some people have the gift of total recall of events lasting long periods – others can get mixed up as to events which were over in seconds. This is not a personal reflection – it was confirmed by the evidence of Mr Patton, consultant psychologist. Having observed the accused and sought to assess his credibility quite objectively I am satisfied that his recall in relation to this part of the incident is and will remain distorted and that he is not lying or seeking to conceal something from me.”

[78] The problems with memory are compounded by delay. The law has long recognised this. Girvan LJ discussed the problem in R v JW [2013] NICA 6 in the context of historical sexual abuse. He said:

“[14] What has been said in the context of the prejudice created by delay in the context of civil litigation applies with even greater force in the context

of criminal proceedings for the outcome of criminal proceedings may subject the defendant to potentially severe penal consequences and to extensive damage to his private life and reputation. In Birkett v James [1978] AC 297 in the context of a civil case of alleged want of prosecution Lord Salmon said:

‘When cases (as they often do) depend predominantly on the recollection of witnesses, delay can be most prejudicial to defendants and to the plaintiff also. Witnesses’ recollections grow dim with the passage of time and the evidence of honest men differs sharply on the relevant facts. In some cases it is impossible for justice to be done because of the extreme difficulty in deciding which version of the facts is to be preferred.’

As was pointed out by the Law Commission in its Consultation Paper 151 on Limitations of Actions the justification for limitation periods lies in the key concern that a defendant may have lost relevant evidence and be unable to defend the case adequately. Due to the loss of vouchers or other written evidence and the death or disappearance of witnesses it might be very difficult if not impossible for a defendant to meet a claim made after several years had gone by. Even where witnesses are still available they might have no memory or an inaccurate memory of the events in question. As long ago as 1829 in their first report the Real Property Commissioners (Parliamentary Paper 1829 Volume X 1, 39) stated that:

‘Experience leads us to the view that owing to the perishable nature of all evidence the truth cannot be ascertained on any contested question of fact after a considerable lapse of time.’

If this proposition were invariably the case all old criminal cases would be bound to be stayed because justice could not be done and a fair trial could not be conducted. Our criminal law does not go that far. A more accurate way of expressing the matter is that as time elapses the ascertainment of the truth of an allegation becomes increasingly difficult. As the Law Commission paper demonstrates it is clear that “it is

desirable that claims which are brought should be brought at a time when documentary evidence is still available and the recollection of witnesses are still reasonably fresh". This is the best way to ensure a fair trial and thus to maximise the chance of doing justice. Delay of its very nature increases the risk of injustice occurring. This is a point which any summing up should bring home to the jury so that they sufficiently appreciate the point.

[15] Where a recent complaint of sexual abuse is made a detailed investigation can be made of the allegation in its full factual matrix. The time of the alleged incident can be identified. The location can be identified, examined and photographed. Forensic examination can be carried out of the scene of the alleged crime, of the complainant and of the defendant. Body samples can be taken and analysed. Potential witnesses can be clearly identified and questioned. The precise familial or social context in which the alleged events happened can be closely scrutinised so that as clear a picture as possible can be formed of the full context of the alleged abuse. Any alleged recent complaints to third parties can be carefully scrutinised. The defendant will have an opportunity against the picture flowing from a recent investigation to put forward explanations of the alleged events, can respond to the specific allegations in their precise context and can present a full defence (such an alibi) if one is available. Where an allegation is made long after the event and is made in an unidentified and wide time frame the police can carry out few of the investigative steps open to them at the stage of a recent complaint. The defendant thus suffers the real and clear prejudice presented by the fact that the complaint cannot be fully scrutinised and investigated in the light of recent events by an impartial police investigation. A consequence flowing from this is that the case will often come down to what is in reality a dispute between two persons with one person's word against another. A jury must fully appreciate the risks presented by having to decide a case on that basis since it necessitates the jury deciding whose evidence is preferable in the absence of any of the police investigative steps which are normally

available to subject to scrutiny the honesty and reliability of a recent complaint. The absence of such timely investigation often removes the possibility of a more objective analysis. A jury should be made aware in the course of the summing up of these difficulties presented to a defendant arising out of a late complaint and a delayed investigation.”

[79] In this inquest nearly 25 years have passed since the events which are under detailed consideration took place. The passage of such a period of time is bound to have affected the recollections of those who witnessed and participated in the events of that fateful day 25 November 1992. Some witnesses may have deliberately tried to erase these terrible events from their memory. Some may, whether consciously or sub-consciously, be simply remembering the statements they gave after the event and/or their testimony to the original inquest in 1995 and/or the 2012 inquest. It is important that I recognise the weaknesses and difficulties that face any witness trying to recall accurately what happened a quarter of a century ago, a length of time greater than the period between the ending of the First World War and the commencement of the Second World War. It is not possible to over-estimate the difficulty in relying on sworn testimony in a search for the truth at a remove of 25 years from the event to which it relates.”

[18] I appreciate the difficulty the witnesses would have had trying to remember details about what had happened about 45 years ago. Some may have put it out of their mind, others may have been constantly reminded of the event and found it difficult to put out of their mind. For those who have re-lived the event, memories could have become distorted to fit into a perception of what they believe happened or should have happened or what others have told them had happened or should have happened. Crown Court judges are required to warn juries when assessing circumstantial evidence to be alert to the tendency of the human mind to look for (and often to slightly distort) facts in order to establish a proposition, so also should tribunals of fact be alert to genuine witnesses having distorted memories (whether remembering or forgetting things) that fit into their perception of what they believe happened. The gap of 45 years in no way assists the witnesses or anyone attempting to assess their evidence.

[19] I would also wish to record my thanks to all the witnesses who gave evidence. This event took place 45 years ago and trying to remember the event

could have been difficult, and for some, it would have brought back painful memories. Some witnesses co-operated at relatively short notice, and others travelled significant distances to give oral evidence.

The lay-out of Roden Street and the general location

[20] The incident took place in Roden Street in Belfast. Roden Street runs in a north-south direction between Grosvenor Road to the north and Donegall Road to the south. Roden Street, and the adjoining streets, consisted of terraced houses. From a contemporary photograph many of these houses are shown as bricked up. This would reflect the evidence given by David Clarke a local resident in 1972 that the communal strife that was evident at that time in Belfast, was present at the northern end of Roden Street with pressure being placed on Protestant/Unionist residents to leave, and with them being replaced by members of the Catholic/Nationalist community who had suffered similar pressure in other areas of the city.

[21] Of particular relevance to the inquest are the adjoining streets of Clifford Street and Neely Street to the west and Excise Street and Burnaby Street to the east. Clifford Street is approximately 200 metres from the Grosvenor Road. Excise Street is approximately 100 metres from the Grosvenor Road. Burnaby Street and Neely Street form what is a crossroads with Roden Street and this is 75 metres from the Grosvenor Road. Neely Street is about 95 metres in length and at its end (with the junction with Mulhouse Street) was an army sanger (which I presume was a reinforced bunker).

[22] The area is now completely redeveloped. Roden Street remains but is now effectively two cul de sacs caused by the construction of the Westlink (A12) with only a pedestrian bridge connecting the two ends. Although Roden Street follows the same route, it and the adjoining streets have been demolished and rebuilt, with the adjoining streets laid out to a different design. A site visit would have been of little use, and reliance has been placed on contemporary maps, copy photographs, and some copy press photographs, all of which are of relatively poor quality. A copy of the Ordnance Survey sheet showing the area as at the time of the shooting is annexed in Annex 1.

[23] Members of an Army patrol have accepted that they were in the area of the junction with Clifford Street and Roden Street and that firearms were discharged by members of the patrol along Roden Street in the direction of Grosvenor Road.

Situation in Belfast on 9/10 June 1972

[24] The intelligence reports provided in evidence to the inquest indicate that during this period there was a high level of tension. The Army Headquarters NI Intelligence Summary for the period 8 – 14 June 1972 indicates that there were 323 shootings and 40 bomb incidents. 5 soldiers had been killed (one while off-duty) and 4 wounded, 2 police officers were wounded, one prison officer was wounded, 3 suspected terrorists were killed, 2 wounded and 30 other hits on terrorists were claimed. 3 civilians had been killed and 33 injured.

[25] The INTSUM (intelligence summary) for the Belfast area for the period 7 – 13 June 1972 indicates that UDA barricades had been established throughout areas of Belfast over the weekend 9/11 June and that the most serious inter-sectarian gun battle seen in Belfast “for some time” had occurred in the Bone area (Oldpark/Ardoyne area) with one soldier, one IRA member and two civilians killed.

The Soldiers involved

[26] The 3rd Battalion the Royal Anglian Regiment were stationed at the Mullhouse Mill, a converted former mill situated just off Roden Street, with entrances at Mullhouse Street (which ran to Grosvenor Road), and Clifford Street (which ran to Roden Street). The soldiers involved in the incident that resulted in Marian Brown’s death were part of an eight man patrol from that Battalion. On returning early from its uneventful patrol, it was ordered out by an officer to man a static checkpoint at the junction of Clifford Street and Roden Street. The checkpoint consisted of an Armoured Personnel Carrier (“APC”) parked up in Clifford Street with the front protruding into Roden Street. It was under the command of a corporal and consisted of a lance-corporal and six privates, each taking up different positions within or beside the APC and on both sides of Roden Street but in the vicinity of the APC.

[27] Each of the military witnesses was given a cypher letter, although at different stages during the preparation for the inquest, anonymity orders were considered and decisions made based on the individual circumstances of each witness. Some were deceased and in some cases family members sought anonymity. Some soldiers sought anonymity and others did not. For convenience I will use the cypher letters as these were used in the preparation for the inquest, during the inquest itself and in the written and oral submissions from the parties. I do not propose to annex the individual decisions relating to anonymity, some of which were granted. The names of the soldiers mentioned in this ruling who were not granted anonymity are Soldier C – John Kendall, Soldier D – Michael Hedderman, and Soldier F – Gerald Jones.

The civilians present on Roden Street

[28] There were three groups of civilians on Roden Street at or about this time. At the western or Royal Victoria Hospital side of the Roden Street/Grosvenor Road

junction were Marian Brown, Thomas Corrigan and Marie Fusco; on the eastern or City Centre side of the junction were Teresa Simpson, David Clarke and Maura Hughes and on the eastern side of Roden Street near Burnaby Street (about 75 metres from Grosvenor Road) were Elizabeth McManus, Lawrence Wilson and Michael McGuigan. I have used the word 'groups' very loosely and more to describe their location. Elizabeth McManus, Lawrence Wilson and Michael McGuigan were together as a group; Marian Brown and Thomas Corrigan were together but not associated with Marie Fusco and David Clarke and Maura Hughes were also together but not associated with Teresa Simpson.

[29] As to how the civilians came to be at the various locations, Marian Brown, Thomas Corrigan and Teresa Simpson (Marian Brown's married sister) had been at the Brown family home at Stanhope Drive, Belfast and were walking in the direction of Teresa Simpson's Donegall Avenue home, where Marian Brown was planning to spend the night. Thomas Corrigan was Marian Brown's boyfriend and was walking with her. At this junction they were to go their separate ways with Thomas Corrigan going westward along the Grosvenor Road and the two sisters going along Roden Street. Marian Brown and Thomas Corrigan were embracing at the western side of the junction and Teresa Simpson had remained on the eastern side. Marie Fusco had come independently across the Grosvenor Road to be at the western side in close proximity to Marian Brown and Thomas Corrigan. At the same time David Clarke was walking his babysitter, Maura Hughes, home. (David Clarke has given differing accounts as to whether he was walking away from his home in Excise Street off Roden Street, or away from where Maura Hughes was staying (off Grosvenor Road) and towards his home at the time. I will deal with this point in more detail later in this ruling.) Elizabeth McManus, Lawrence Wilson and Michael McGuigan had all been working in the Abercorn restaurant that evening and the gentlemen were walking Elizabeth McManus to her home on Roden Street.

[30] There is no suggestion that any of these civilians were carrying or using firearms or were acting in a manner that could give rise to anyone believing that they were armed or were acting in such a fashion that could be interpreted as disorderly or in breach of the law, or causing any threat to anyone.

