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

**IN THE MATTER OF AN INQUEST INTO THE DEATH OF
PATRICK McELHONE**

BEFORE MRS JUSTICE KEEGAN, SITTING AS A CORONER

**HEARING ON 30 NOVEMBER 2020 - 4 DECEMBER 2020
AND 7 JANUARY 2021**

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Introduction

[1] This inquest investigates the death of Patrick Anthony McElhone who was 24 years old when he died as a result of injuries sustained when on 7 August 1974 he was shot and killed at Limehill, near Pomeroy, County Tyrone. There is no dispute that Mr McElhone was shot by a soldier and that soldier was Lance Corporal Roy Alun Jones, a member of A Company, First Battalion, of The Royal Regiment of Wales. This inquest is unusual in that a criminal trial has already occurred as Lance Corporal Jones was charged with the murder of Mr McElhone and acquitted of that charge on 27 March 1975. That case was the subject of an Attorney General's reference which was heard by the Northern Ireland Court of Appeal and the House

of Lords. A civil case was also taken by the next of kin which was settled. Subsequent to the criminal trial an inquest in relation to Mr McElhone's death took place on 29 April 1975 and returned with an open verdict. Lance Corporal Jones is now deceased.

[2] The Attorney General for Northern Ireland directed a fresh inquest by correspondence of 20 December 2018. By virtue of section 14(1) of the Coroners Act (Northern Ireland) 1959 the Coroner must proceed with an inquest when such a direction is made. There is no discretion in relation to this.

[3] I am a High Court Judge but I am also appointed as a Coroner. With the agreement of all I heard this case sitting without a jury.

[4] The next of kin of Mr McElhone were represented by Patrick Fahy Solicitors who instructed Mr Des Fahy QC and Mr Michael Forde of counsel. The Ministry of Defence ("MOD") were represented by the Crown Solicitor's Office who instructed Mr Aiken QC. One military witness, Private Bedford, was represented by Devonshires Solicitors and they instructed Mr Egan of counsel who appeared for his evidence only.

[5] I heard the case in Omagh between 30 November 2020 and 4 December 2020 and on 7 January 2021 at the Royal Courts of Justice in Belfast. I was attended by Sinéad Mallon, solicitor of the Legacy Inquest Unit ("LIU") and counsel Fiona Doherty QC and Denise Kiley of counsel. I am very grateful for all of the assistance provided by the various legal representatives. My findings are in narrative form as follows.

Preliminary issues: Case management

[6] I case managed this case during my time as Presiding Coroner in Northern Ireland as part of the review into all outstanding legacy cases. During that review I decided that this case should form part of the year 1 cases as part of the Lord Chief Justice's 5 year plan. I retained the case myself and with the input of all counsel I decided that it was feasible to hear this case in November 2020, notwithstanding the Covid 19 pandemic. I am grateful that Mr Fahy specifically thanked the court and the LIU for keeping this inquest on track. I also thank all staff, solicitors and counsel for making this possible.

[7] The case proceeded in hybrid form, meaning that a mix of remote technology and live courtroom attendance was utilised. The case proceeded in a socially distanced court in Omagh with solicitors, counsel and some next of kin present. I allowed others, including the media, to link in remotely. I issued a protocol at the outset (circulated on the JudiciaryNI website <https://www.judiciaryni.uk/sites/judiciary/files/media-files/McElhone%20Inquest%20-%20Video-Link%20Protocol.pdf> and attached hereto

in Annex 1) to ensure that everyone understood the rules associated with remote hearings and happily there were no breaches in relation to this.

[8] As part of my case management I allowed partial or full anonymity for those military witnesses who applied. Most witnesses were not fully anonymised given the previous public hearings in relation to this incident. I also allowed many of the witnesses to give evidence via live video link by virtue of the Coronavirus Act 2020. I did not allow screening for any witness.

[9] Whilst live link was clearly a pragmatic solution during the pandemic, I have also utilised this medium in other inquests pre-pandemic under common law case management powers. In my view such methods are useful in legacy cases where witnesses, civilian and military, are often elderly and outside the jurisdiction. The focus in this type of exercise is to ensure that the evidence is obtained and transmitted in the most effective way.

[10] When using remote technology there is a need to ensure that it works. Thus, I ran tests for each witness in advance. An agreed bundle of documents was sent to each witness in advance as I wanted to make sure that witnesses had access to the relevant papers. For some of the witnesses, representatives from the LIU were with witnesses in remote locations. We used a variety of locations including hotels and police stations and private homes. When LIU representatives were not present I allowed family members to accompany witnesses or ensured they could manage without support. I record the high level of collaboration between the parties in relation to these issues which meant that this inquest could proceed as a hybrid hearing on schedule. In this case all interested parties agreed that the approach was the best to ensure that the inquest could proceed.

[11] I mention another point in this section. Certain witnesses did not wish to be interviewed by my Investigators to allow a statement to be filed in advance. I should say that these witnesses had filed historical statements but the usual practice is for Investigators to speak to witnesses and collect any evidence in advance. I did not consider that a section 17A notice pursuant to the Coroners Act (Northern Ireland) 1959 was appropriate in these cases. The witnesses in the inquest are witnesses of the Coroner and not a particular party. That is because this is an inquisitorial process, albeit with adversarial elements. In recognition of the issues involved in these cases witnesses have availed of their own legal advice. However, I follow a process of the Coroner collecting the evidence rather than anyone else.

[12] Hence, as no statement was provided by four of the witnesses in advance I simply called them to give evidence. I then had a transcript prepared and that forms a record of the evidence. I adjourned any questioning from the interested parties to allow them to consider the evidence given. As a result I heard the evidence of four military witnesses in two parts.

[13] After the evidential hearings in November 2020 I paused and directed that the evidence of Lance Corporal Jones be compiled in one document to be read in and also that counsel discuss the remaining issues. I am very grateful for the written papers provided by Ms Doherty and Ms Kiley which all other counsel had an opportunity to consider. I should say that I also put the family of Lance Corporal Jones on notice of the last day of court hearing on 7 January 2021 when submissions were heard and his evidence read. The family acknowledged my approach but did not want to add anything or attend.

[14] I provided all potentially relevant material to the interested parties. In relation to the Public Prosecution Service (“PPS”) material I considered some arguments in relation to privilege and ultimately a gist was provided by agreement. This method also applies in relation to sensitive material. This process was effective because of the collaboration of all parties and oversight by me as the Coroner. Ultimately, we were able to obtain consensual solutions to the issues raised which allowed all potentially relevant material to be provided.

[15] During the case management process, I asked the parties whether there was any agreement in relation to the issues to assist me in deciding how I proceed with my investigation. I did this to maintain a sense of proportionality in this case given that it had been examined by other courts and Lance Corporal Jones is deceased. Whilst there were initial indications from Mr Aiken that a different approach could be taken this did not come to pass. I make absolutely no criticism of that as everyone is entitled to take their own course. However, I cannot help but think that there was an opportunity missed in this case particularly given the way the evidence proceeded and the fact that on 7 January 2021 Mr Aiken on behalf of the MOD told me in the clearest of terms that his client accepted that this death could not be justified by the State.

Legal Considerations

[16] Given the fact that the MOD now acknowledge that this death cannot be justified by the State I do not need to deal with the legal considerations in as much detail as I might have. However, I am cognisant of the procedural obligations I have pursuant to Article 2 of the European Convention on Human Rights (“ECHR”) which were confirmed in *Jordan v UK* [2003] 37 EHRR 2 and *Nachova & others v Bulgaria* [2006] 42 EHRR 43 “to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State bodies, to ensure their accountability for deaths occurring under their responsibility.”

[17] Rule 15 of the Coroners (Practice and Procedure) Rules (Northern Ireland 1963 (“the Coroners Rules”) requires me to consider who the deceased was, how and when and where the deceased came by his death and the particulars regarding registration. Rule 16 states that the Coroner must not express any opinion on questions of criminal or civil liability. The purpose of an inquest is fact finding.

There are also obligations flowing from the ECHR as any investigation must be effective and involve the next of kin.

[18] Counsel have also reminded me that (i) the inquest has to reach conclusions on major issues canvassed at the inquest; *R v Her Majesty's Coroner for the Western District of Somerset ex parte Middleton* [2004] UKHL 10, at paragraph [18], (ii) one of the functions of the inquest is to allay rumour and suspicion; *In the Matter of an Application for Judicial Review by Siobhan Ramsbottam* [2009] NIQB 55, at paragraph [11], (iii) that the evidence at the inquest may range more widely than the verdict or findings; *Jordan v Lord Chancellor* [2007] UKHL 14, at paragraph [37].