The evidence given at the inquest

Ballistics evidence

[31] To put the evidence given by the various military and civilian witnesses into context it is important to consider the evidence of Leo Rossi, a forensic expert in the field of weapons and ballistics. He told the Inquest that the standard issue army weapon at the time was a self-loading rifle ("SLR") which fires 7.62 x 51 mm calibre rounds at high velocity. All the soldiers confirmed that they were armed with this weapon. It is a semi-automatic weapon, discharging single shots when the trigger is pulled. A Thompson sub-machine gun fires .45 inch calibre rounds and is fully automatic with rounds being discharged as long as the trigger remains pulled or

until the magazine housing the rounds becomes jammed or is empty. The term 'automatic' refers to the design of the weapon which uses the energy of a round being discharged and the internal mechanism of the weapon to eject the spent casing and move the next round into the breech from which it is then discharged.

[32] The velocity is determined by the speed of the bullet, with the SLR discharging bullets at 2300 feet per second and the Thompson at 920 feet per second. The single shot from the SLR emits a single sharp crack and the Thompson emits a duller repetitive report. The volume of either weapon can be distorted by atmospheric conditions and the acoustics created by the proximity of buildings.

[33] Each weapon will display a muzzle flash when fired. This flash is caused by the combustion of the propellant in the ammunition. The brightness of the flash will depend on the type of ammunition used. The normal military SLR weapons are fitted with muzzle flash suppressors, and similar devices can be placed on other weapons including the Thompson, the device being affixed and removed with relative ease. The purpose of the suppressor would be to attempt to reduce the ability to spot the location of the weapon when being discharged thus protecting the user from counter-fire. Whether or not a muzzle flash is visible will depend on its brightness, the extent of any suppression and the general lighting and environmental conditions at the time.

[34] When a round strikes a hard surface there may be a flash caused by the impact. This would be less pronounced than a muzzle flash, although the intensity of the flash will depend on the nature of the surface, the angle of strike and the nature of any damage caused to the bullet and the surface.

Gunman

[35] Many of the witnesses have used the word 'gunman', and this is also a word used in intelligence reports and army logs. In Northern Ireland, it is a readily used and understood word and I have also used it for convenience. My understanding of the use of the word by the different witnesses and in written records, and the basis of my use, is that it describes an armed civilian of either sex engaged in carrying or firing a weapon. The word 'civilian' has also been used by witnesses and by me and others. My use, and the assumed use of the word by others, denotes a person who is not a member of the army, or a police officer, and not a gunman as I have described above.

Police evidence

[36] Detective Chief Inspector Meenehan was unable to attend the inquest due to illness, but did give evidence at, and prepared a report for, the 1974 inquest. He was in charge of the investigation into the death. In 1974 he stated that there had

been a heavy gun battle between the army and terrorists that night at a location about a quarter of a mile away from this scene in the Clonard area. In relation to the presence of bullet marks or strikes he said there had been a lot of shooting in the area and that it was impossible to place a date of such marks or strikes. He confirmed that no empty bullet casings were found at the locations where civilians were said to have fired weapons, despite a search by the army. In his summary for the earlier police inquest file (dated 28 December 1973) he reported his conclusions as follows *"As a result of examining the statements of all the civilians and military personnel, it appears there is a conflict of evidence. The military are satisfied the first burst of shooting came from the Grosvenor Road followed by shooting from Burnaby Street and it was this burst which caused the injuries to the civilians. The civilians agree there were an initial 3 or 4 shots generally from the Grosvenor Road direction but they say that the bulk of the firing that which caused the injuries and fatality, came from up Roden Street. It may be said here that on the night in question there was considerable shooting in the Falls area between terrorists and members of the Security Forces..... In spite of search by the Military there were no empty cases found at the gunman's location."*

[37] Constable John Moffitt is deceased. He made a statement at the time, but does not appear to have given evidence in 1974. His statement indicates that he examined the scene on the 12 June 1972 and observed 'bullet holes' in the buildings on Roden Street at the location of Marian Brown's death, with obvious evidence of people trying to recover bullets from the brickwork. The actual bullet strikes noted by him were as follows –

- Door frame of 1 Roden Street
- Right side of downstairs front window of 1 Roden Street
- Left side of the downstairs front window of 1 Roden Street
- Drainpipe between upstairs windows of 3 and 5 Roden Street
- Right side of window of 5 Roden Street
- Right side of door of 9 Roden Street
- Right side of the downstairs window of 11 Roden Street
- Right side of door of 11 Roden Street
- Between the two upstairs windows of 15 Roden Street
- A number of strikes on the blocked up windows of Hannigan's public house.

At the time he was being protected by an army patrol, and refers to hostile residents refusing to permit him to search for bullets. He was aware that the residents were alleging the army were responsible for the bullet marks and in light of this he makes the comment that some of the marks were of an appearance suggesting direct hits, probably coming from the Burnaby Street direction. I assume he meant that the marks had the appearance of a perpendicular or near perpendicular direction of fire as opposed to a more narrow angled direction of fire. He does describe seeing some marks which would have been caused by a narrow angled glancing ricochet.

[38] No one was ever interviewed or charged, nor was anyone ever prosecuted for any offence arising from the shooting at Roden Street

Evidence from the soldiers

[39] Soldier F was nearly 19 at the time and is now deceased. He gave evidence to the 1974 inquest. I had his deposition which contained some manuscript additions, presumably to reflect the answers given by him to questions asked during the 1974 inquest. He described being on duty in the army sanger protecting the entrance into Mulhouse Street Mill. At 00.50 he observed a muzzle flash from the corner of Roden Street and Neely Street near the old police station (on the western side). He gives no further description of this muzzle flash or bullet associated with it. He then was aware of an attack to his rear from the Mulhouse Street side adjacent to Grosvenor Road, when about 30 rounds were fired and struck his sanger from what he described as a slow firing heavy calibre automatic. He said that he returned one round from his SLR in the direction of the muzzle flash he observed at Roden Street/Neely Street. The exchange of fire that Soldier F described would have been perpendicular to the direction of Roden Street and the automatic fire would have been in a parallel direction to Roden Street (one block to the west).

[40] Soldier A gave evidence in 1974 and before me. I had his deposition from the 1974 inquest. He also provided a further written statement in advance of my inquest dated 18 May 2017. He was a lance corporal and second in command of the patrol of eight soldiers. They had returned early from a patrol and had been ordered out by an officer to man a static checkpoint at the corner of Clifford Street and Roden Street. The patrol's APC was parked out into Roden Street and he was in the vicinity of the carrier. He said that he heard 2 or 3 low velocity shots with no idea of the actual location. He moved into a position to observe the Grosvenor Road end of Roden Street. In oral evidence before me he said that he observed two gunmen one at each side of the end of Roden Street and observed muzzle flashes from each location. Previously in his statement and in 1974 he did not mention these individuals or the muzzle flashes. He then saw a vehicle moving slowly in a westerly direction along Grosvenor Road across the mouth of Roden Street. He then saw muzzle flashes from the front passenger window and heard the discharge of about 30 to 35 rounds of automatic fire. He believed that the fire was directed at soldiers. He fired one aimed round at the muzzle flash and was confident that he hit his intended target. He indicated that "I never miss" and this apparent boast may have some credence given his expertise as a marksman having represented his Regiment at shooting competitions. It is noted that he returned from Bisley to attend the 1974 inquest, Bisley being the army shooting centre, and in a report of 1974 a reporting officer stated "*He is a very good shot and his personal knowledge and ability is of quite a high standard*". He described the car as swerving to the right and then speeding off.

[41] Soldier E also gave evidence in 1974 and before me. I had his 1974 deposition and, like Soldier A, he provided a further statement for my inquest dated

17 March 2017. He held the rank of corporal and was in charge of the patrol. He was at the APC, and said that he observed five civilians at the junction of Roden Street and Grosvenor Road, and then a car moving slowly along the Grosvenor Road from right to left. He was then aware of shots being fired from the rear of the car by what he perceived to be a Thompson machine gun. He described the rounds as being directed at the civilians who dropped to the ground. Because of a clear field of vision, he then ordered his patrol to fire at any gunman they observed. He heard shots being fired by his patrol. He described firing 3 shots at the car but does not know if he hit the car. He then saw muzzle flashes coming from an automatic weapon located at the western corner of Roden Street and Grosvenor Road, but did not see any person. He was aware that fire was being directed by other soldiers at the muzzle flashes. He said that a soldier later told him that this person had been observed getting into the car.

[42] He said in his 1972 statement that he then became aware of a gunman with a pistol at the junction of Roden Street and Burnaby Street and observed two muzzle flashes. He then directed two aimed shots at the person, hearing two bullet strikes at the corner of 26 Roden Street. In his oral evidence in 1974 he said that he did not see this gunman or fire at the gunman as he was working at the radio at the time. He had been relying on what another soldier had told him. Before me he said that he had seen this gunman and had fired two rounds.

[43] Soldier B made a statement in 1972 but did not give evidence in 1974. He gave evidence before me by way of a live feed from abroad. Whilst he did not record a further statement in 2017, there were reports available from the Coroners' Service investigator detailing her conversations with the former soldier. (The next of kin, in their submission, have erroneously submitted that his evidence is based on his written statement but nothing of significance arises from this.) He was 18 at the time and had taken up a position at the doorway of 62 Roden Street protected by the entrance wall. 62 Roden Street is on the east side and about 25 metres closer to the Roden Street/Grosvenor Road junction than the APC. He described Soldiers C and D taking up a defensive position opposite to him at the entrance to a yard. He observed a figure moving in and out of sight at the western junction of Roden Street and Grosvenor Road.

[44] Soldier B then observed muzzle flashes and he heard a slow firing heavy calibre automatic weapon. He considered that the shots were aimed at his position and referred to seeing two groove marks on the pavement beside him. He then took aim at the muzzle flashes and fired six shots in succession. He said the firing continued so a further 6 aimed shots were fired at the target. As the firing still continued 8 further shots were discharged by Soldier B, and at this stage the gunman altered his firing position from his shoulder to his hip, although he said that the gunman could have been kneeling at that stage. Soldier B had run out of ammunition and withdrew out of sight into the doorway. He heard 4 or 5 further shots and then all firing ceased. He is not aware of hitting any person with his fire.

Under cross-examination he clarified that he did not actually see anyone at this location only muzzle flashes. Later he was at the mouth of Roden Street and was aware of blood on the pavement on the western side, and despite looking for bullet casings he did not see any.

[45] Statements were read from Soldier C who is now deceased and Soldier D who could not be located in order to secure his attendance at the inquest. Neither had given evidence in 1974. Soldier C was 22 and Soldier D was 20 at the time. Both had taken up a position as described by Soldier B in the entrance to a yard on the western side of Roden Street. Soldier C heard two shots but did not observe a gunman or any bullet strikes. He then saw a figure standing at the western junction of Roden Street and Grosvenor Road and then muzzle flashes from this figure. He heard 2 or 3 bursts of automatic fire. He returned 7 rounds at the figure. His SLR then jammed and he withdrew behind cover to unblock his weapon. When he had completed the unblocking of his weapon, the firing had stopped. He described the incident as lasting 30 seconds.

[46] Soldier D said that he heard continuous automatic fire coming from the junction of Roden Street and Grosvenor Road but did not return fire at that stage. He did see muzzle flashes from the western side of the junction and observed a person run across Grosvenor Road and jump into a car which drove eastward (cityward) down the Grosvenor Road. He fired 5 aimed shots at the car. Two shots struck the car but he was unsure about the others. He was unaware of any civilian presence.

[47] No statements appear to have been taken from the remaining three members of the patrol. No clear reason emerged for this, but I can only assume that it was considered at the time that they did not make any material observations or participate in the exchange of fire. The evidence from the patrol members did appear to suggest that other patrol members were inside the carrier or in its vicinity and this could explain the fact why no statements were taken.

[48] Soldier H did not make a statement but gave oral evidence. He was a member of the Special Investigations Branch of the Royal Military Police in 1972 holding the rank of corporal or acting sergeant. He was in charge of a team of six investigators who would have worked in pairs in plain clothes and unmarked vehicles. If there was a shooting incident involving a soldier the procedure was that he would be notified, he would contact the military unit concerned, and then proceed as soon as possible to a venue where the personnel involved could be interviewed.

[49] In this case he remembers the death of Marian Brown. A notebook entry indicates that he recorded statements from Soldiers A, B, C and F about 11.20 on 10 June 1972. (As more statements had been taken from other military personnel I am assuming that another soldier, the unidentified 'pair' of Soldier H, was responsible

for those statements and that they were taken at or about the same time and in a similar fashion.) He had no memory of visiting the scene, although he said that this would have been extremely difficult to arrange as a security cordon would have been necessary to protect investigators. At the time they were working under a lot of pressure given the number of investigations required. After taking the statements they would be typed up, a brief report summarising the matter would have been prepared and then submitted to his headquarters at Lisburn HQ. There would have been very little liaison with the local civilian police at his level.

[50] Soldier H was describing his role under RUC Force Order 148/70 which applied to investigations at this time. The Order has been the subject of judicial comment (see Re Thompson's application [2003] NIQB 80) and in the Bloody Sunday report relating to events on 30 January 1972 and I will deal with this later in this ruling). The Order placed an effective barrier between civilian police personnel and army personnel. The actual terms of the Order required the police to complete an investigation and then forward the report to the Royal Military Police who would then undertake the interview of military personnel. It would appear that what actually happened on the ground was not as envisaged by the Order. The Royal Military Police did not wait for a report to be forwarded by the police, but started its own investigations immediately and took statements from the soldiers. In this case Soldier H had worked in parallel with the civilian police and not sequentially as envisaged by the Order.

[51] In summary the evidence given by the soldiers who had been on patrol appears to show the following-

- About 30 rounds were fired from the Grosvenor Road along Mulhouse Street at a sanger occupied by Soldier F. (Mulhouse Street runs parallel to Roden Street, about 100 metres to the west.)
- A gunman was observed by Soldier F and by Soldier E in the vicinity of the Roden Street, Neely Street and Burnaby Street crossroads. It is uncertain if the gunman was the same person or these were separate sightings of different people. Soldier F fired one round and Soldier E fired two rounds at the gunman they observed.
- Soldier A heard 2 or 3 low velocity shots from an unknown source.
- Soldier A and Soldier E observed a car moving westward on the Grosvenor Road. Soldier A heard 30 to 35 rounds of automatic fire from the front passenger seat. Soldier E observed a burst of fire from a Thompson machine gun from the rear passenger seat. Soldier A fired one round at the car and Soldier E fired three rounds at the car.
- Soldier D fired five rounds at a car which picked up a gunman and was travelling eastward on the Grosvenor Road.
- Soldier E saw muzzle flashes from the western corner of the Roden Street and Grosvenor Road junction.

- Soldier B saw and heard a slow firing heavy calibre automatic weapon from the same location. This firing continued from this location as he returned fire with three sets of rounds, six, then another six and finally eight.
- Soldier C saw a figure at the same location and then muzzle flashes. He fired seven rounds at the figure. Prior to this he heard two rounds from an unknown source.

[52] The consistent evidence from the soldiers was that there was no real record kept in relation to the issue and return of ammunition at the time. The SLR magazine could hold 20 rounds and in their evidence the soldiers confirmed that they had magazines with that number of rounds, although the evidence from Soldiers D and E is that they had 21 rounds, with one in the breech of the weapon. There is no way of accounting for the number of rounds discharged. The evidence is that 39 rounds were discharged in total, three in the direction of the Roden Street, Nelly Street and Burnaby crossroads, nine in the direction of a car or cars moving along the Grosvenor Road, and 27 in the direction of the western corner of Roden Street and Grosvenor Road.

Evidence from the civilians

[53] The civilians were present at the scene at three locations. Three workmates from the Abercorn Restaurant in Belfast were returning home from work. When the shooting started they were the closest group of civilians to the soldiers. Michael McGuigan and Robert Wilson were walking Elizabeth McManus to her home in the Roden Street area. Michael McGuigan gave evidence in 1974 and again before me. I had his 1974 deposition, an attendance note that was recorded when he spoke with the next of kin's solicitor, and his response to a questionnaire. A number of civilian witnesses provided answers to a standardised questionnaire which were recorded by the next of kin's solicitor in 2017 and given to the inquest. Michael McGuigan said that they had come up from the city centre along the Grosvenor Road and then turned left into Roden Street. They were walking along the left hand side of Roden Street. He had little memory of the incident now, but his deposition in 1974 indicated that they had just passed the Excise Street junction when he heard shooting coming from behind them from the Grosvenor Road or Burnaby Street. He thought that it was not directed at them. He described it as a few shots in quick succession but he had no idea how many shots were fired or whether it was automatic fire or what were the velocity of the rounds. He described how they took cover by flattening themselves. He was questioned about the first shots because his 1974 evidence was that they came from behind him, which would have been from the Grosvenor Road direction. His oral evidence was unclear on this issue, although I have sympathy for this witness owing to the passage of time.

[54] There was then a second burst of fire from the Clifford Street direction, again not directed at them. They took more cover and then he remembers shots "peppering" the pavement close to them and then being shot at with a continuous

burst of fire. He then moved round the corner into Excise Street. At this time he became aware that Elizabeth McManus and Robert Wilson had been struck by bullets.

[55] Robert Wilson is now deceased. Although his deposition is signed as having been taken by the Coroner it is not signed by Robert Wilson, and there is a note "cannot be traced" in what appears to be the Coroner's handwriting on the document. It is therefore unlikely that his evidence was given under oath at the inquest but was a transcription of an earlier police statement. It states that on passing Excise Street he heard machine gunfire "from up towards Donegall Road". He then heard a lot more shooting which was close to them. They attempted to take cover and he was shot in his buttock. He stated that most of the shooting came from the Donegall Road end although he also heard shooting from the Grosvenor Road which he took to be soldiers stationed at Neely Street.

[56] Leo Rossi examined a distorted flattened bullet fragment that was recovered from Robert Wilson's buttock and stated that it was part of a 7.62 x 51 mm calibre copper jacketed bullet and the type used by the Ministry of Defence at the time and fired from a 7.62 mm SLR. He did acknowledge that it could also have been discharged from a weapon capable of discharging a 7.62 x 51 mm round. This examination took place on 22 June 2010. An earlier examination by Victor Beavis also from the Forensic Science Laboratories in Belfast on or after 4 July 1972 revealed three grooves on the fragment but Mr Beavis was unable to identify its calibre or the weapon from which it was discharged. I put the ability of Mr Rossi to determine the calibre of the round to developments in forensic science in the 38 years between the two examinations.

[57] Elizabeth McManus, the third witness of the Abercorn group, could not be traced. She did not attend the 1974 inquest and her draft deposition is marked 'In Brussels'. The draft deposition, which presumably was prepared on the basis of an earlier police statement, states that when they had crossed over Burnaby Street she heard two shots or more, which she described as single shots but she did not know if they came from a rifle or pistol. She described the shots as coming from the McDonnell Street area. (McDonnell Street is on the north side of Grosvenor Road near the Roden Street junction.) They then slid down for protection. When they started to move round a corner she heard another burst of firing from the Clifford Street area and she thought this was a long burst of automatic fire for a minute or more. She was struck by two bullets one to upper forearm (she does not say if left or right) and the other to the right mid-thigh.

[58] Looking at the evidence from the Abercorn group, there are accounts of shooting coming from the general direction of the Grosvenor Road/Roden Street junction, which is consistent with the soldiers' accounts of where the gunman or gunmen were generally. However, I have to take into account that I heard oral evidence from only one of the three witnesses, and he was unclear on this particular

issue. Further, in respect of the two witnesses I have not heard from, whilst it can be presumed that the two draft depositions of Robert Wilson and Elizabeth McManus were based upon earlier statements recorded from them by the Royal Ulster Constabulary, those police statements and the pertaining declarations are not available to me. These are all matters I have to take into account when considering what weight to attach to the evidence available from them or purporting to be from them in the various forms.

[59] Another group of civilians was in the vicinity of eastern side of the Roden Street and Grosvenor Road junction. David Clarke gave evidence in 1974 and again before me. He and his wife lived in Excise Street. He described the area as being “explosive” at the time and plagued by numerous shooting incidents. On returning home he was walking their babysitter, Maura Hughes, to a house in Linview Street (which is off the southern side of Grosvenor Road two blocks down towards the city centre from Roden Street). In evidence he said that his memory of the event was good, although his oral evidence did differ substantially from what was recorded in his 1974 deposition. He could give no real explanation for the differing accounts.

[60] In his 1974 evidence he had said that he had walked with Maura Hughes up to the corner and he had remained there watching Maura Hughes proceed along Grosvenor Road and turn into Linview Street. He then turned round and re-traced his steps back along Roden Street away from the junction before becoming aware of a lady walking behind him with a pram. (This would have been Teresa Simpson). He heard three shots and commented to Teresa Simpson that the shooting was close. He said the shooting has high velocity from the Grosvenor Road but he was unsure what side of the junction with Roden Street. He did not see anything. The odd vehicle was passing but there was no vehicle stopped at the junction. About 20 seconds later he heard a fusillade of fire from the Roden Street/Clifford Street area. He thought at least 50 shots had been aimed at the junction. He then described how he and Teresa Simpson dived for cover and on looking up he saw two people on the other side of the junction lying on the ground.

[61] At this inquest, he said that he was still with Maura Hughes walking towards the junction of Roden Street and Grosvenor Road when he heard shots from behind him but had no idea where from and they were some distance away. He then remembers crouching down with Maura Hughes beside numbers 2 or 4 Roden Street and seeing Teresa Simpson with the pram. He then was aware of two shots hitting the building above him and debris falling on his head. (The next day he remembered seeing two bullet marks on this building.) He was aware of two further shots but had no idea from where any of these four shots came from. He then described being concerned about the lady with the pram and crossing over the junction to the western side to check her and the pram. At this stage he recollected a vehicle passing countryward on the Grosvenor Road. On reaching her he observed her to be on the ground with a serious wound to her face. Then he heard a final burst of rapid automatic fire which he described as coming from the army

sanger on Mulhouse Street at its junction with Neely Street. He flagged down a passing taxi and placed the lady in the taxi which drove away. He then returned to Maura Hughes and walked her home. He repeated that his current recollection was correct and remembers reading the press reports afterwards about a 'gunfight' when he was sure that the army were not involved at all as he only saw soldiers after the shooting was over. It is clear that David Clarke is confused in relation to the individuals concerned. The lady with the pram was Teresa Simpson and she was, and remained, on the eastern side (with David Clarke) and was not struck by any bullets. Marian Brown was not pushing a pram, and she remained on the western side. Although there is no record of how her body was removed from the scene, it is extremely unlikely that a taxi was involved.

[62] Maura Hughes had not been spoken to in 1972 and through information given by David Clarke at the inquest she was able to be traced during the currency of the inquest. The Coroners' Service investigator provided a short note of the conversation she had with Maura Hughes and a short statement dated 16 June 2017 was also available. She gave evidence to say that she was 17 at the time and had been walking with David Clarke along Roden Street back to what was her brother's home in Linview Street. They were half-way between Excise Street and the Grosvenor Road when she heard 4 or 5 shots but did not know from where the shots came from. She remembers sheltering down and at some stage running home. She was aware of a couple at the junction but of little else and did not remember any more shooting. Attending Court to give an account in a formal setting for the first time some 45 years after the event was a difficult task. This witness did not have the benefit of any contemporary statement or note of her observations recorded closer to the time of the shooting.

[63] Teresa Simpson provided a deposition to the 1974 inquest and gave evidence before me. Her oral evidence was largely in keeping with her 1974 deposition. I also had her responses to the questionnaire and statement dated the 11 January 2017. She described that she was in the company of her sister Marian Brown and Thomas Corrigan and had walked from her parent's home on her way down Roden Street to her own home on Donegall Avenue (off Donegall Road). She was pushing a pram containing groceries. She described her sister and Thomas Corrigan as being on the western side of the junction and that she remained on the eastern side, walking slowly down Roden Street in anticipation that her sister would catch up with her. She then heard what she described as automatic gunfire with possibly other gunfire with it and coming from a gateway up Roden Street. She described the shooting as going on and on and was only aware of the shooting from Roden Street. She was definite that no shooting came from Grosvenor Road. She fell to the pavement. She was asked about the soldiers' accounts of a car and gunman or gunmen at and around the junction. She said that she did not see any of that happening.