[19] In Northern Ireland, in inquests of this nature, the civil standard of proof has been applied before verdicts have been reached. There are numerous reported cases in relation to this in the legacy field including the case of *Jordan* where the civil standard was discussed and approved by the Northern Ireland Court of Appeal, reported at [2018] NICA 34. The standard of proof to be applied in inquests has been the subject of litigation recently in England & Wales in a case heard by the Supreme Court of *R(On the application of Maughan) v Her Majesty's Senior Coroner for Oxfordshire* [2020] UKSC 46 and in Northern Ireland *In the Matter of an Application by Hura Steponaviciene for Judicial Review* [2020] NICA 61.

[20] In both cases it was concluded that the standard of proof to be applied is the civil standard. Whilst these cases dealt with suicide, they also referred to unlawful killing verdicts. Such a verdict is not available in Northern Ireland but the same principles apply. In Northern Ireland, narrative verdicts are also used as short form is not available. This is discussed by McCloskey J, as he then was, in his first instance decision in *Steponaviciene* reported at [2018] NIQB 90. In its judgment in *Steponaviciene* the Northern Ireland Court of Appeal commented on the *Maughan* decision as follows:

“By a majority the Supreme Court decided that the standard of proof in a Coroner’s inquest on the question of suicide or unlawful killing was the balance of probabilities.”

[21] These decisions are binding upon me and so I have approached this case on the basis that the civil standard of proof applies. In any event, as the substantive case is now conceded by the State, this issue cannot be controversial in this case.

[22] In approaching the evidence, I bear in mind that the index event was in 1974. That said, there are good records from the time of the investigation, contemporaneous statements/depositions and this case has gone through other court adjudications. In assessing the witnesses who gave evidence before me I bear in mind that they may not be able to remember every detail or that they may get some things wrong. There is an obvious measure of latitude required in these cases. I therefore take a holistic approach to a case such as this. I bear in mind that this is

not a trial, it is an investigation directed by me but with input from all interested persons. Within that framework, I have reached my conclusions.

Scope/ issues

[23] The scope of this inquest was agreed in advance in a document which contains the following narrative at paragraphs 3 and 4:

“3. Related to the how question the Coroner will consider:

- (i) the evidence of witnesses at or near the scene of the incident in which the deceased was fatally wounded;
- (ii) pathology evidence;
- (iii) forensic evidence relating to the weapon used in the incident;
- (iv) evidence relating to the police and military investigation of the death.

4. Further, in addressing the how and in what circumstances question, the Coroner will examine in evidence the military operation that culminated in the death with reference in particular to the following matters (in so far as the examination of these matters can assist in addressing that question):

- (i) The purpose of the operation;
- (ii) The planning and control of the operation on the part of the relevant authorities;
- (iii) The actions of those involved in the operation, at all stages;
- (v) The state of knowledge of those involved, at all stages of the operation;
- (vi) Whether in the planning and control of the operation, or in the conduct of the operation, those involved sanctioned or engaged in the deliberate use of lethal force that was unjustified by reference

to Article 2 of the European Convention on Human Rights and/or domestic law;

- (vii) Whether the operation was regulated, planned or controlled in such a way as to minimise to the greatest extent possible any risk to life;
- (viii) The guidance that existed at the relevant time relating to the use of force in such operations;
- (ix) Whether, the RUC and RMP/SIB investigations into the death, and consequently any enquiries into the circumstances of how the deceased came about his death, were hindered by any attempt to conceal how the deceased came about his death."

[24] I allowed some submissions from the interested parties on 7 January 2021 at the conclusion of the evidence. In addition to the core issue of whether this State killing was justified, I heard submissions on some other issues identified by counsel as follows:

- (i) The purpose of the Royal Regiment of Wales presence at the McElhone house on 7 August 1974.
- (ii) The existence or otherwise of a list/folder containing intelligence regarding IRA activists.
- (iii) Whether the name of Patrick McElhone was on that list/folder.
- (iv) Whether the name of Michael McElhone was on that list/folder.
- (v) The status of the evidence of Sergeant Harray to the inquest given its clear contradiction with the contemporary reports of his evidence on these issues to both the criminal trial and the first inquest.
- (vi) The relationship between the RMP and RUC viz-a-viz the investigation of the death of Patrick McElhone and in particular the decision not to interview Lance Corporal Jones under caution.
- (vii) Whether at the conclusion of the evidence there is any valid reason for the presence of Lance Corporal Jones and Patrick McElhone in the field where he was shot dead.
- (viii) Whether the shot fired by Lance Corporal Jones which killed Patrick McElhone was an aimed shot.

- (ix) Whether at the conclusion of the evidence the level of force used against Patrick McElhone can be justified and whether any other justification can be advanced for the shooting dead of Patrick McElhone.
- (x) Whether there was a deliberate attempt to conceal the truth about what happened to Patrick McElhone, beginning with the false accounts provided in the radio communications immediately after the shooting.

Setting the Scene: engineering evidence

[25] I have been greatly assisted by the evidence of Mr Brian Murphy, Consulting Engineer, who provided maps and photographs to explain the scene of this incident to me. I should say that I have also had the benefit of Royal Military Police (“RMP”) photographs from the time which are extremely useful. Mr Murphy filed three reports of 11 November 2020, 29 November 2020 and 3 December 2020. He gave oral evidence in relation to these reports which I summarise as follows.

[26] In his reports Mr Murphy describes the area which is a rural setting outside of Pomeroy in Co. Tyrone. He describes the road and the old farmhouse and also the locus where the shooting took place which is a large boggy area known as the meadow. There obviously are some changes to the area, in particular, the old house is derelict. The meadow remains, the current gate is different – it is hinged on the eastern side whilst the old gate was hinged on the western side. It also appears that the current gate is closer to the road and the gate posts are new. As Mr Murphy has reported, the field is currently very boggy and difficult to walk on. The gates to the farmhouse are new and at the time there were no pillars at the entrance.

[27] In his reports Mr Murphy also makes the point that the foliage is different, the sycamores in front of the window were not there at the material time and the hedge on the eastern side of the entrance was less dense at the date of the incident. Mr Murphy commented on the fact that the locus had been attended on two occasions by Detective Constable Donnan who took measurements in relation to the position of the body, head and feet lying more or less parallel to the road, the indicated position of Lance Corporal Jones near the gate and the position of the spent cartridge to the right of Lance Corporal Jones. A further position was given which was a gouge or groove in the ground attributed to the bullet which was fired at Mr McElhone.

[28] Mr Murphy, along with Ms Kiernan from Keith Borer Consultants, mapped this and ultimately they decided that the positions marked on Detective Constable Donnan’s sketch map could be reconciled with the evidence and the scene as they found it in 2020.

[29] I have had the opportunity to visit the scene myself. The old house remains although it is a ruin. I could see the yard in front of the house which is not large and the entrance onto the road. I also walked down the road to the field and looking

around I could see the expanse of land there on the right side of the road and that the land on the left was at a height as described by Mr Murphy.

[30] In his second report Mr Murphy also deals with the position of some of the soldiers and he took some photographs of those positions having looked at the statements. In particular, Private Kelleher mentioned in his statement that he and Private Bedford were in a yard on the right hand side of the house and he mentions that Bedford was up an incline. Private Bedford mentions that he was lying on his stomach and covering the area north of the dwelling. Mr Murphy also utilised a map which appeared to be created by the Historical Enquiries Team (“HET”) which indicated the positions of the various soldiers from the road. Also the position of Lance Corporal Lis which is at the other side of the road near farm buildings is explained by Mr Murphy in his evidence. Overall, Mr Murphy was able to give a visual picture of this site. In particular he described how the road coming from Pomeroy rises and then falls down to the field.

[31] It is clear from looking at the contemporaneous photographs and the recent photographs that the yard in front of the old house is relatively small. There is a door and two windows to the front of the house and an outbuilding facing the house. Mr Murphy described a rampart or raised area behind the house which is also apparent on the photographs. Across the road there are outbuildings and a large expansive meadow. Mr Murphy helpfully pointed out an area of fields including hay rucks, which accords with the evidence that the area is farmed and a tractor can actually be seen in one of the photographs. Mr Murphy thought that the gate was in a different position to that in 1974 and that the verge of the road may have changed over time. Also he said that the foliage has changed over time.

The evidence from civilian witnesses

[32] I began the inquest by hearing a personal testimonial from Oonagh McElhone, a niece of the deceased. She was nominated by the family to provide a short statement and she carried with her a photograph of Mr McElhone in and around age 24. She said he was born in 1950, he worked on the family farm. She said that he was musical and played the accordion for the Pomeroy Accordion Band. She said that he was very close to his parents and his untimely death aged 24 was something they never got over.