[64] The group on the other corner of the junction consisted of Marian Brown, Thomas Corrigan and Marie Fusco. Thomas Corrigan was Marian Brown's

boyfriend and was 18 at the time. He had walked with Marian Brown and her sister to this junction and they were then planning to go in different directions, with Thomas Corrigan going westwards up the Grosvenor Road. He gave evidence in 1974 and again before me. He said that he had not made a statement to the police before the 1974 inquest and he said that the words and phrases in his deposition were not words and phrases that he would have used at that time in his life. I also had two statements from him dated February 2015 and his responses to the questionnaire. Whilst he did not think he would have used some of the words appearing in his 1974 deposition, he did not take any significant issue with the actual content of the deposition and its accuracy. He said that he was embracing Marian Brown when he heard shots ring out but was not sure from where. They were "loud". He then grabbed Marian Brown and tried to move towards the shelter of the buildings when he then remembers being shot. During his oral evidence before me he was taken through the direction he was facing and the direction Marian Brown was facing when the shooting started, as well as their movements after the shooting. This is something I return to later in these findings. He remembers little of the incident after the point when he was shot. He was struck by a number of bullets. His injuries included multiple lacerations to his left cheek with a double fracture of the zygomatic (or cheek) bone, entry and exit wounds to the left side of the chest which damaged his diaphragm and liver, and a compound comminuted fracture of the right elbow. He required emergency surgery and was finally discharged from hospital on the 4 July 1972.

[65] Marie Fusco lived at 39 Roden Street and gave evidence at the 1974 inquest and before me. I also had her response to the questionnaire. She had been crossing the Grosvenor Road walking towards the junction when she saw the couple. She said that about four yards from the corner she heard four shots in quick succession which she thought were rifle shots. She described them as coming up from towards Springfield Road (further up to the west). She then turned into Roden Street and there was a burst of automatic fire coming from down Roden Street. She was aware of bullets striking around her and she saw the couple fall. She then said there was another burst coming from down Roden Street and she said that four to six guns were firing. She also saw gun flashes from down Roden Street. She was definite that there was no one shooting from Grosvenor Road side and was not aware of any car. She also said that the next day a male came to her house. He had a ladder and she saw him using it to remove bullets from the wall at the junction and take them away. The Sunday Independent article (see [77] below) refers to a Gretta Smith. I understand that this was the name by which Marie Fusco was known in 1972. She is pictured at or about the location where Marian Brown fell. She is quoted as having said that she was on her way home and was turning the corner into Roden Street from Grosvenor Road (the actual corner is not identified) when she heard a burst of gunfire. In the article she estimated that altogether about eighty shots were fired.

[66] On the 5 December 2006 members of the Historical Enquiry Team had a meeting with Mr Richard Brown, a brother of Marian Brown. A note of that meeting records that the family enquired at the time of the local section of the Irish Republican Army ("IRA") to see if they had been conducting operations in the area that could have been responsible for Marian Brown being shot. The family were told that if the IRA had been responsible they would have admitted to it.

Army records

[67] The records held by the army take the form of log sheets. Although no direct evidence was given as to their creation, it is likely that they were compiled on a contemporaneous basis as information was radioed in to different headquarter units along the chain of command, with information initially coming from personnel on the ground. It is impossible to identify the initial source of the information, or the identity or number of parties through whom the information was passed before it is recorded.

[68] A Log Sheet of 3 Royal Anglian of 10 June 1972 at Number 9 stated " 01.04 2 gunmen fired North of Roden St towards Grosvenor. Fire returned. One hit claimed. Trying to find body."

[69] A Log Sheet of "1 Kings", a reference to the Kings Regiment, of 9 June 1972 at Number 26 stated " 17.22 the receptionist at Dr Sloanes Surgery Grosvenor Road recd a telephone call allegedly from the IRA. Advising that the surgery should not be opened tonight as anyone on the Grosvenor Rd after 18.00 hrs is in danger of being shot by their active units." The entry at 77 stated "02.00 Adm RVH. Robert Wilson (19) RC of GSW [gun shot wound] left buttock in Roden St at 01.00 hrs, adm 010+. Elizabeth McManus (19) RC of ... GSW r leg and r forearm in Roden St at 0100 hrs, adm 0103 hrs. James Carrigan (16) RC ... injuries head and face in Roden St at 01.00, adm at 01.03". The entry 84 stated "03.25 Adm to Lagan Bank Morgue. Dead Marie Brown 15 Stanhope Dve. Shot incident in Roden St between 0100 & 01.30."

[70] The Log Sheet from "HQ NI" which I take to mean the Headquarters of the army in Northern Ireland has the following entries for 10 June 1972. Number 7 "7 RHA. 50 rounds Mulhouse Loc (at 0052), details to follow". Number 14 "Re Mulhouse shooting. At 0055 hrs 30 shots from Grosvenor/Roden by 2 gunmen at Neely St Sangar and overshot into Excise Street. 2 x 7.62 returned. 1 possible hit claimed. A woman was wounded. Elizabeth McManus (19) .. (GSW to right leg and left arm). Robert Wison (19).. GSW to left buttock". Number 31 "At 0106. Shooting at patrol in Roden St from Burnaby/Roden. 4 casualties. 1 woman dead. 27 x 7.62 returned at gunman by patrol"

[71] Reference to 7 RHA is likely to be the 7th Parachute Regiment Royal Horse Artillery. At the time its operational area was Ligoniel. It is suggested by Ciaran MacAirt, a project Manager with Paper Trail - Legacy Archive Research that it is probable that 7 RHA were providing a supporting role to 3 Royal Anglian at the time.

[72] The police duty officer's report for the 24 hour period ending at 8 am on 10 June 1972 (Serial No 161/72) at 15 stated "At approximately 12.55 a.m. on Saturday, 10th June 1972 about 30 shots were fired at an Army sanger at Neely Street off Roden Street. Some of the shots hit the sanger but others struck two pedestrians near the junction of Roden Street/ Excise Street. The injured persons are:- Robert Wilson ... condition fair. Elizabeth McManus ... condition fair." At 16 it is stated "About 1.00 a.m. on Saturday, 10th June 1972, troops in the Roden Street area saw two gunmen near the Grosvenor Road end of Roden Street open fire on a group of civilians in Roden Street. The troops fired at the terrorists but failed to hit them. Two persons were hit by the terrorist fire. They are Marion Brown. 16 years ... dead on admission to Hospital. Thomas Corrigan 16 years ... Conditions serious in Royal Victoria Hospital. Michael McGuigan 19 years Shock later discharged"

[73] A Royal Military Police Crime Report created on the 10 June 1972 stated - "00.50 Elements of C Coy 3 R Anglian in Roden St. Gunman opened fire from junc of Roden St/Grosvenor Rd. 39 x 7.62 returned. No hits"

Books, newspapers and other evidence

[74] The book - **Lost Lives: The Stories of the Men, Women and Children Who Died as a Result of the Northern Ireland Troubles** - chronicles the lives of those killed during the period of political unrest. It is a result of the combined efforts of five respected journalists. When contacted, the authors declined to give evidence claiming that they wished to protect their journalistic sources. The entry in the book relating to Marian Brown stated -

"She was shot, apparently by the UDA/UFF in Roden Street "According to reliable loyalist sources, however, the UDA carried out the shooting"

References to UDA and UFF are references to the Ulster Defence Association and the Ulster Freedom Fighters. Both groupings are terrorist organisations based in the loyalist community. Many knowledgeable commentators consider that they are one and the same organisation.

[75] The CAIN (Conflict Archive on the Internet) website is an archive and research tool maintained by the Ulster University. In its entry relating to Marian Brown (attributed to Malcolm Sutton), it is stated that she was killed by a non-specific loyalist group having been shot from a passing car while standing with friends on Roden Street.

[76] There were several newspaper reports relating to the incident. The Newsletter of 10 June 1972 described the night as one of the worst nights of violence in recent weeks. Describing the incident it stated "Troops fired at the gunmen but did

not report any hits and how, only minutes earlier, two gunmen fired about 30 shots at the army post at Neely Street, off Roden Street”.

[77] The Sunday Independent of 11 June 1972 referred to claims by the Army that the death was caused by gunfire directed at the military post but it stated that enquiries seemed to indicate gunmen deliberately opened fire on civilians. The article also reported the comments of a Mrs Mary Byrne. (She did not make any statement and did not give evidence to either inquest.) She was a resident in Roden Street and a photograph showed a bullet strike on her door. The article is ambiguous in that the text states that she and other neighbours considered that the gunman responsible could have been firing at the army post at Neely Street. However, a photograph showing Mrs Byrne pointing to a bullet strike to her door has a caption – *“evidence say locals that the army statement that shots were being fired at the army post in Neely St was ludicrous”*. A further photograph in the article of a damaged lamppost has a caption stating that the damage was caused by bullet marks which according to local residents indicated that the shooting came from what was described as the “protestant” end of Roden Street with the caption indicating that the “protestant end” of Roden Street was behind where this picture was taken. Despite the poor quality of the copying of the press cutting, it is reasonably clear with the houses and depth of the road in the background that the photograph was taken from the Grosvenor Road end of Roden Street, and looking into and along Roden Street towards the Donegall Road end and not as the caption suggests.

[78] The transcript from the BBC television news on 10 June 1972 stated *“the girl shot dead last night at Roden Street in Belfast was 16 years old Marian Brown from Stanhope Drive. Three other people were wounded when, according to the Army, gunmen fired from Burnaby Street.”* The BBC radio news in the breakfast time bulletin on the same day stated *“A girl aged sixteen was shot dead and twelve other people were shot and wounded during the night. The girl died at Roden Street in an incident in which three other people were wounded. The army say that soldiers saw gunmen fire at people in Roden Street from the corner of Burnaby Street. The soldiers fired at two gunmen but didn’t hit them. In the same area, two gunmen had earlier fired thirty shots at an army post at Neely Street and the soldiers fired back and think they hit a gunman. Some of the gunmen’s bullets went into Excise Street and hit a girl and a youth, both aged nineteen – they’re not seriously injured. In another shooting incident in the same area, an army patrol at Clifford Street came under fire but the soldiers did not fire back.”*

[79] In the Belfast Telegraph article of 14 June 1972 reporting the funeral of Marian Brown, it is stated – *“She died when two gunmen opened fire on civilians from the Burnaby-Roden Street junction”*

[80] A Newsletter article of 5 July 1974, reporting on the inquest, stated – *“Mrs Teresa Finlay .. said she had been walking home with Marian and her boyfriend. Her sister crossed the road to say goodnight to her boyfriend at Roden Street. She saw them part and then heard Marian call to him again as automatic gunfire rang out... Mr Corrigan said that*

on thinking of the incident afterwards he was satisfied that the shots had come down Roden Street towards them... Other witnesses agreed and said between 80 and 90 shots were fired. They all said that they did not see any cars in the area. Army witnesses said that they were on patrol in the area when they spotted a dark car and then a Thompson sub-machine gun opened up from the back seat. Fire was returned and they said a number of other gunmen in the area were also shot at. One soldier said he thought he saw a gunman in the crowd among the civilians...Coroner Mr. James Elliott said that the situation was confusing and described the whole affair as tragic."

[81] The Irish News also reporting on the Inquest on 4 July 1974 said that the civilian witnesses told the Jury that all shots were fired down Roden Street. They said no one had fired from the Roden Street/Grosvenor Road junction at a Military VCP sited along Roden Street. It continued - *"The army witnesses claimed that they were fired on from a position at Grosvenor Road by two gunmen sited near the civilian's location. The military said that they returned fire at the gunmen but did not see if any of them were hit. Mention was made of shots from a car also near this location."*

[82] In the immediate aftermath of the death, Teresa Simpson, who was living in Donegall Avenue in an area which could be categorised as Protestant/Loyalist, received bullets in an envelope posted through her door. She was also aware of comments being made in that neighbourhood along the lines that "we got your sister", particularly after the publication of the Sunday Independent article.

Consideration of the evidence in relation to the gunfire

[83] In analysing this evidence I am conscious that the incident, insofar as it involved the firing of bullets, is likely to have been over in a very short time. Some witnesses have referred to time frames and they are all very short. Eight civilians gave evidence either orally or by statement and all would have been in the close vicinity of incoming gunfire, with three having been struck by bullets and the others having to dive for cover. The army personnel were in more protected areas and apart from one, did not say that they were in close proximity to incoming fire. In addition one would expect that military personnel would be more experienced and trained to be alert during situations like this, but it is accepted that during intense and brief incidents such as this, even the most experienced soldier may have difficulty in remaining calm and in control. The ability of anyone to remember exactly what they heard and saw, and the sequence of such observations, will be severely challenged.

[84] Leo Rossi gave his expert evidence in relation to the noise of gunfire, muzzle flashes and bullet strikes. Military personnel will have more experience in relation to the discharge of weapons and will have a better perception of what they see and hear. Civilians are unlikely to have that experience and it is acknowledged that they could mistake or misinterpret noises and flashes. It is also acknowledged that even the most experienced of soldiers may misinterpret noise and observations in the intensity of an incident such as this.

[85] An elementary analysis of the evidence would indicate that it is suggested that there may be five firing points. (To avoid confusion, as the soldiers have been allocated a letter and I will later refer to the bullet wounds to Marian Brown's body by number, I will use a double letter to identify these firing points.)

[86] Point MM is the location of the patrol of 3 Royal Anglian at the junction of Clifford Street and Roden Street. For convenience I have referred to this as a single location, but there are three sub-locations. MM(i) is where the vehicle was parked and where Soldiers A and E were located. MM(ii) is further up Roden Street on the same side where Soldiers C and D were located at the yard entrance. MM(iii) is opposite that location close to 62 Roden Street and was where Soldier B was located.

[87] Point NN is at Burnaby Street at its junction with Roden Street and opposite Neely Street.

[88] Point OO is at the junction of Grosvenor Road and Roden Street. As with MM, there are three sub-locations, OO(i) at the eastern corner, OO(ii) at the western corner, and OO(iii) on the actual Grosvenor Road where the vehicle is said to have been moving across the mouth of Roden Street.

[89] Point PP is the army sanger at the junction of Neely Street and Mulhouse Street, and Point QQ is somewhere near the junction of Mulhouse Street and Grosvenor Road.

[90] Evidence was also received indicating different directions of fire. The military witnesses said that from MM shots were directed by Soldiers A, B, C, D and E at all three sub-locations at OO. Civilians at or about OO confirmed that shots were fired in their direction. Soldier E also directed fire at location NN. Soldier F also indicated that his sanger received incoming fire from NN and QQ and returning fire towards NN. Michael McGuigan, Robert Wilson and Elizabeth McManus who would have been close to the location at NN all described shots coming from the Clifford Street/Donagall Road end of Roden Street area in their direction. Soldier B described rounds aimed at his position at MM(iii) as evidenced by strike marks adjacent to where he was.

[91] The military records appear to suggest that there were two separate incidents, with the Mulhouse Street/Neely Street sanger being the target of an attack about 00.55 and then the second incident approximately ten minutes later involving the patrol from 3 Royal Anglian. The military records show the injuries to Robert Wilson and Elizabeth McManus as a result of the first incident, and the death of Marian Brown and injury to Thomas Corrigan as a result of the second incident.

[92] I do not accept that these were two separate incidents insofar as the injuries, including the fatal injury, are concerned. There is only evidence of one round being

fired by Soldier F from the sanger in the direction of NN. Soldier E's fire to this location is clearly part of the second incident. Michael McGuigan, Robert Wilson and Elizabeth McManus all spoke of the fire coming up Roden Street as opposed to coming perpendicular to Roden Street. They also all spoke of being between Excise Street and Burnaby Street on Roden Street. Soldier F's single round, either in an intact or fragmented condition, is extremely unlikely to have caused the single wound to Robert Wilson and the two wounds to Elizabeth McManus. Neely Street as it approaches Roden Street has a slight curve to the north, and the buildings on the southern side of Neely Street would have impacted on the line of sight and the line of fire from the sanger when one considers the location of Robert Wilson and Elizabeth McManus at that time. Any fire directed from QQ towards the sanger along Mulhouse Street, could not have struck either Robert Wilson and Elizabeth McManus given their location on Roden Street. I am satisfied that Robert Wilson and Elizabeth McManus were not injured as a result of the first incident as it has been described by Soldier F and recorded by the army in its logs. They were injured in the Roden Street incident and were injured at or about the same time as Marian Brown's death.

[93] The primary source of the information in the army log relating to Mulhouse Street is likely to have come from Soldier F who was in the relative security of the sanger and as such could radio in detail in a more calm and collected atmosphere and from 7 RHA who are likely to have had been providing a supporting role, although the details of that role are unclear. I am satisfied that there was a burst of fire aimed at the sanger from the QQ location. Soldier F did not return fire towards QQ and he only fired once towards NN. No casualties were found in Mulhouse or Neely Street. This was therefore one confined burst of fire by a gunman or gunmen from QQ to PP.

[94] The Roden Street incident involved soldiers firing rounds along Roden Street up towards the Grosvenor Road. The key questions to consider are - what caused them to open fire and at what?

[95] The evidence from the soldiers is summarised at [51] and it is clear that there is confusion as to what was happening on Roden Street and Grosvenor Road as far as they were remembering the events. It is extremely unlikely that all the appearances and actions of gunmen described by each soldier could have happened.

[96] The evidence of the civilian witnesses is also inconsistent. None describe seeing any gunman on foot either at NN or at OO(i) and OO(ii). Given the proximity of the civilian witnesses to these locations, notwithstanding the fact that this incident would have been over in a short time and during the incident they would have been in fear for their safety and seeking shelter, I would have expected at least one of the witnesses to have made some sort of observation, however fleeting of a civilian either carrying or firing a gun, had such an individual been present at either of these locations.

[97] Firing point OO(iii) has to be considered in a different way. This was the vehicle from which fire was said to have been directed. Four of the civilian witnesses do not remember seeing any vehicle. One has to consider that evidence in the context that the appearance of a vehicle driving along an arterial road would not be a significant feature and people going about their ordinary business, albeit after midnight in a troubled part of Belfast and in a period of civil strife, would not necessarily register in their mind a vehicle driving along Grosvenor Road. David Clarke (whose evidence one would have to treat with an element of caution given the differing accounts between 1974 and 2017) said that he was aware of vehicles on the Grosvenor Road but not one stopped at the junction with Roden Street. The 1974 and 2017 versions differ as in 1974 he is walking towards Grosvenor Road and in 2017 he is walking away from it. In 2017 he did recollect seeing a vehicle passing countryward along the Grosvenor Road after the shooting had started. The evidence given by Maura Hughes would tend to support David Clarke's 2017 evidence in relation to his direction of travel as she remembers walking with him towards the Grosvenor Road when the shooting started.

[98] I have considered what each civilian said about how they thought the incident started. The army were using the SLR which is a semi-automatic weapon requiring the repeated pulling of the trigger to fire. The Thompson sub machine gun as described by Soldier E is an automatic weapon with a single engagement of the trigger being sufficient to discharge a stream of bullets. I bear in mind that when a civilian describes gunfire as automatic fire this is on the basis of an untrained ear, and with gunfire echoing in a built up environment I can understand how a civilian could mistake rapid fire as automatic fire. Whilst there is no reason to suggest that the army were using automatic weapons that evening, gunmen may well have been using a miscellany of weapons, single shot, semi-automatic and automatic. There is clear evidence that prior to this incident a significant number of thefts of weapons of all calibres had taken place in Northern Ireland and further afield. This would be in addition to weapons held in the arsenals of the various terrorist groups which had been supplemented by purchases from whatever sources they had available.

[99] Michael McGuigan, Robert Wilson and Elizabeth McManus who had walked up the Grosvenor Road from the city centre and were then walking along Roden Street in the direction of the army patrol gave differing accounts. Michael McGuigan heard rapid fire but behind him (i.e. the Grosvenor Road area) in accordance with his 1974 deposition. My interpretation of his oral evidence before me was that whilst he might not have entirely endorsed that version, he did not reject it either. He said that the second burst came from the Clifford Street direction. Robert Wilson in his statement said that he heard machine gun fire from the Donegall Road direction. Then he heard a lot of shooting mostly from the Donegall Road end and some from the Grosvenor Road, which he took to be soldiers stationed at Neely Street (presumably a reference to the sanger at PP). Elizabeth

McManus described hearing two or more single shots coming from the McDonnell Street area, which is adjacent to the Roden Street/Grosvenor Road junction, and then a burst of firing from Clifford Street. One consistent theme coming from the evidence from this group is that they were aware of firing from both ends of Roden Street. Given their location, somewhere in the middle between Clifford Street and Grosvenor Road, I consider this to be significant. The clear theme from their evidence is that they had a perception of cross-fire with them in the middle.

[100] The civilians at the eastern side of the junction also give differing versions. Teresa Simpson heard automatic gunfire and said that it was coming up from a gateway on Roden Street (probably location MM(ii)). It was sustained and she was not aware of any gunfire from Grosvenor Road. David Clarke, in 1974 said that he heard high velocity shooting from Grosvenor Road, although in 2017 he described the initial shooting from behind him (i.e. up Roden Street). He also described in 2017 hearing automatic fire coming from the army sanger (at PP). Maura Hughes remembers four or five shots but did not know where they came from.

[101] At the other corner (location OO(ii)), Thomas Corrigan remembered loud shots ringing out but not knowing where they came from. Marie Fusco (known then as Gretta Smith) said that she heard what she thought were four rifle shots in quick succession coming from the Springfield Road direction (further to the west), and then as she turned into Roden Street she heard a burst of automatic fire coming from Roden Street.

[102] In the aftermath of the incident, Soldier B indicated that he was at the OO location and on checking could not find any spent bullet casings. Constable Moffitt described observing bullet holes on the walls, and doors of property near the location OO(ii). He made his observations on the 12 June 1972 when he was there with the protection of an army patrol. The local population were hostile so he was not able to carry out a thorough examination. He did make the comment that he felt some of the marks were more indicative of someone trying to recover bullets from the brickwork. Marie Fusco said that she was aware of a civilian later on the 10 June 1972 with a stepladder removing bullets from the wall.

[103] The lack of any bullet casings does not support the contention from those military witnesses who say that gunmen were present standing at OO(i) and (ii) firing weapons. Soldier B was on the scene reasonably quickly after the incident. I accept that recovery of mementoes and souvenirs of this type was possible, but it is highly unlikely that given the alleged number of rounds fired from these locations that all casings ejected in the process would have been taken in this fashion. Although Soldier B does not specify the exact length of time he took to make his way from MM(iii) to OO, the distance was about 175 metres and is not likely to have been very long. This left a very brief window of opportunity for someone to remove the casings. I accept that some may have fallen into crevasses and drains but the absence of any rounds suggests that gunmen were not present on the road or

pavement at these locations. The lack of casings may not be so significant if the gunman was positioned in a car. The casings once ejected from the firing chamber could fall within the vehicle and remain collected there and removed from the scene with the vehicle.

[104] The evidence of Constable Moffitt concerning the bullet strikes is difficult to reconcile. I only have his statement and without hearing from him, and examining his experience and expertise on bullet strikes, it is hard to assess his evidence. If there was a more perpendicular bullet strike as suggested by Constable Moffitt then that would support the contention these rounds did not come from location MM where the soldiers were, and may give some support to the proposition that the rounds were coming across the mouth of Roden Street either from the Grosvenor Road at OO(i) or (iii), or even from the Burnaby Street location at NN. It is also possible that some of the bullet marks resulted from other shooting incidents, because there was evidence from some of the civilians that shooting incidents were not infrequent in this area.

[105] The man removing the bullets is a mystery. If he existed, he is unlikely to be from the security forces given the high level of animosity in the area against the security forces. He could have been from a terrorist grouping but this would be highly unlikely, or he could just have been either a souvenir hunter or a householder tidying up his frontage. Whatever the explanation, I consider this evidence to be of little or no relevance.

[106] I turn now to consider the evidence that gunmen were operating in the area. There was a message to the doctor's surgery earlier that evening warning of IRA attacks on the Grosvenor Road. This may have just been a hoax call although the use of a doctor's surgery may suggest there was some significance to the call, which indicated an intention for gunmen to be active in the Grosvenor Road vicinity and was a warning to the staff and patients. The fact that the caller was said to represent the IRA would tend to suggest that targets of the gunmen were likely to be security force personnel. The call may have related to another plan that evening, or it might have related to the Mulhouse Street incident or some other incident. It is also possible that another decoy or additional attack was planned along Roden Street. The existence of this call lends weak support that IRA gunmen were involved in this incident as I have to take account of the lack of evidence concerning this telephone call received by the inquest. I take little notice of the reported conversation with representatives of the IRA and the Brown family after the event. No detail is given as to who was actually involved and the source of the information. Nobody from the IRA, or on behalf of the IRA, has sought to assist this inquest by the provision of evidence to be assessed by the inquest. What weight I could attach to such evidence, if given, is a matter of speculation at this point. I take little notice of this conversation.