[33] The next witness was Mr Michael McElhone, brother of the deceased. He is a gentleman aged 75 years. Mr Michael McElhone prepared a statement for the Coroner’s Investigator dated 15 October 2020 and he was referred to this during his evidence. He was also taken to previous documents that he had provided. Mr McElhone gave evidence in a very straightforward and open way to the court. Of particular concern to him was the fact that his brother had been referred to as “backward” or “slow” in the course of previous investigations into this case. He said this was wrong and had caused great upset to the family and he wanted that notion dispelled.

[34] Mr McElhone said he had attended the trial in Belfast when Lance Corporal Jones was charged with murder however he said that information was not provided to the judge in particular that the soldier had said to the investigating officers that this was an accident. He said the family got £3,000 compensation. Mr McElhone referred to the fact that he had the task of identifying the body and he confirmed the contents of his deposition made at the time in relation to that. He also emphasised that the local police were extremely sorry in relation to what happened, in particular Constable Ferguson.

[35] In relation to the events themselves, Mr McElhone said that he was out during the day working. He told me that his brother was a farmer and that he was out working the land on the day in question. Mr McElhone described the house and land with the use of photographs. He also provided his recollection of events when he returned home around 6.00 or 6:15pm. He said he saw soldiers when he came home from work and they stopped him going into the yard and he said that they were rather abusive to him. They told him to stay in the house and not come out and he said they used abusive language. However, he said that he did come out of the house accompanied by Father McGirr and he went to the meadow and placed a white sheet over his brother who was clearly dead by that time. Mr McElhone said there were a lot of soldiers in the meadow running around swearing almost looking like they were playing with up to 10 or 12 of them moving their guns from one hand to the other. He described their demeanour as one of rejoicing. He said that order was only returned to the scene when the police arrived and settled the army down.

[36] Mr McElhone was referred to a statement he made which led to the inquest being directed by the Attorney General for Northern Ireland in 2018. He accepted that it did not contain his recollection of the soldier saying "sorry it was an accident" but he said he heard these words at the time and that this was told to the Cookstown police. Mr McElhone also referred to someone he said was called "Bradford or maybe Bedford" indicating that this was correct. Mr McElhone was referred to a HET interview in which another soldier named HARRY had referred to him potentially being on the list of suspicious persons and "on the run". Mr McElhone denied that.

[37] When asked whether or not his brother was on the fringes of the Irish Republican Army ("IRA") /a wanted man Mr McElhone said "absolutely not." He said the family were brought up well by their parents and Patrick was not on the fringes of the IRA and was never involved in anything. He also confirmed during questioning that his parents had no difficulty with the soldiers searching the house. He said that they also had no dealings with police and were not connected in any way with criminal elements. Mr McElhone said that he and his siblings were taught by their family to stay within the law and that was his main purpose in life.

[38] Mr McElhone described the house he lived in at the time as a modest place. He also said that he thought the trial in Belfast was not very fair and that no one from the prosecution spoke to him or his family.

[39] Mr Michael McAleer also gave oral evidence. He provided two accounts in relation to these events but the most up-to-date account which he was taken through was a statement to the Coroner of 16 October 2020. He made a contemporaneous statement on 10 August 1974. Also, there was some other material produced from press reporting at the time in relation to Mr McAleer.

[40] Certain parts of this evidence are uncontroversial. Firstly, it is clear that he was driving a cement lorry on the road at the relevant time. Also, Mr McAleer confirmed that he had a big black beard and so was recognisable. He said that he was a neighbour of the McElhone's and he was travelling past the McElhone's house from Pomeroy on the day in question. Mr McAleer marked his position on the map where his lorry was stopped. This was on the road outside the outhouses of the McElhone household. Mr McAleer could not be entirely sure about events after such a long period of time but he said that the soldier who stopped him was behaving with "poor manners." He said he could not remember exactly what he was questioned about but he referred to the soldier saying that he would get £200 "for killing a fucker like me." Then he said he heard a bang and the £200 was referred again. Mr McAleer then said that he saw Peter McElhone coming up from the other side of the hill, he was not sure what he said but he was in a pretty bad way. He said he was told to go on his way and when passing the field he saw people in the field but mostly a couple of soldiers along the road.

[41] Mr McAleer could not say who shot Mr McElhone due to where he was positioned when the shooting occurred but he did confirm in his evidence that Mr McElhone Senior, Mr Peter McElhone, was coming up the hill towards his house from the meadow. He was also asked did anyone approach him and ask him about the Jones trial and he said no. When questioned he said that he was taken out of the lorry and questioned and he said he was physically manhandled outside the lorry and there may have been more than one soldier, maybe two or three at that stage. He said that is when he saw Mr McElhone come up from the other side of the hill. Mr McAleer was told to get in to his lorry and as he drove slowly up the road, the soldier ran in front of him.

[42] I also received some evidence under Rule 17 of the Coroners Rules from the deceased's parents Peter McElhone and Margaret Ellen McElhone, who are also now deceased. These comprised depositions made in the case of Peter McElhone on 11 November 1974 and in the case of Margaret Ellen McElhone on 11 November 1974. These were read in by agreement. In his deposition Peter McElhone states that on the afternoon of the day in question he was standing in the yard at his home. Soldiers came into the yard and asked to search the outhouses. At about 6.00pm he states he was in the house with his wife when his son Paddy came in, he asked for his tea in a hurry as he was very hungry. Then the deposition states that "two

soldiers came to the door and beckoned Paddy out and said that they wanted a word with him." He went out with them and they closed the door.

[43] The deposition then refers to the fact that Mrs McElhone went down into another room in the house which had a window and was closer to the road. She came back and spoke to Mr McElhone and he then went out onto the road. Mr McElhone's deposition then states:

"I saw the soldiers pushing and shoving Paddy up against the ditch. I asked the soldiers what was wrong but I got no answer. I then saw one soldier shaking Paddy by the back of the neck and he shoved him in front of him up the road towards the meadow. The soldier opened the gate, shoved Paddy into the meadow and then ran back. Then I heard a shot and I saw Paddy fall. He was standing still at the time. I asked what my son was shot for and the soldier said to me 'Get in you fucking slabber you or we will shoot you too'. One of the soldiers shoved me back and I fell against the ditch. I went back into the house. My son was never involved in any unlawful activities and he had no interest in politics. His only interest was music."

It is indicated in the deposition that this witness was not cross-examined.

[44] The deposition of Mrs McElhone is also from the time. She states in this that on the afternoon of the day in question some soldiers came to her house. She refers to photograph number 3 in the album and identifies her house. She says the soldier spoke to her and asked her could they look around and she told them they could go ahead. She describes the soldiers as being in uniform and their faces were well blackened. She then describes that they started to search the premises. She said herself and her husband were together in the house. Her son Paddy was mowing in a field of hay all day. She said that he came home at 6.05 or 6.10pm to get his tea. He was hungry and she started to make the tea. She then says "He was sitting at the table when two soldiers came and wagged him out. The door was wide open when they came to it. They said, "come on out young fellow we want a word with you outside." Mrs McElhone then states in the deposition "Paddy jumped up and came out to them. They slammed the door on me and my husband when they had Paddy out on the doorstep." She says she ran to the lower room and the window was partly open. She then says as follows "I saw them and Paddy in the middle of the road. Then they started shaking him, and a soldier said 'you're not trying to help the British Army much.' They took him away up the road out of my sight. Then I heard loud talk. They took him up the road to the left. I was looking out of the window to the right of the cottage on photograph No 3 of the album".

[45] In the deposition Mrs McElhone then states, "As the result of what I saw I went back to the kitchen to my husband and told him to go out as they had Paddy away up the road with him." She then says Mr McElhone went outside after this and she was on her own in the house and after a few minutes she heard one shot and then went to the door and she heard her husband screaming down the road that Paddy was shot dead. Again, in relation to this deposition cross-examination was declined.

[46] This death was commented upon by Father Denis Faul and Father Michael McGirr who were local priests at the time. A letter from them of 8 August 1974 was read into evidence. It is apparent from this letter that Father McGirr attended the scene and administered the last rites. In the letter reference is also made to soldiers using foul language and appearing nervous. One soldier is referred to as continually pacing up and down the road taking to himself and shaking his head. There is reference to soldiers referring to "the fucking bastard in the field." The letter refers to the local people being terrified of the soldiers and asks that they be removed from the Pomeroy area immediately. There is also an account given in the letter which broadly accords with Mr and Mrs McElhone's statements.