[107] The role of the UDA or its symbiotic twin the UFF has also been referred to. The Lost Lives publication is a highly respected publication. It is certainly within the capability of those organisations to carry out this type of random sectarian attack. The Lost Lives commentary refers to reliable sources, but the authors have not been forthcoming in relation to the identity of the sources or whether their information is first- or multi-hand. This thread of suspicion that it was the UDA or UFF seems to run through other reports at the time and since, including the CAIN website. In the absence of any real evidence apart from the record of these organisations for carrying out similar attacks on civilians, it is difficult to see how this entry takes the matter much further. It lends weak support to the proposition that these organisations were involved in this attack. I have considered the bullets posted through Teresa Simpson's letterbox and the comments made to her. I do not consider that they can be given much weight. This incident and the comments are typical of sectarian threats and abuse, but do not really give weight to the suggestion that a loyalist paramilitary organisation was involved.

[108] I have referred to the evidence that provides weak support suggesting involvement of either the IRA or the UDA/UFF. With the IRA probably being involved in the Mulhouse Street incident, it would be highly coincidental that the UDA/UFF was carrying out an operation in or about the same location at or about the same time. Given the chaos that existed and the significant number of incidents occurring in Belfast at the time, it cannot be ruled out as a possibility but I would consider it to be highly unlikely. Insofar as there were any gunmen operating in this incident they were probably IRA and they were targeting the soldiers at Clifford Street as opposed to targeting the civilians, and in particular Marian Brown.

[109] The determination of this issue is a finely balanced one, with different conflicting strands of evidence. It is difficult to comprehend why this group of soldiers, having reached nearly the end of their patrol time, returned early and having been directed out to man a static checkpoint close to their barracks and marking time before they would be off duty, would suddenly, without any precipitating event or provocation, open fire on a group or groups of civilians who would not have been posing any risk to them. I have considered possible mistakes by the soldiers thinking they, or civilians, were under fire when in fact they were not. I considered the Mulhouse Street incident as a precipitating event with a long burst of fire coupled with Soldier F's single shot towards NN and possible ricochet being mistaken for a muzzle flash, leading to an eruption of fire from the soldiers. Whilst this could not be ruled out, it is an unlikely series of events involving trained soldiers.

[110] One significant difficulty for me is the various explanations given by the soldiers and in turn the conflict between their accounts and the civilian accounts. The soldiers describe gunmen at four separate locations, some on foot, another in a vehicle, another getting into a vehicle, with these vehicles travelling in opposite directions. The civilian witnesses do not see any gunman but a number would

appear to confirm the use of automatic fire as the initial sounds in the sequence and the location of Grosvenor Road as the source of this fire. The fact that so many witnesses give differing accounts does not mean that none can be relied on. Had the standard of proof been the criminal standard it is difficult to see how anything could be proved. However it is the civil standard. That standard is what is more likely than not to have happened.

[111] Taking everything into account I am of the view that there was an exchange of gunfire between a gunman and the soldiers. Of all the military explanations the most accurate one is likely to be Soldier A's observation of the vehicle and its front seat passenger. It explains why some of the civilians heard automatic fire and some others thought the gunfire was from the Grosvenor Road area. Having said that, I do not believe that all of Soldier A's account is accurate – for instance, he refers to a gunman or gunmen elsewhere other than in the vehicle, which I consider to be unlikely, but in respect of the presence of the vehicle and its occupant, his evidence on this point appears to be the more likely. The presence of a vehicle is noted by David Clarke (although he does not confirm any details about the number of occupants or what they were doing) and the failure of the other civilians to note a vehicle can be explained by the fact that a vehicle driving along a road is not a significant fact for one to register or remember, particularly when sheltering from gunfire. If one accepts that at the time David Clarke was walking towards the Grosvenor Road (in accordance with his 2017 evidence which is corroborated by what Maura Hughes remembers) it is also significant that he was actually facing the Grosvenor Road at the time as opposed to the other witnesses who were facing away at the time. It also gives an explanation for the lack of shell casings at the scene as they could have been ejected into the vehicle and retained within it as it departed the scene. Whilst I have referred to Mr Clarke's evidence, I do not want to overstate the weight I have attached to it. I have also taken account of the evidence from the soldiers, the other civilian witnesses, the absence of any mistaken reason to open fire and the unlikelihood of the soldiers opening fire for no reason.

[112] I therefore find, on the balance of probabilities, that a passenger in a vehicle travelling countryward along the Grosvenor Road opened fire with an automatic weapon, thus triggering return fire from the soldiers manning the vehicle checkpoint in the vicinity of Clifford Street/Roden Street junction.

The evidence relating to the bullet that caused the death of Marian Brown

[113] I now turn to consider the evidence relating to the cause of the death of Marian Brown. The purpose is to determine whether or not she was killed by a bullet fired by a gunman or by a soldier. Evidence was given from five pathologists, Professor Thomas Marshall, Professor Jack Crane, Dr John Clark, Dr Nat Cary and Dr Russell Delaney. There was no dispute between the pathologists that Marian Brown was killed by a single bullet which passed through her neck and severed the cervical spine resulting in immediate collapse and rapid death. She was also struck by a number of other bullets although none of these bullets caused the

fatality. With no bullet, or fragment of a bullet, being found at any of the wound sites within the body, the main focus of the evidence was concentrated on the determination of the direction of travel of the bullets, the entry and exit wounds corresponding to the bullets, and the type and velocity of bullets.

[114] An autopsy was carried out on the body of Marian Brown at the Mortuary on Laganbank Road in Belfast by Professor Thomas Marshall on the 11 June 1972. He observed and recorded 10 bullet wounds to the body. In his report he itemised them numerically and I will use the same numbers.

[115] Wound 1 was to the right hand side of the neck and wound 2 was to the left hand side of the neck. A probe was inserted and this confirmed the passage of the bullet horizontally linking both wounds, one being an entry wound and the other an exit wound. Professor Marshall having had the benefit of the examination of the body was of the opinion that wound 1 was the entry wound and wound 2 was the exit wound, but his professional colleagues disagreed preferring the opposite scenario with the bullet passing from left to right.

[116] The bullet when either entering or exiting the neck then created a gaping wound 11cm in length to the right upper arm. This was wound 3.

[117] Wounds 4 and 5 are linked wounds marking the passage of a bullet downwards through the right upper arm exiting on the outer side of the arm. Whilst there was some speculation that this bullet may have in fact been a fragment of the bullet which entered at wound 2 part of which after fragmentation caused Wound 3 and another part of which caused Wounds 4 and 5, I am satisfied that this was a separate bullet. I consider it unlikely that a bullet entered Wound 2 and then fragmented with the two fragments both emerging through Wound 1 and then deviating from each other to cause Wounds 3 and Wounds 4/5.

[118] Wounds 6, 7 and 8 were caused when a bullet entered the outer side of the left elbow at Wound 6, fragmented and two parts exited the front of the left forearm at Wounds 7 and 8. There was some speculation that these wounds had been caused by two separate bullets with a common entry wound and different exit wounds, but there was little expert opinion to support this possibility and I reject it.

[119] Finally Wounds 9 and 10 were linked wounds to the inner side of the right knee (Wound 9) and to the front of the leg below the right knee (Wound 10).

[120] There was some discussion about the possibility that Wounds 6 and 7/8 and Wounds 9 and 10 were caused by the same bullet. This theory has a certain superficial attraction given the lines of passage of these wounds - both in a diagonal downwards direction from left to right (as shown in a diagram prepared by Dr Clark appended to his report of 8th November 2014), but there was no real support for this

from within the professional opinions expressed during evidence. I reject this suggestion.

[121] Marian Brown was wearing a dress and coat at the time and they were examined on 26 June 1972 by Mr Victor Beavis forensic scientist. The report indicates blood staining and holes which are consistent with the pathology findings relating to the bullet entry and exit wounds. The green coat was blood stained at the right collar area and under the right armpit to the back. There was a tear and three holes to the right shoulder area. On the lower right arm there was a hole about 8 inches from the cuff at the back, and on the lower left arm there was a hole at the front four inches from the cuff and one to the back nine inches from the cuff.

[122] The black and yellow dress had blood staining to the right collar area, to the left lower arm at the front and the upper arm to the back, and the right upper arm. Two holes were located to the right shoulder area, one described as large. Four holes were found in the front lower left arm with one hole to the back upper arm, and one hole to left upper arm at the back. All the holes in both garments were swabbed and were found to be negative in relation to the presence of lead. Mr Beavis concluded that the appearance of the holes indicated that the shots were fired from in front of the deceased although he could not indicate the range at which they were fired.

[123] Professor Marshall was of the opinion that Wound 1 (right hand side) was the entry wound. This was his assessment in 1972 and was based on the nature of the wound which he was able to observe. The other pathologists had to rely on photographic evidence, and each acknowledged that such an examination is not a substitute for actual observations. The typical entry wound would have a collar of abrasion. Professor Crane said that both wounds (1 and 2) were bordered by some abrasion, and because of this there had to be a degree of uncertainty, although his opinion was that the appearances of the wound was more likely to be an exit wound. It was larger (but only to a small extent), it was more irregular, and a linear abrasion to the wound had the appearance of a 'shoring' of the wound by a collar of a coat supporting the skin at the location. Professor Crane, and Drs Cary and Clarke considered that the existence of Wound 3 with its gouging track along the upper right arm had the appearance of an exiting bullet as opposed to an entering bullet.

[124] Professor Marshall is a pathologist of formidable experience and expertise and he had the benefit of examining the wound. However I prefer the opinion of his colleagues for the reasons I have mentioned. It is likely that Wound 2 on the left side of the neck was the entry wound and Wound 1 was the exit wound. The bullet then travelled down the upper right arm causing Wound 3.

[125] As for the implications of whether the bullet was moving right to left, or from left to right, it is important to take into account the evidence of Thomas Corrigan.

He described the parting moment with an embrace when they were facing each other at the entrance to Roden Street at location OO(ii). They were standing on the pavement, she with her back to the Donegall Road end of Roden Street. He described how both he and Marian Brown reacted to hearing the shooting. It is impossible to say whether they were reacting to actual weapon discharges or to ricocheting bullets, but little turns on it. It would all have been instantaneous.

[126] Propelled by Thomas Corrigan, Marian Brown spun in a clockwise direction through 180 degrees before moving, possibly in a diagonal direction, towards the shelter of the buildings on the western (Royal Victoria Hospital) side of Roden Street. Such rotation and movement is bound to have been rapid and would have exposed both her right and left hand side to a number of different points from which bullets could have been fired, leading to direct or ricochet contact.

[127] I must also consider the qualities of limbs generally and the actual parts of Marian Brown's body that were struck. A fit mature person's arms and legs can change position substantially in a short period of time. At the time of her death Marian Brown was 17 years 8 months and was described in the Autopsy Report as being healthy. Combined with that, when Marian Brown was spun around she then moved quickly toward the wall, presumably either running and/or being dragged by Thomas Corrigan. She is also likely to have adopted a crouching position during this period possibly with her arms raised protecting her head. Those movements would have caused substantial change in the positioning of her limbs. Her neck would also have a degree of mobility, even when running, although the presence of the gouging wound (Wound 3) on the right upper arm would suggest that the neck and upper arm were aligned, with the face perpendicular to the shoulders and right arm.

[128] Having determined the direction of the fatal bullet (left to right) through Marion Brown's neck, had she been static when struck, it would be much easier to make an assessment of the location from which the bullet had travelled from.

[129] However, she was not. Her body was rotated at least 180 degrees and possibly up to 270 degrees. When one then adds to that the additional capability of the neck/shoulders rotating up to 90 degrees from the normal alignment to the body, there are endless possibilities as to the actual direction of the bullet when it struck Marian Brown. In the sequence of the movement described by Thomas Corrigan, the left side of her neck would have been exposed to firing locations OO(ii), then OO (iii), then OO(i), then NN, then MM(iii) and finally MM(i) and MM(ii). I therefore consider that determination of the direction of the travel of the fatal bullet, or indeed any of the other bullets that struck her body, is of very limited value in attempting to determine the location, or locations of the source of the bullets.

[130] It is also impossible to work out the sequence in which the various bullets struck her body. Because of the nature of the fatal wound it is likely that she was upright at the time, and it would have caused her collapse. The other bullets could have struck her when she was upright or when she going to ground or when she was lying on the ground. David Clarke said that she was lying on her back with her head towards the road which means that she was presenting her left hand side down Roden Street towards Donegall Road.

[131] I now turn to consider the type of bullet that caused the fatal neck wound. Professor Marshall, who had the benefit of visual inspection, was of the view that the entry and exit wounds were more like those caused by a Thompson sub-machine gun round than those caused by an SLR rifle round. He revised this opinion in a letter of the 31 January 2015 after receiving Dr Clark's report. He considered the possibility that the wound was caused by a ricocheting bullet, either as a distorted bullet or a fragment of a bullet, and indicated that he was *"less inclined to opine that the neck wound is more likely due to a Thompson submachine bullet than one from a SLR rifle"*. Drs. Clark, Cary and Delaney prepared a combined note and stated that *"Taken at face value, the nature and extent of bony injury to the cervical spine and the base and vault of the skull together with the exit of bullets and fragments would tend to favour high velocity rounds (SLR) versus medium velocity (Thompson) but that is not absolute."* (I believe that the reference to fragments relates to the bullet causing Wounds 6, 7 and 8.) Professor Crane, because of his late engagement in the inquest could not take part in the discussions from which this note emerged. He was of the opinion that it was impossible to determine the velocity of the bullet from the nature of the entry and exit wounds and the internal damage caused.

[132] Professor Crane was of the opinion that the damage to the second cervical vertebrae (C2) is not an indicator of velocity as this is a particularly delicate bone being 4 mm thick with internal soft tissue. It would be severed with the most modest of velocity. Similarly, the fracture to the base of the skull was caused by the distribution of the energy from the bullet as it passes through the C2, and not by a direct strike. As a consequence the nature of the internal damage caused by the bullet is of little assistance in determining the velocity or type of the bullet.

[133] Professor Crane was also of the opinion that there was absolutely nothing from the appearance of the wounds that would suggest the velocity of the bullet. To some extent this is supported by Dr Cary in his report of 29 January 2017 when he stated *"Any reliance on wound dimensions concerning the nature of the entering bullet is fraught with difficulty and potentially unreliable."* Dr Cary was expressing this opinion in the context of Professor Marshall's assertion that the neck wound was caused by a Thompson round, but it can equally apply to suggestions that the wounds were caused by an SLR, or other high velocity, round.

[134] Professor Crane is a highly experienced pathologist and the reality of his work in Northern Ireland has meant that he has examined numerous gunshot wounds and corpses. For this reason, and also taking into account his analysis of

the findings, I prefer the opinion expressed by him on this point, particularly when one considers the rather guarded view expressed in the Joint Note. Without underestimating Professor Marshall's experience and the benefit he had of viewing the wounds and injuries, I also do not consider that the nature of the wounds and damage caused by the bullet supports the opinion that they resulted from a Thompson machine-gun bullet.

[135] On the balance of probabilities I find that the nature of the injuries does not indicate the velocity of the bullet, the type of bullet or the type of weapon discharging it. I have therefore concluded that there is nothing in the pathology evidence that assists in determining the nature of the bullet which killed Marian Brown or the location from which it was fired.

Training and Yellow Card Rules

[136] I heard evidence from the soldiers themselves about the training they received and the inquest received other evidence on this issue.

[137] In addition to their basic training as soldiers, they had been stationed in Germany prior to this posting and had undergone training in an effort to prepare them for their tour in Northern Ireland. The soldiers described a training facility known as 'Tin City' which was a mock- up of an urban area. The training would also have involved use of the "Yellow Card".

[138] Instructions issued to army personnel relating to the opening of fire were contained in a yellow booklet entitled "Instructions by the Director of Operations for Opening Fire in Northern Ireland". This is known as the "Yellow Card" and the applicable revision at this time was the fourth revision (in November 1971). Each soldier was, or should have been, well versed in its contents, and would have been required to carry it with them when armed and on duty.

[139] I do not propose to set out the full document, but I will refer to sections of relevance -

"1. These instructions are for the guidance of Commanders and troops operating collectively and individually. When troops are operating collectively soldiers will only open fire when ordered to do so by the Commander on the spot.

2. Never use more force than the minimum necessary to enable you to carry out your duties.

3. Always first try to handle the situation by other means than opening fire. If you have to fire: (a) Fire only aimed shots. (b) Do not fire more rounds than are absolutely necessary to achieve your aim.

Warning before firing

6. *A warning should be given before you open fire. The only circumstances in which you may open fire without giving a warning are described in paras 13 and 14 below.*

7. *A warning should be as loud as possible, preferably by loud-hailer. It must: (a) Give clear orders to stop attacking or to halt, as appropriate. (b) State that fire will be opened if the orders are not obeyed.*

You may fire after due warning

8. *Against a person carrying what you can positively identify as a firearm [which includes a grenade, nail bomb or gelignite type bomb] but only if you have reason to think that he is about to use it for offensive purposes and he refuses to halt when called upon to do so, and there is no other way of stopping him.*

9. *Against a person throwing a petrol bomb if petrol bomb attacks continue in your area against troops and civilians or against property*

10. *Against a person attacking or destroying property or stealing firearms or explosives, if this action is likely to endanger life.*

11. *Against a person who though is not at present attacking has (a) in your sight killed or seriously injured a member of the security forces or a person whom it is your duty to protect and (b) not halted when called upon to do so and cannot be arrested by any other means.*

12. *If there is no other way to protect yourself or those whom it is your duty to protect from the danger of being killed or seriously injured.*

You may fire without warning

13. *Either when hostile firing is taking place in your area, and a warning is impracticable or when any delay could lead to death or serious injury to people whom it is your duty to protect or to yourself; and then only (a) against a person using a firearm [which includes a grenade, nail bomb or gelignite type bomb] against members of the security forces or people whom it is your duty to protect or (b) against a person carrying a firearm [which includes a grenade, nail bomb or gelignite type bomb] if you have reason to think he is about to use it for offensive purposes.*

14. *At a vehicle if the occupants open fire or throw a bomb at you or others whom it is your duty to protect, or are clearly about to do so.*

Final consideration of the evidence relating to the cause of death

[140] The ultimate question that requires to be considered is whether it is still possible, in light of my earlier findings, to come to a decision as to who fired the fatal bullet.

[141] There was an exchange of gunfire at this location. The number of bullets fired by the gunman is uncertain. Soldiers did fire bullets. I can only rely on their recollection and statements. Soldier B has admitted firing 20 rounds, in three bursts of semi-automatic fire and Soldier C has admitted to firing 7 rounds. Each of the 27 rounds were aimed at a person at the OO(ii) location which was where Marian Brown was standing. Soldier B and Soldier C said that they fired aimed shots, although the evidence of Constable Moffitt indicates that a significant number of shots hit the walls and surfaces of the houses adjacent to Marian Brown.

[142] When I consider whether it is more likely than not that the bullet that killed Marian Brown was fired by a soldier I must take into account the fact that 27 bullets are acknowledged as having been fired in her direction at a supposed target standing at a location at or about where she was standing. I recognise that this was an exchange of gunfire and that more likely than not the gunman was firing from a moving vehicle at the time. That gunman may have been trying to kill Marian Brown or others in that location, or he may have been trying to kill the soldiers. I do not ignore the evidence that the IRA or the UDA/UFF may have been involved and that both organisations have individuals within their ranks that are capable of deliberately killing civilians. I am sure that these organisations had within their ranks, members who were sufficiently inexperienced in the use of firearms and any discharge by such a person could have been in a reckless and grossly negligent fashion. I recognise that there is a possibility that her death was caused in such circumstances, but when placed against the fact that at least 27 bullets were conceded by soldiers as having been fired in her direction, I have decided that it is more likely than not that one of the soldiers' rounds caused her death either through a direct hit, or a ricochet off the walls of the buildings on, or the road/pavement surface of, Roden Street. However based on the evidence from all the soldiers, and in particular the evidence of Soldier B and Soldier C that they fired in the direction of OO(ii) where Marian Brown was standing, it is probable that the fatal round was fired by either of those soldiers, although I am unable to reach a finding based upon evidence as to which one fired that round.

Were the soldiers justified in opening fire?

[143] Article 2 of the European Convention on Human Rights has been considered on a number of occasions by the domestic and European Courts in the context of self- defence or defence of another. A number of those authorities were concerned with agents of the State employing lethal force, using weapons.

[144] The law permits an individual to use force, including the use of a weapon, when they honestly believe that it is necessary to do so to defend himself or herself

or another. The level of force used in such circumstances must be no more than is absolutely necessary.

[145] One of the most recent considerations of this issue in the European Court of Human Rights was in Da Silva v UK [2016] ECHR 314. At [248] it stated: *“It can therefore be elicited from the Court’s case-law that .. the principal question to be addressed is whether the person had an honest and genuine belief that the use of force was necessary”*

[146] The first question I must ask myself is whether the soldier who fired the fatal shot held an honest belief that it was necessary to use force. The second question I must ask myself is whether the level of force used by that soldier was no more than was absolutely necessary for the achievement of one or more of the purposes set out in Article 2(2)(a) – in defence of any person from unlawful violence.

[147] When considering these questions, I must take into account the fact that the individual involved was a trained soldier, rather than, for example, an untrained civilian (see Bennett v UK [2010] EHRR 52 at [57]).

[148] When approaching the first “honest belief” question, I have to consider whether or not I can actually determine the answer given that I am unable to reach a finding as to which soldier actually fired the fatal round. I believe that I can reach such a finding on this knowing only that it was a soldier as opposed to an identified soldier.

[149] The jurisprudence makes it clear that the focus is on the subjective belief of the individual, in this case a soldier. Whilst the reasonableness of their actions can inform the decision-maker’s judgment on whether or not they held the honest belief that the use of force was necessary, it does not determine the answer. It is clear from the relevant jurisprudence that it is not an objective test.

[150] In the circumstances presented to the soldiers on Roden Street in the early hours of 10 June 1972, in light of my finding that there was a gunman firing an automatic weapon from a car, I find on balance that all of the soldiers who discharged their weapons held an honest belief that it was necessary to use force for the purposes in Article 2(2)(a), namely defence of themselves and/or another. The soldiers did not all expressly state whether they were defending themselves or another or both when they opened fire, but I find that it was in the defence of both themselves and others.

[151] However, that is not the end of the matter. I must also consider whether the level of force employed by the soldier when firing the fatal round was no more than absolutely necessary. Again I must ask myself whether I can reach a finding on this given that I do not know which soldier fired that fatal round. Notwithstanding the difficulties involved, I believe that I can.

[152] One of the significant difficulties for me is that one of the factors I have to look at when assessing the level of force employed is what the soldier honestly perceived to be the threat. The different soldiers gave different accounts of the threat they perceived themselves and/or others to be facing. However, one common theme is that there was a gunman firing in a hostile manner in a built up area.

[153] I must look at the options that were open to the soldiers. Whilst obviously they could have done nothing, I have already decided that they honestly believed that it was necessary to use force. When considering options, I am referring to what options were available in terms of employing force. There was no evidence of any alternative weapons available to the soldiers of lesser lethality. Given their distance from the Grosvenor Road/Roden Street junction I am not convinced such lesser options would have been feasible in any event. They could have moved forward to meet the gunman, but that was inherently dangerous in light of my finding that an automatic weapon was being fired along Roden Street in their direction.

[154] Therefore I find that it would have been possible to use an SLR rifle within the confines of the law. However, I also find that the soldier who fired the fatal shot did not do so.

[155] Not all of the soldiers who opened fire mentioned seeing civilians present in and around Roden Street prior to opening fire. However, even for those who did not, they would have been acutely aware from their immediate surroundings and from their time in that area of Belfast that they were in an urban environment made up of terraced housing with doors and windows onto the footpath and road. The risk of casualties and death increased as a result of the location they were in.

[156] The soldiers, who should have been aware of the contents of the Yellow Card, should only have opened fire if they had an identifiable target who was posing an immediate threat to the soldiers and/or others, and they had a clear unobstructed line of fire to that target and fired aimed shots at that target.

[157] Whilst under fire, they were also in positions of relative safety. I do not wish to overstate this. The situation they found themselves in was very serious. The use of a firearm is potentially lethal and there was a prospect of someone, including themselves, being shot and killed. However, they were able to take some cover from the firing. That influences the level of threat, although only to the soldiers, which in turn influences an assessment of what is no more than absolutely necessary in response.

[158] As the jurisprudence has made clear and I accept, I must also make some allowance for decisions made in the heat of the moment, even for a soldier trained in the use of firearms and trained to deal with situations when they are being fired upon.