Pathology

[47] By agreement I received the post mortem evidence without the witness having to attend in person. The post mortem was undertaken by Professor Marshall on 8 August 1974 at 2.30pm in the mortuary, South Tyrone Hospital, Dungannon. Professor Marshall's report indicates that the body of a young man of average build measuring 68 inches in length was before him. Rigor mortis was present. Hypostasis of purple colour stained the back of the body. He refers to the bullet wounds present as follows:

- (1) An entrance wound to the right side of the back 49½ inches above the soles of the feet. It was 6cms from the midline and 2½cms below the lower angle of the shoulder blade. It was a neat funnelled shape hole, 6mm diameter with dark brown soiling of the margin in the 12 o'clock position. It was surrounded by a zone of pale abrasion 2 mms broad.
- (2) An exit wound on the front of the chest 52 inches above the soles of the feet. It was centred 2cms to the left of the midline and 2½ cms above the level of the nipples. It was a hole about 22mms diameter bordered by black abrasion, 5mms broad, between the eleven o'clock and twelve o'clock positions. There was a slight radial notching in the three o'clock, six o'clock and eight o'clock positions. There were small pieces of fractured bone in its base.

[48] The commentary given by Professor Marshall is as follows.

"This young man was healthy. There was no natural disease to accelerate death. Death was due to a bullet

wound of the chest. A single bullet had struck the right side of the back about 50 inches above the feet. This was an inch below the shoulder blade. It had gone horizontally forwards through the chest with a slight deviation to the left to emerge over the middle of the breast bone. It had lacerated the base of the heart, the origin of the aorta and the pulmonary trunk and had made a small laceration in the front margin of the right lung. Death would have been immediate. There were no other injuries on the body. The report of the forensic science laboratory shows that at the time of his death there was no alcohol in the body.”

Ballistics

[49] I received a report from Ms Anne Kiernan which examines the ballistics evidence. This report is dated 26 November 2020. Ms Kiernan also gave oral evidence on the final day of the inquest hearing on 4 December 2020. In summary, the ballistics evidence establishes that Mr Patrick McElhone was fatally shot by a single gunshot to the back which penetrated his chest. It also was a bullet that broke the sternum and so may have deviated upon exit. A fired cartridge case, the weapon fired at the scene and the ammunition together with Mr McElhone’s clothing were seized and forensically examined. Nothing can be taken of note from the forensic examination of the evidence taken from Mr McElhone. In particular, there was no evidence of explosives. There were lead traces found on swabs but as Ms Kiernan’s evidence firmly established this is of no evidential weight. The scene was also photographed with cones placed to indicate the position of the shooter, the recovered cartridge case, the deceased’s body and a gouge in the ground which has been attributed to the flight of the bullet.

[50] The conclusion given by Ms Kiernan is that the relative position of the shooter with the fired cartridge case is consistent with the scenario of the shooter being stood in the gateway when he fired the shot. From the wound ballistics it appears that Mr McElhone may have been in the process of turning either away or towards the shooter or stood still with his back to the shooter, slightly rotated, when he was struck by the bullet. It cannot be said whether Mr McElhone was running, was walking or was standing still. Through a process of questioning Ms Kiernan agreed that this was effectively an aimed shot at the central body mass which penetrated the heart. She could not say it was actually aimed at the heart but she explained that the bullet was not fired into the air, it was not fired to the left or right of the target, it was aimed at the central body mass. Ms Kiernan also stressed that the bullet was stable and did not strike anything else. She broadly agreed with the dimensions provided by Detective Constable Donnan at the time. However, she thought that the position of the spent cartridge given on the original map was probably too far away

from where the shooter was positioned and so either the cartridge had been moved inadvertently or the shooter was forward and to the right from the position given. Either way the witness said that this does not change the dynamic of this scene to any great extent.

[51] The thrust of the evidence was that the soldier shooting at Mr McElhone was doing so roughly from the position of the gate. It cannot be said whether the soldier was in a standing or kneeling position but either way he had to bring his rifle to a shooting position and set the rifle for shooting at least by releasing the safety catch. The deceased clearly had his back turned to the shooter and fell and was killed instantly. Given that the shot broke the sternum the bullet's trajectory may have deviated at an angle from that point and as it left Mr McElhone's body.

[52] The forensic evidence taken at the time by the Department of Forensic Science in Belfast was also read into evidence. In particular, John Milburne's evidence was read as this deals with the examination of the clothes and the rifle. Mr Milburne also undertook some testing of the rifle and it was found to be operating normally. He found a bullet entry hole in the jacket of the deceased and a corresponding hole in the shirt Mr McElhone had been wearing. Nothing of significance was found in the clothing. Mr McIlroy, a Forensic Scientist, gave evidence in a statement which was read in which refers to the absence of improvised and commercial explosives residues in relation to the deceased. In addition, Mr James Smyth Wallace of Forensic Science, referred to the swabs taken from Mr McElhone's hands to test for the presence of material associated with the use of firearms. As I noted above, nothing of evidential value emerged from this evidence. I received all of this evidence in accordance with Rule 17.

Royal Ulster Constabulary ("RUC") witnesses

[53] I now turn to the RUC evidence which was given in statements made at the time by two RUC witnesses, Mr Pickard and Mr Donnan. Both gave evidence remotely before me and I will summarise it as follows. Mr Pickard was a Detective Inspector at the relevant time. He made a deposition of 9 August 1974 in which he stated that he was based at the RUC Station in Pomeroy and he was enquiring into the death of Patrick McElhone. He said that he was involved with the defendant Lance Corporal Jones. He cautioned him and invited him to make a statement. He says in his deposition that Lance Corporal Jones declined to make a statement at this stage. That was on 8 August 1974. He says he again saw the defendant at Cookstown Magistrates' Court on 9 August 1974 at 11:15am, he arrested him and preferred the present charge against him, namely a charge of murder. He said he again cautioned him and asked him if he had anything to say in answer to the charge and Lance Corporal Jones replied "not guilty it was an accident." This witness believed that he could connect the defendant with the charge and the defendant was thereafter remanded.

[54] Detective Inspector Pickard gave evidence of his involvement in the investigation of this incident which is significant and is largely contained in the comprehensive report that he prepared dated 27 September 1974. In it he explains that on 7 August 1974 at 6:30pm the police at Pomeroy received from Army authorities a report that one of their patrols had been involved in a fatal shooting at Gortsraheen Road in Pomeroy. The scene was visited by Detective Constable Donnan accompanied by other police arriving there at 7:05pm. Present at the scene was a 16 man patrol of the Royal Regiment of Wales under the command of Sergeant Harrhy. There is then reference to the finding of the body. The description given is that the body was lying almost parallel to the road with the head towards Pomeroy and 51 feet from the gate into the field. The feet were 44'7" from the hedge dividing the field from the road and the head was 45'1" from the hedge, under the body was a large pool of blood. 27 feet from the gate and 19 feet from the hedge a spent 7.62mm bullet case was found. 79'9" from the gate and running at an angle of approximately 45° from the road was a groove in the surface of the ground 1'6" long, 1" deep tapering to nothing at the end the furthest away from the body. The end nearest the body was 67'0" from the hedge and the end furthest away was 68'3".

[55] No weapons or explosives were found on the body or in the general area of the scene. There is then reference to the identification of Lance Corporal Jones as the person who fired the shot. There is then reference to statements taken from the various soldiers and also from the family. There is then reference to the history given and in the report Mr Pickard then highlights the conflict in the evidence where he says:

"At this point there is a conflict in the account given by the army patrol and that given by Mrs McElhone. Sergt Harrhy states that while talking to P. McElhone he saw a cement lorry coming toward them from the direction of Pomeroy, so he turned his attention away from McElhone and concentrated on the lorry being driven by Michael Dermot McAleer. Sergt Harrhy does not know what McElhone did after he left them. Sergt Harrhy then states that before he spoke to the lorry driver L/Cpl Jones had a conversation with him about McElhone's identity and as a result he instructed Jones to bring McElhone back. This is corroborated by Cpl Wood. It is interesting to note that Sergt Harrhy states he only knew of McElhone's name after he had left McElhone to speak to the lorry driver, but there had been some discussion previously resulting in McElhone being asked to come out of the house. The first natural question for him to ask was "what is your name." Peter McElhone, in compliance with his wife's request left the house and went in the direction of the soldiers and Patrick. He walked to the top of a small incline, a distance of

approximately 20 yards and there saw a soldier holding his son by the scruff of the neck and running him down the road, turning right through a gate into the field which he refers to as the meadow."

[56] The report then refers to the accounts of various different soldiers and the medical evidence. It then refers to the questioning of Lance Corporal Jones. The report states that Lance Corporal Jones was interviewed by Detective Constable Donnan on 8 August at 12:10pm. He was cautioned and asked if he wished to make a written statement. He declined but stated verbally "No, in actual fact I had legal aid earlier and I have been advised not to say anything." He was asked if he wished to make any verbal statement and he replied "No, you can speak to the Major." On 8 August 1974 at 7:40pm Detective Inspector Pickard again saw Lance Corporal Jones and he told Jones who he was and that he was enquiring into the death of Patrick Anthony McElhone. Lance Corporal Jones was again cautioned and he made no comment. Then at 11:15am on 9 August he was formally arrested and charged with murder to which he replied "not guilty, it was an accident." Subsequently, Lance Corporal Jones achieved bail.

[57] This report also contains the following:

"The motive for the crime is difficult to see but it is equally difficult to see how a soldier with experience of four tours of duty in Northern Ireland in addition to serving in Aden and Malaysia and who has been trained regularly in weapons since joining the army in 1963 can have an accident. To have an accident Lance Corporal Jones had to make three movements, (1) cock the weapon, (2) take of the safety catch and (3) touch the trigger. A report of tests carried out by forensic expert, John Milburne, shows that the weapon had no defects and functioned normally.

The verbal statement that it was an accident conflicts with the statement of Private Bedford who says that Jones told him "he made a break for it." Corporal Wood was told by Jones words to the effect "he was running away" and L/Corporal Bennett said Jones told him "the bloke ran off and he called on him to halt and when he did not do so he fired a shot." This version also appears to be incorrect as soldiers nearest Jones did not hear any warning being shouted.

The only other explanation of this incident is that Jones deliberately took McElhone into the field and shot him for reasons known only to himself. I therefore recommend

that the charge of murder preferred be proceeded with. Other offences such as grievous bodily harm have been committed but I suggest that no action be taken in relation to them.

Of the army witnesses I am of the opinion that L/Corporal Bennett is the most reliable. The remainder of the patrol while explaining their account of the incident gave the impression that they knew more than they were saying. The whole patrol was interviewed twice but this impression did not change. “

There are four civilian witnesses, Mr and Mrs McElhone and their son, Michael, and Michael Dermott McAleer. McAleer contributes little or nothing in the way of evidence other than a smear campaign against the army. Michael McElhone only proves identification while his parents are essential in proving the circumstances before the shooting. However, Mr McElhone is 74 years old and Mrs McElhone is 64 years old and both are simple country people with the result that appearing before the court may not produce the best evidence.”

[58] The Detective Inspector also provided a deposition for the inquest in 1975 which was put before the court. Some material from the HET was put to him as well in which he was asked about the decision of MacDermott J to acquit Lance Corporal Jones of the criminal charge and he found that it was hard to understand in the circumstances of this case. He had attended every day at the trial. During questioning Mr Pickard gave evidence in a straightforward manner and referred to the fact that he had considerable experience in the RUC over 30 years. At the time he was 13 years in post and he was the senior investigating officer. He was asked about the involvement of the RMP in the investigation and he said he had no problem with that, that they gave assistance to the RUC. He described the RMP as being very objective and he did not question it in any way. He was not aware of a de-brief at the station but he was aware that Lance Corporal Jones had army legal advice. He referred to his report and was clear that there was no explanation as to what had happened here and that the evidence was sufficiently strong to justify a charge of murder and a conviction. He thought there was no justification for this killing at all and very clearly said this in evidence to me and he said he still did not understand the acquittal.

[59] In relation to the inquiry with Lance Corporal Jones at the station he said that the man did not wish to give an account and so there was no interview as such and the witness said that he did not think that it was needed. The only direct evidence from Jones was “not guilty it was an accident” and this witness said that he (Jones) never said at the station that the deceased was running away.

[60] The other police witness who gave evidence was Detective Constable Donnan. In addition to his statement for the Coroner Detective Constable Donnan referred to his statement made on 24 September 1974 which was effectively his report of events. He also made a deposition for the original inquest and appeared on 29 April 1975 in relation to that.

[61] Of significance is a sketch map that Detective Constable Donnan prepared shortly after visiting the scene which sets out the original markings of where the deceased was and where Lance Corporal Jones was. In the deposition from the time Detective Constable Donnan said that he was attached to Cookstown RUC Station and he was on duty at Cookstown when he was told by Constable Ferguson at Pomeroy RUC Station as to events. He accompanied Sergeant Spiers to Limehill in Pomeroy arriving at 7:05pm. There he saw the body of a man lying in a field and he also saw the soldiers at the scene, in particular, he had the benefit of seeing Lance Corporal Jones at the scene who indicated his position when he fired the fatal shot. This was between two gate posts at the entrance to the field. In his statement Detective Constable Donnan then refers to the measurements he took at the scene. He says that the body was removed from the field at 7:40pm.

[62] At 12:10am on 8 August 1974 he along with Chief Inspector Hodgett saw Lance Corporal Jones in Pomeroy RUC Station. He informed him of his identity, the nature of the enquiries and cautioned him. He then invited him to make a written statement about the incident and he replied "No, in actual fact I had legal aid earlier and I have been advised not to say anything." Also, he said "No, you can speak to the Major." The interview terminated at 12:13am.

[63] The evidence of Mr Donnan was extremely helpful. He did say that his memory was a little hazy given the passage of time but he could recall certain matters. Firstly, he said that the army at the scene were not co-operative. He also confirmed that at the scene he saw the body and there was no weaponry near the body. He said there may have been mention of a weapon being present at one stage but that was clearly inaccurate. He also referred to who had primacy over the investigation and he believed that that was the RUC. He said however the RMP were there and also the army legal team were there. In his evidence he said he still did not really understand the purpose of the patrol that day.

[64] He said he did not recall Lance Corporal Jones providing him with an explanation for firing the shot. He said that he did not know the McElhone family very well but Constable Ferguson would have known them and as such he said, confirming his original report, that neither Patrick McElhone (the deceased) nor any other members of the family were recorded on Special Branch files and they were not known to have connections with subversive elements. The military concerned were not tasked by police to give attention to this household. This is recorded in the report that was submitted by Detective Constable Donnan on 10 August 1974.

[65] Under questioning, Detective Constable Donnan could not remember any cheering or rejoicing of soldiers at the scene. However, he did recall speaking to Lance Corporal Jones at the scene. He said he was quite calm. In terms of the investigation he also referred to the fact that this took a long time to complete as the soldiers were not made immediately available for questioning. He was asked about certain statements that he took including the statement from Sergeant Harrhy, and in particular, he had no recollection of any mention of possession of a list of names or photographs or addresses. In relation to this case Detective Constable Donnan said that his abiding impression, which he was adamant he had a good memory of, was that the patrol did not co-operate at the scene other than point out where the shot was from. He thought that they were clearly acting on instructions.

[66] Detective Constable Donnan also interviewed others and he said that it took a long period of time because there clearly was a de-brief and so statements were not taken immediately. He said he is quite clear there was no firearm at the scene. He had no memory of the trial but he did have a memory of his sketch map. He also recalls speaking to the parents at the scene to some extent. He said that this was really a simple family and that Mr McElhone was a very inoffensive young man. He said that he had an innocence about him which some might have considered "backward" but he really just came from a humble home which was a small holding. Detective Constable Donnan described it by saying that in 1974 there would not have been many homes as humble. He also reiterated in his evidence that intelligence was clear that there was no information from Special Branch of this family being in any way connected with the IRA.

[67] I received some further Rule 17 evidence of Knox Henry, police surgeon who pronounced life extinct at the scene. Also a deposition of Austin Ferguson who was a local policeman stationed at Cookstown. He, in his deposition of 29 April 1975, states that he received a report from the Army at Pomeroy RUC station to the effect that there had been a shooting incident at Limehill, Pomeroy. He arrived at the scene at 6.50pm. He looked into the field and there saw the body of a man lying face downwards. There did not appear to be any life in the body. He says he preserved the scene until other police arrived and about 7.30pm he accompanied Michael McElhone into the field where the body was identified. He then escorted the body to the mortuary and attended a post mortem.

[68] A further Rule 17 statement was admitted from Hugh McCormac, Constable of the RUC in relation to obtaining the weapon held by Lance Corporal Jones, also Robert Logan Allen who was the police photographer. His deposition was made on 29 April 1975 in which he confirmed taking photographs at the scene.

[69] Constable Charles Black made a deposition of 11 November 1974 in which he confirmed mapping the area. That evidence was again admitted by Rule 17. He took measurements at the scene and prepared plans and those plans have been admitted as exhibits in this inquest.

[70] The deposition of Hugh McCormac, Omagh RUC is dated 11 November 1974. This policeman went with Detective Constable Donnan to the field and he says he assisted in searching the meadow with him. He says that he saw Detective Constable Donnan pick up a spent bullet case. "It was found between the gate from the field to the road, and a pool of blood. About half way between the two." This witness took the casing back to Pomeroy RUC station and also confirmed with Lance Corporal Jones that he had been in possession of the rifle and the witness established there were 19 rounds left in the magazine. This witness took firearms and explosive swabs and clothing which he delivered to forensic science.

[71] Austin Ferguson of RUC Pomeroy made a deposition of 29 April 1975 in which he confirmed that Michael McElhone identified the body of the deceased in his presence in the field around 7.30pm. A handwritten statement of Police Sergeant A Spiers refers to the deceased. He accompanied Constable Ferguson and in his statement he states that he found no firearms of any description on or underneath the body or in the vicinity of the body.