[159] The distance between the soldiers and the junction was relevant. It was certainly not impossible to aim at and strike a target that far away, but the distance reduced the prospects of a hit, or increased the prospects of a miss. The lighting conditions did not assist. It was night time and the inquest received, and I accept, evidence that the lighting was poor with a number of street lights on Roden Street not working, thereby making it more difficult to see what they might be trying to aim at.

[160] I have found that the gunman was in a car at the junction. Marian Brown was not in the car. She was close to and making her way closer to the wall at the westerly corner of the Roden Street/Grosvenor Road junction.

[161] In the event of a soldier firing at the gunman in the vehicle and striking Marian Brown, taking into account all the surrounding circumstances, he was not using force that was no more than absolutely necessary in the circumstances. The level of force used was more than that. The fact that they intended to strike a gunman, missed their target and struck Marian Brown does not necessarily lead of itself to a finding that the force was more than absolutely necessary. However, I have reached my finding by taking into account the circumstances the soldier was in. The environment and conditions the soldier found himself in were important. A well-aimed shot (or possibly more than one shot) at the vehicle would have been no more than absolutely necessary provided there was a clear line of sight with a sufficiently good prospect of striking it and nothing else. That would not have been the case of a soldier firing at the vehicle and striking Marian Brown, even when accounting for movement of the vehicle.

[162] Whilst I have found that the gunman was in a vehicle, if the soldier who fired the fatal round honestly believed that there was a gunman at the corner of the junction in and around where Marian Brown was present rather than in the vehicle, I still find that the use of force was more than absolutely necessary because they were not in a position to aim a shot or shots at an identified target with an acceptable prospect of striking that target. The identified target would have had to have been a person against whom the soldier believed the force was necessary. The soldier should not have been firing unless he could make out such a target and aim at that target with sufficient confidence he would strike that target and nothing else. That was not the case.

[163] I have not considered the number of shots fired in the circumstances when assessing the level of force in question. I do not know whether it was the first bullet a particular soldier fired that caused the fatality or not. My view is that no shot should have been fired unless an identified target could be made out, and aimed at, with sufficient confidence of striking same and nothing else.

[164] In the circumstances I have concluded that the use of force by the soldier that caused the death of Marian Brown, whoever he was, was not justified.

Investigation into the circumstances of the death

[165] The duty is on the State to carry out a meaningful investigation into any death of this type when it has been caused by a soldier, or may have been caused by a soldier. The procedural aspects of Article 2 of the European Convention did not apply at the time of the original investigation involving the Royal Ulster Constabulary and Royal Military Police, but it has to be scrutinised in the context of an Article 2 compliant inquest owing to the timing of the Historical Enquiries Team investigation and this inquest.

[166] I accept that very soon after the death, the police would have received the report of the autopsy which indicated that the round that killed Marian Brown was a Thompson sub-machine gun round. This would have pointed the investigation away from the soldiers and towards the members of terrorist organisations. However there was still sufficient evidence of significant discharge of ammunition by the soldiers in the direction of Marian Brown, and evidence of bullet strikes in her vicinity, to have warranted further investigation.

[167] The police issued Force Order 148/70 on the 8 September 1970 and this remained in force until cancelled and replaced by Force Order 131/73. Order 148/70 was entitled "Instructions regarding Complaints against Military Personnel." It stated that where a complaint involving military personnel is received by the police, the Commander of the Division shall obtain statements from civilian and police witnesses and will investigate the "criminal aspect" of the matter. On completion of the police investigation the police report will be forwarded to the Royal Military Police who will interview and obtain statements from military personnel involved.

[168] The Report of the Bloody Sunday Inquiry dealt with an incident in Londonderry in January 1972. The investigation by the Royal Military Police into that incident followed a similar pattern. To avoid unnecessary delay and duplication of evidence it was agreed that excerpts of the Inquiry's findings could be considered as relevant evidence in this Inquest. I do not intend to quote from the Report as it is a matter of public record. The relevant section is in Volume IX – Chapter 173 entitled – Evidential Matters. The Royal Military Police statements and maps.

[169] One cannot fault the speed with which the military police obtained statements from the soldiers and this appears to be matched with reasonably expeditious statement taking from civilians by the police, save as I have mentioned at [173]. However the impact of Force Order 148/70 meant that no further meaningful investigation could continue as the soldiers were placed beyond the powers of the civilian police, who had apparent control of the investigation. There was no proper central controlling investigating officer to whom evidence would be

reported and by whom decisions could be made about seeking further evidence, seeking clarifying statements from witnesses, or arrest and interview under caution. After the initial evidence was obtained, one would have expected some further steps to be taken to clarify the evidence, notwithstanding the difficulties faced by police at the time. It appears that there was virtually no follow up.

[170] There was a military aspect to the investigation in that the Ministry of Defence had legal advisors who would assess compliance with the Yellow Card rules based on the written materials provided to them. Soldier J fulfilled that role in this case, although in his two statements to the Inquest he only spoke in general terms about this process as he had no recollection of this actual incident. The Inquest did not have access to the actual report of the legal advisor. It is unlikely to have been the document referred to in [73] above as this was probably prepared by Soldier H given its date. Soldier J did not know what happened to his reports once they were passed up through the chain of command and there is no evidence available from anyone further up that chain of command in relation to their investigation, if any. In any event I consider that the purpose of the legal advisor's role was more to do with the Army's review of compliance with Yellow Card rules, important as that was, rather than an overarching investigation into the circumstances of the death. It is also apparent that there was no liaison between the civilian police and the military police in relation to this, or any, part of the investigation.

[172] For obvious reasons Force Order 148/90 was a clear impediment to the proper investigation of this killing. It has been criticised in Re Marie Louise Thompson's Application for Judicial Review [2003] NIQB 80 and in subsequent decisions.

[173] The failure by the police to interview Thomas Corrigan was a significant omission. He had been in the company of Marian Brown at the time of her death and was also a victim of the same incident having sustained very serious injuries. He was therefore a key witness regarding events up to the moment he was shot. His injuries would have prevented early engagement with him, but he was detained in hospital for over three weeks and his address would have been known to the police.

[174] Other obvious deficiencies were the failure to seal off the scene, or scenes, to enable a thorough search for evidence such as bullet casings, bullet fragments, tyre marks, vehicle parts etc., as well as a failure to seize the weapons used by the soldiers. The circumstances pertaining to the security situation on the ground meant that that may well have been impracticable at the time, but taken together with the failure to interview Thomas Corrigan and with the impact of Force Order 148/90 there was an inadequate investigation into the circumstances surrounding the death of Marian Brown.

[175] It is also important to note that apart from the process of identification of the body, there was no liaison with Marian Brown's family to keep them informed of developments during the investigation.

[176] In all the circumstances I find that the investigation into the death of Marian Brown was inadequate.

Regulation, planning and control of operations

[177] As was pointed out by Colton J. in Re Deery, this inquest should consider whether the use of such force and the operation in which it was used were regulated, planned, and controlled in such a way as to minimise to the greatest extent possible any risk to life.

[178] My first observation in this regard is that whilst the unit in question were performing duties at a checkpoint, they were not on an operation that had specifically planned the use of force.

[179] Nonetheless, the soldiers were performing duties in June 1972 in Belfast, which was rife with tension and Troubles related violence. The soldiers and their commanders would have been constantly aware of the potential for meeting and having to deal with force. This particular morning was no different.

[180] The soldiers had received their basic training when they first joined the armed forces. They also received additional training in Germany with the goal of preparing them for their tour in Northern Ireland. This "Tin City" training was to assist with operations in an urban environment and some of the soldiers mentioned seeing cardboard cut outs made to look like terrorist type figures as well as cardboard cut outs made to look like civilians presenting no threat. I acknowledge that devising training which was both relevant and valuable to soldiers about to embark on a tour of Northern Ireland would have been difficult, particularly at relatively short notice.

[181] The training they received appears to have been of limited assistance for dealing with this type of situation as a number of soldiers opened fire with a large number of rounds in a build-up urban area containing civilians. They either did not see the civilians, or they did see them and either mis-identified the civilians as gunmen or they were prepared to fire rounds targeted at identified gunmen who were in positions adjacent to civilians.

[182] Their training would have involved guidance on the use of force and in particular the content of the Yellow Card, which, whilst permitting the use of firearms when fired upon, I do not believe were followed on this occasion. Although I do not consider that it made any difference to my consideration of the principle issues in this case, two soldiers did indicate that they had an additional round in the breech of their SLR which is a contravention of the Yellow Card.

[183] The patrol had a commanding officer present, Corporal E. He gave an order permitting the soldiers to open fire after they were fired upon, but no subordinate soldier referred in his evidence to hearing that order permitting him to open fire, or awaiting such an order before opening fire.

[184] None of their respective 1974 accounts refer to the Yellow Card, or whether they complied with it. Those who did give oral evidence, when questioned, did confirm their awareness of the Yellow Card and their belief that they complied with its terms.

[185] I note from Colton J's findings in Re Deery at paragraph [148] that the manner in which the use of force is investigated is also something that speaks to the regulation of the use of lethal force. I have already concluded that the investigation in this case was inadequate.

[186] Taking all matters into account, I conclude that the regulation, planning and control of this operation was not such as to minimise to the greatest extent possible any risk to life.

Conclusion

[187] I propose to conclude this ruling in the form of a narrative. The narrative summarises the findings that I have made, on the balance of probabilities, for the reasons that I have set out above.

[188]

- i. The deceased was Marian Brown of 15 Stanhope Drive, Belfast
- ii. Her date of birth was 7 October 1954 and she was born in Belfast the child of James and Teresa Brown.
- iii. She was unmarried and was employed as a stitcher.
- iv. She died on 10 June 1972 and was pronounced dead at the Royal Victoria Hospital, Belfast
- v. The cause of her death was a bullet wound to the neck. The bullet severed the spinal cord at the second cervical vertebrae (C2) causing immediate collapse and death.
- vi. At the time she was struck by this bullet she was located at the western side of the junction of Roden Street and Grosvenor Road, Belfast
- vii. The time was between 00.30 and 01.00.
- viii. Marian Brown was also struck by a number of other bullets which would not have caused her death. It is impossible to determine the sequence of the bullets that struck her.
- ix. All the bullets which struck Marian Brown entered her body from her left hand side and exited her body on her right hand side.

- x. An army vehicle check point comprising soldiers from C Company 3 Royal Anglian Regiment was positioned at the junction of Clifford Street and Roden Street.
- xi. The soldiers were armed with standard issue self-loading rifles (SLRs).
- xii. Prior to the soldiers opening fire an armed civilian travelling in a vehicle on the Grosvenor Road westwards across the mouth of Roden Street opened fire with an automatic weapon.
- xiii. The type of weapon cannot be determined.
- xiv. The intended target or targets of the armed civilian cannot be determined and could have been either one or more of three groups of civilians who were on Roden Street at the time, or at the soldiers.
- xv. At least five soldiers fired shots aimed north along Roden Street. Two of the soldiers state that they fired a total of 27 rounds towards the position where Marian Brown was standing.
- xvi. No warning was given before the shots were fired.
- xvii. All the soldiers who discharged their weapons held an honest belief that it was necessary to use force in their own defence, in defence of their colleagues and/or in defence of civilians.
- xviii. The direction of travel of the fatal bullet from left to right is not indicative from where the bullet was discharged.
- xix. The nature of the wound is not indicative of the velocity or type of bullet that killed Marian Brown.
- xx. The bullet which killed Marian Brown was fired by a soldier from that soldier's position in or around the junction of Clifford Street and Roden Street.
- xxi. The soldier firing that bullet cannot be identified.
- xxii. The soldier firing that bullet is more likely to have been either Soldier B or Soldier C.
- xxiii. Neither Marian Brown or anyone at her locality was acting in a manner that could reasonably or honestly have been perceived as posing a threat of death or injury to any civilian on Roden Street or to the soldiers positioned in the vicinity of the junction of Clifford Street and Roden Street.
- xxiv. The force used was more than absolutely necessary in that the soldier could not have identified any target, and a clear line of fire to that target, that was posing a danger to him, his colleagues and/or to the civilians on Roden Street.
- xxv. The force used by that soldier by firing in the direction of Marian Brown was not justified as it was more than was absolutely necessary.
- xxvi. The rules of engagement in force at the time, as set out in the 'Yellow Card' were not adhered to by that soldier.
- xxvii. The investigation into the death of Marian Brown was inadequate.

- xxviii. The military operation was not planned, controlled or regulated in order to minimise to the greatest extent possible the risk to life.

ANNEX

[Map Roden Street  Plan of Scene of Death.pdf]