Military Evidence

[72] I start with RMP4 who was in charge of the RMP at the time and was one of the investigatory team along with two corporals. He gave evidence to me that he was a member of the Special Investigation Branch of the Royal Military Police based in Lisburn at the time. This witness did not provide a statement to the inquest and so his evidence was heard in two parts. In terms of documentary evidence he filed two reports. The first was a brief report of 8 August 1974 and the second an interim report of 13 August 1974. Firstly, in these reports and from the evidence it is clear that at around 18:30 information was received from the Ops Room located at RUC Station Pomeroy to the effect that a man had been shot and killed, that was Mr McElhone.

[73] The report of 8 August 1974 then gives a brief explanation of initial inquiries which states that the patrol had been tasked to search houses and outbuildings to the north of Pomeroy and that the patrol had completed a search of Mr Peter McElhone's property and talked to the deceased person. During the search and interview Mr Patrick McElhone walked away from the farm buildings across the road and entered a field about 50 yards away from the farm house. As a result of this Sergeant Harray, the Platoon Commander for 1RRW, instructed Soldier A to go and bring the man back. There is in this paragraph the following information which does not appear in any of the statements and so I quote it:

"The soldier ran after the man as far as the entrance to the field and called three times for the man to stop. Mr McElhone failed to heed the warnings and proceeded to run diagonally across the field. At this point Soldier A cocked his weapon (SLR) and fired one aimed round into

the back of McElhone. It would appear that death was instantaneous.”

[74] Paragraph 3 of this initial report of 8 August also concludes with the words that “further enquiries have revealed that at the time of the shooting the deceased person, although failed to halt when called upon to do so, was not in possession of any firearm and therefore this action did not warrant Soldier A taking the action that he did.” As I have said a further report, dated 13 August 1974, was filed entitled “Interim Report” by RMP4. In this report RMP4 provides more detail as to what was alleged to have happened and refers to the statements having been taken from witnesses and in paragraph 8 states that on completion of enquiries a final report will be submitted. In evidence the witness confirmed that no final report was ever filed in relation to this case. The witness confirmed to me that he had 25-30 years’ experience in this area and in his whole career he had not come across a situation of no final report being filed. When I asked him what the reason for this was he said:

“I have been wracking my brains when I saw the interim report and I have been asking for a final report. I don’t recall writing one but that is not to say that I didn’t.”

[75] In terms of a final report it was clarified in evidence that this would obviously have an analysis and may lead to disciplinary action such as court martial or may have other recommendations.

[76] RMP4 was questioned about the Force Order in place at the time which provided that the RUC would have primacy in the investigation of alleged offences committed by soldiers. It was put to him that it was entirely wrong for members of the military to investigate where other military were involved. RMP4 did not accept this however he did say that if a civilian had been shot dead the RMP would have had nothing to do with an investigation. When asked about why certain information was contained in the 8 August report that was not contained in the statements the witness denied that there had been any cover-up and explained that there was a lot of confusion at the scene in the police station and that the RMP had to get this statement taking done as soon as possible. RMP4 confirmed that he had no knowledge of any intelligence being available at the time which would explain the actions of the patrol. When pressed he did not suggest that in any way he was told not to file a final report in this matter.

[77] The remaining soldiers all come from the platoon who were involved in this incident. Most of these soldiers gave evidence without the benefit of anonymity as their names were in the public domain from the various court hearings in 1974 and 1975. Some other statements were read-in to the inquest in cyphered format however they do not essentially add much as those statements do not set out any direct knowledge of events. The witnesses who do give some detail of events start with the members of the platoon. These persons did give evidence to me, namely

Private Bedford, Lance Corporal Lis, Corporal Wood, Corporal M18 and the leader of this patrol, namely Sergeant Harray.

[78] I will start with Private Bedford. Helpfully, this witness provided a statement to the Coroner's Investigator when contact was made. This is dated 24 November 2020. I had provided the original paperwork to this witness and he indicated in his statement and his evidence that his memory of events was not particularly strong but he confirmed that his signature was on the various statements, in other words he confirmed the contents of his RUC statement dated 7 August 1974, an RUC handwritten statement of the same date 7 August 1974. He could not recall the area from photographs, he could not really recall the location of the dwelling house but he did understand from the RUC investigation report dated 27 September 1974 some basic facts. He said that Lance Corporal Bennett was one of the best soldiers, if he had something to say he would say it. Private Bedford said "I cannot remember speaking to the police, but I can say that I was against all of what actually happened that day. The reason that I thought that, which continues to be my opinion today, was not because I saw the actual shooting, but because the man who was shot was found to be unarmed." In relation to why Private Bedford was not called at trial he does not recall having any meeting with a barrister or anyone from the Department of the DPP. He does recall being told to keep his mouth shut and to go with the flow at the time of the incident.

[79] He was content with his HET statement dated 11 February 2013 and the handwritten note of this. He confirmed in his statement and in his evidence that it was Lance Corporal Jones who told him to keep his mouth shut. He also referred to recent telephone contact being made with him by Corporal Wood. He said that Corporal Wood explained to him that there was a letter and as he was not living at his address he then picked it up. In evidence Private Bedford said that Corporal Wood said that "I should go and get the letter and then call him and he would tell me what to say." This is disputed by Corporal Wood and Private Bedford wondered whether he had the wrong end of the stick but he did think that is what was said. In any event he said he had his own mind and he was not going to change what he had said at the time.

[80] The RUC statement, dated 7 August 1974 was taken by Sergeant Spiers at Pomeroy Station. In that, Private Bedford refers to being part of the patrol. He said he was placed on duty in a hedge row at the rear of the McElhone house just to the north of the dwelling and on the same side of the road as the dwelling house. He said he was lying on his stomach and covering the area north of the dwelling. He said he did not at any time call at the McElhone dwelling nor did he take anyone from the vicinity of the dwelling. He said he then saw a soldier walking along the road towards the north. He was accompanied by a civilian in dark clothing, the soldier was known to him as Lance Corporal Jones, they were walking down hill and eventually disappeared from his view. After that the witness said he heard a shot, he did not see who had fired the shot, immediately after the shot was fired he heard Corporal Jones shout "he made a break for it." He then saw Corporal Wood

and Sergeant Harray go down towards the direction from which Lance Corporal Jones had shouted. He said he did not fire any shots and during the course of his patrol in this area he did not see any civilians carrying firearms at all. In the statement made to HET the witness said "the death of Patrick McElhone was the only time when I was there when a civilian was shot and killed. I would like to say that Jones should not have shot an unarmed man. There was no excuse for what he had done." It is clear that this witness did not go to court or to the inquest in this case.

[81] Mr Bedford gave evidence in a straightforward manner. He said at the start that he had some memory problems but he was doing his best to assist. I should say that Mr Bedford was represented by Devonshires Solicitors and Mr Egan of counsel attended at the inquest for his part of the evidence with my agreement. An important feature of this evidence is that Mr Bedford said there was no excuse for what Lance Corporal Jones had done. Also, he reiterated the account given in his statement made to the RUC on 7 August 1974 that he saw Mr McElhone walking down the road with a soldier and that he was told to keep his mouth shut.

[82] In relation to whether or not he was willing to assist Lance Corporal Jones this witness very naturally volunteered the following "I shouldn't think so, because I was against him right from the start, the man had no weapon, it was murder." He did not recall Lance Corporal Jones at all shouting to the man in the field to stop or halt and he agreed with Mr Fahy, on behalf of the next of kin, that this was wrong. He could not remember about not wanting to attend the trial but he did say looking at it now if he was asked to go he would have done so and he does not quite know why he did not give evidence at the criminal trial. Mr Bedford did not give evidence at the criminal trial and he said this is the first time he has ever given evidence.

[83] The next witness to give evidence was Lance Corporal Lis and he again attended this inquest having given a statement to the Coroner's Investigator, dated 16 October 2020. In that he referred to his RMP statement and he made the point that he agreed with that statement. He referred to his criminal court deposition which is dated 11 November 1974 and says he recalled going to court but he was not in the witness box very long. He also made some comments about Lance Corporal Bennett who he thought was quite an excitable person who might drop you in it. He referred to the HET document dated 28 November 2012 and confirmed the position in that wherein he said "I still insist that I could have stopped Patrick McElhone that day. He was not armed and all Jones had to do was just shout and I would have stopped him. There was no warning given to Patrick or a warning shot just the bang and that was that." There is other evidence in that HET document that he does not agree with which was a suggestion that a soldier from this regiment had been killed months before. He also was told to keep his mouth shut, he said, and that was from Sergeant Harray, Corporal M18, Corporal Wood and Corporal Chappell.

[84] In answer to this he said Sergeant Harray was a good man but he could be forceful when he wanted to be so you did not cross him. Mr Lis said that he was

considered an outsider as he had moved to the Battalion from a different regiment. He said that after this incident he asked to move to HQ Company with the Battalion as the whole affair did not sit well with him.

[85] In the statement given to the RMP on 7 August 1974 Lance Corporal Lis confirms his position which was at the corner of a large hay barn about 100 metres from the road north east of Mr Peter McElhone's farm house. He says he was positioned with the side of the barn on his left. In front of him was a hedge row behind which was a large field, his arc of fire and vision was the eastern side of the field to his front and it was, at this time, daylight and visibility was good. He said he was on the eastern flank of his section and the nearest man to him was about 150 metres to his left. He then refers to hearing the gunshot.

[86] During his evidence Mr Lis considered that there must have been another man with him in this position but he could not recall exactly who that was. The reason why he thought there was another man was because he was operating a General Purpose Machine Gun ("GPMG") and there would usually be two men there. He did give fairly clear evidence though from the photographs as to the topography of the field and the fact that this overlooked the place where the incident occurred. He thought that he was on the ground and due to the undulations in the field it was only when he stood up that he could see that a man had been shot. He was very clear though that he could have stopped any person who was running away in that field. In the deposition for the criminal trial the witness again confirmed that he was stationed in a defensive position near the corner of a large hay barn, he was sitting and lying at the time, he said he a limited view of the field.

[87] The witness gave evidence in a very straightforward way and clearly displayed his own independent mind. He was firm in his view that he was told not to talk about this. He was dismissive of any suggestion that the army wanted to shoot a civilian but he had no difficulty in saying that there was no justification at all for this killing. He also felt that those around the Royal Regiment of Wales protected Lance Corporal Jones. He was very clear in his evidence that he could have stopped this man from running away. He also at the end of his evidence, unsolicited, indicated to the court and, in particular, for the benefit of the family that he regretted what had happened. The witness also confirmed that there was no sense of jubilation or celebration exhibited by the soldiers.

[88] The platoon was divided into two sections of 8 soldiers each and the two Corporals commanding gave evidence to me, namely Corporal Wood and M18. There was some dispute about which section Lance Corporal Jones was in but it is likely it seems to me from the collective evidence that this was M18's section. M18 also gave evidence in a very straightforward way. He confirmed the operation that day. Probably the most striking part of his evidence is that he said that he had actually spoken to Patrick McElhone earlier on the day in question when he was out in the field on a tractor. He said he asked him some questions, there was general chat and there was no animosity or difficulty between them. He said he had no

difficulty understanding the man at all. He said that he found this a very shocking incident and he could not really recall why he did not report in his statement that he had spoken to this man earlier. He denied that this was because it might have painted the deceased in a good light.

[89] M18's statement at the time was taken by Sergeant Spiers at Pomeroy RUC Station. He refers to being part of the patrol. He said he did not at any time call at the house or ask anyone in the house to accompany him outside nor did any other soldier in his patrol. He said he heard what he took to be a backfire of a motor vehicle and he now knew this to be a shot. He said he did not see anyone fire a shot and immediately afterwards he moved in the direction from where the shot was fired and saw Lance Corporal Jones standing by a gateway in a field. He said he then looked in to the field and saw a body and he followed Corporal Wood over to the body. He then was redeployed in the area. He said he saw no firearm of any description visible on the body or in the immediate vicinity. In relation to evidence he was called to the trial he said but was not required to give evidence and he was not called to the inquest. He said that he did recall speaking to HET.

[90] The other Corporal is Corporal Wood. He also gave oral evidence before me. He made an RMP statement which indicated that he was patrolling and commanding 8 men. He said they were tasked to search houses in the area of Pomeroy and were split into two sections. He does refer to being at the McElhone house and he said on arrival at the house he and his section moved past the house and took up positions at a crossroads some 100 yards south of the house. He said that Sergeant Harrhy remained with the second section to interview the occupants of the house. He said he walked back to the house at about 5:50pm where he saw Sergeant Harrhy questioning an old man and a young man was stood nearby, the latter about 22 years old dressed in a black donkey jacket. He said that whilst the conversation with the old man was taking place the younger man walked away in a northerly direction up the road. At that time he saw a concrete lorry approaching and having information that a man wanted for questioning had a brother who drove that type of lorry, Sergeant Harrhy, Lance Corporal Bennett and him stopped the lorry and began questioning the driver who was Michael McAleer.

[91] In the RMP statement Corporal Wood said that previous to this Sergeant Harrhy had realised that the young man walking away from the farm was Mr McElhone, a man whom they wanted to question. So he said Sergeant Harrhy detailed Lance Corporal Jones to bring him back. Thereafter, he said he heard a gunshot which appeared to come from beyond the farmhouse in a northerly direction. He went down to the scene and saw Lance Corporal Jones walking towards him on his right carrying his SLR. Corporal Wood asked him what had happened and he replied with words to the effect "he was running away." He then said that he went to the field and he saw the body, he could not see any sign of a gun or other weapon around him. He said he ran back to the farm house leaving the body where it was. On the way back he said he saw an old man Mr McElhone just approaching him on the brow of the hill saying "what's happened" and he told him

not to go down there. He said when he got back he told Sergeant Harrhy that the young man had been shot and he thought he was dead and then he joined the section.

[92] Corporal Wood gave a similar account in his deposition for the criminal case dated 11 November 1974. He could not recall having any names or addresses of people they were to be looking for in the area. Under questioning the witness insisted that Jones had said Patrick McElhone was running away although it was put to him that this account did not come from Jones until his trial in March 1975 and he had not given this account to the HET. This witness, in common with other military witnesses, said that even if he was running away that might be an explanation but it was not a reason for him being shot dead as he was unarmed. Under questioning, Corporal Wood was uncertain of the exact details of what occurred. He did recall contacting Mr Bedford about this inquest. He denied saying that he would tell Mr Bedford what to say. Corporal Wood also gave evidence to me of some difficulties that he had had in Northern Ireland which meant that he was badly affected by his service and left the army in 1981. He did not have any memory of Pomeroy Police Station and being told what to say and he also referred to his regimental association making contact with him.

[93] Next in the chain of command and an important witness in this inquest was Sergeant Harrhy who was in command of the patrol. He made a statement at the time taken by Detective Constable Donnan at Pomeroy RUC Station on 7 August 1974 in which he said he had come in to the Pomeroy area having left Gough Barracks at 12:30pm by helicopter and he was in charge of 15 other soldiers. He said his duty was a foot patrol in the area north of Pomeroy and to carry out spot checks of all vehicles and persons in that area. He said sometime during the afternoon he called at a house and spoke to the occupant who he now knows to be Peter McElhone, this man was over 60 years of age. He said that his soldiers took defensive positions around the house and when they left the house they stayed on the road and awaited the arrival of the Company Sergeant Major from Pomeroy who was coming to see how things were going. He stayed for a while and during that time a young man came out of the house.

[94] Mr Harrhy said he stopped and had a conversation with him but let the man go as he did not think there was anything more to be gained by talking to him any further. He said just as he left to walk down the road he saw a cement lorry coming up the road travelling westwards and he told the soldier to stop this lorry. He said he was then talking to Lance Corporal Jones and "he told me that he had been talking to the bloke I had just been speaking to earlier on. He told me the blokes name was Patrick McIlhone." The witness said that on hearing that he sent Jones after the man to fetch him back, then he went to the lorry to speak to the driver, Michael McAleer, and spoke briefly to him and then he heard a shot. He said he left McAleer immediately and ran down the road and saw a body in the field on the right hand side of the road and Lance Corporal Jones at a gate which was the

entrance to the field. He said he ran up to his radio operator and informed Pomeroy RUC Station. He sent another soldier to check to see if the person was dead.

[95] A second statement was taken from Sergeant Harrhy on 9 August 1974 again at Gough Barracks. This witness gave extensive evidence to me about the incident which is unsurprising given he was in charge of events. He was pressed on a number of matters. Firstly, he was asked did this incident mark a stain on the regiment. He said it did not represent the whole regiment but it had followed him throughout his career. He also apologised and said he was desperately sorry to the family as this was a tragedy. He said that Lance Corporal Jones was not subjected to any disciplinary investigation but that was not his jurisdiction and in fact he was promoted to Sergeant.

[96] When asked about the murder trial, Mr Harrhy said he remembered being a defence witness and giving evidence at the trial. A significant aspect of the evidence given by Mr Harrhy at the trial was that he had army intelligence at the time which was contained in a folder. He accepted that this is not mentioned anywhere in his statements. Also in evidence before me he clearly said that Patrick McElhone was at no stage anywhere on this list. He said that he thought Michael McElhone, the brother, was on the list as somebody on the fringes of the IRA. Therefore, he stated that any reference by the trial judge following Lance Corporal Jones' trial for murder to Sergeant Harrhy giving evidence that Patrick McElhone was a person of interest was a "misinterpretation of his evidence."

[97] There are two such references in MacDermott J's judgment and also press reports to that effect. When asked about these Mr Harrhy said they "were wrong." In relation to this folder or list, he said he did not hand it over to the RMP or the RUC and it would usually be just given back to the army and destroyed but he was insistent that there was a folder. He also said it would have been with him all day. He said he did not volunteer the information to Detective Constable Donnan because he was not asked about it. He said he had no memory of being in Gough Barracks and being debriefed in any way and he could not remember much more about that. He was quite clear that the names had been mixed up by the judge at the criminal trial and when pressed on this he was very clear that some mistake had been made.

[98] Mr Harrhy was also shown a report of his evidence at the original inquest in 1975 in which he is reported as saying that Patrick McElhone was on the fringes of the IRA. He said that this was also wrong. Sergeant Harrhy's signed deposition from the original inquest on 29 April 1975 records that he gave the following evidence to the Coroner:

"I did not order L/C Jones to open fire in accordance with Rule 1 of the Yellow Card.

I accept that none of the circumstances set out in paras 13, 14 & 15 of the yellow card headed "you may fire without warning" existed at that time.

I didn't hear any warning given. In my opinion, had a warning been given at the field, I would not have heard it."

[99] Mr Harrhy accepted that in relation to Michael McElhone to even suggest that his name was on the list blackens his name and that he clearly was not a person "on the run" as suggested by Mr Harrhy in his interview with HET given that he arrived at the scene from work and was allowed to enter the house, was not questioned and also ultimately was responsible for identifying the body to police. It was put to Mr Harrhy that from the first second the shot was fired there was an army cover-up about what was happening but this was denied very strongly by the witness. He was clear that there was no excuse whatsoever for this shooting and even if the person was running away he was shot for no reason whatsoever that was justifiable. Mr Harrhy stood over his account that Jones had been tasked to bring the man back when he walked past him on the road. However, in evidence he stressed that he did not order Lance Corporals Jones and Bennett to go to the house to bring the man out in the first place and he could not understand in all his time how that happened if he had not ordered it. He did not have a recall of Mr Patrick McElhone being spoken to earlier in the day and he effectively said that he wanted him brought back up because he had taken Mr Michael McAleer out of the cement lorry and he wanted to ask him in the presence of Patrick McElhone about certain matters. There is some confusion about the exact nature of the questioning that was suggested whether it was about Michael McElhone or Mr McAleer's brother.

[100] Additional military evidence was read in pursuant to Rule 17 of the Coroners Rules. There is a deposition of Major Barkway Jones made on the 11 November 1974. He was the Company Commanding Officer. In his statement he says he was the Major, he was on duty in the Pomeroy area and he detailed Sergeant Harrhy to operate in an area north of Pomeroy. He sent a small platoon with him and that platoon included the defendant. He said the duties of that platoon were to search outhouses and farmhouses for arms and ammunition. In addition it was to get to know personalities in the area. In this statement the Major states that he knew the defendant Lance Corporal Jones in that he had been under his command since February that year, he had received regular training in the weapons to be carried. By regular training he says he means he had been operational in Belfast and the training time had been very limited. He was on 7 August 1974 entrusted with a Self-Loading Rifle ("SLR") with a 3x sight and he was qualified to be a Corporal.

[101] In addition, Lance Corporal Bennett who was present made a statement at the time and a deposition. He is deceased. In the written deposition Bennett gave he describes the operation and seeing Mr McElhone that day. He identifies Mr McElhone as the man seen on the tractor earlier. He describes an interaction

with the deceased which resulted in him handing the man over to Sergeant Harray. He then says he dealt with the cement truck. He says he went down to where he heard a shot came from and saw the body. He says Lance Corporal Jones told him that "the bloke ran off" and he called on him to halt and when he did not he fired a shot.

[102] Private Kelleher also made a statement at the time and he made a deposition. He describes the operation and states they were at the McElhone house as it was the place of a known suspect. He says he was with Private Bedford in a small wood on the right hand side of the road overlooking the roadway. He says in his statement that he did not see the incident at all. Private Cole was with Private Kelleher according to his statement. He says that he was the radio operator in his statement from the time but again he did not witness events.

[103] I have considered other military statements from M17, M19, M10, M11, M12, M13, M14, M15 and M16 which describe the operation that day. These were read into evidence and I have considered them but they do not directly assist with the events in question. The statement of M23 confirms that he was not in the area at the relevant time. The statement from Derek Hulme is a confirmatory statement that he was in the RMP at the relevant time and that he took photographs.

[104] The accounts of Lance Corporal Jones were read into evidence by agreement. They come from a number of sources starting with the evidence of his contact with the police immediately after the event. The records of this are as follows:

- (i) Lance Corporal Jones was interviewed by Detective Constable Donnan on 8 August at 12.10am. He was cautioned and asked if he wanted to make a written statement. He stated "No, in actual fact I had legal aid earlier and I have been advised not to say anything." He was asked if he wanted to make any verbal statement and he replied "No you can speak to the Major."
- (ii) On 8 August 1974 at 7.40pm Detective Inspector Pickard again saw Jones in the presence of his Commanding Officer, Major Barkway Jones and he told Jones who he was and that he was enquiring into the death of Patrick Anthony McElhone. Jones was again cautioned but he made no reply.
- (iii) At 11.15am on 9 August 1974 Lance Corporal Jones was formally arrested by Detective Inspector Pickard and the following charge was preferred: "that you on the 7th August 1974 at Limehill in the County of Tyrone murdered Patrick Anthony McElhone contrary to common law". He was cautioned and asked if he had anything to say in answer to the charge. He replied "Not guilty. It was an accident."

[105] Given the other proceedings, I had material from both the civil and criminal cases. It was suggested by Mr Aiken that I receive the PPS file which I did. Mr Henry represented the PPS and agreed that some gisted material could be

provided which came from the file I saw. Firstly, material was shared in gisted form from the file in relation to the trial process and why certain witnesses were called or not called. The Court indicated to the PPS that one of the issues of interest insofar as the prosecution materials are concerned is the decision-making in and around who gave evidence for the prosecution at the subject criminal trial. Some of the materials over which Legal Professional Privilege (“LPP”) is claimed speak to this issue. In order to assist the Court, the PPS provided a gist of the information contained in prosecution documents over which LPP is claimed. The information below is taken from materials supplied by senior counsel who acted for the prosecution at Lance Corporal Jones’ trial, as well as two written communications between prosecution lawyers, one of which followed a consultation mentioned below.

[106] No relevant information has been omitted from the gist in respect of the witness issue.

- (a) The decision to prosecute for murder was made in October 1974.
- (b) The Crown Court trial, which began on 24th March 1975, was preceded by a Preliminary Investigation (PI) in Cookstown on 11th November 1974. Senior counsel, Mr John Curran QC, assisted by junior counsel, Mr Nick Hanna BL, presented the prosecution case at the PI and the trial. Senior counsel took the witnesses through their evidence on oath at PI to produce their depositions, which provided the evidence upon which the accused was returned to the Crown Court for trial. The trial was originally listed in February 1975, but there was no High Court Judge available to hear the case and the date was changed to 24 March 1975.
- (c) Prior to the PI (Preliminary Inquiry) a consultation was arranged with the soldiers who were expected to be the prosecution witnesses. We do not have a list of all of those who were anticipated to be called as prosecution witnesses, or a list of who attended the consultation (although the soldiers are referred to in the plural), or notes of the consultation, but we know for certain that the following soldiers attended because they are specifically referred to in the available records:
 - (i) Lance Corporal Bennett;
 - (ii) Corporal Wood;
 - (iii) Private Bedford;
 - (iv) Lance Corporal Lis;
 - (v) Private Kelleher.
- (d) It is clear that the prosecution team anticipated that a number of soldiers would be called as prosecution witnesses. However, following the consultation with senior counsel the decision was made not to call a number of them.

- (e) Senior counsel's note to the DPP's Office in December 1974 (post-dating the Pl but predating the trial) said of that decision, "*Suffice it to say that almost to a man those witnesses proved so hostile to the Crown that I was unable to use them. They were most assuredly not likely to be witnesses of truth. In the event I called only two peripheral witnesses who seemed to me to be reasonably reliable.*"
- (f) Lance Corporal Bennett was described as particularly hostile during the consultation and delivered a "*tirade*" of remarks about the prosecution of the accused and Irishmen generally.
- (g) Corporal Wood and Private Bedford gave counsel the impression at consultation that they would try to assist the accused in every way possible. Bedford described seeing the accused and the deceased chatting together in a friendly fashion when they were walking down the lane prior to the shooting, whereas there was no mention of this in his statement.
- (h) A document created by the other prosecution lawyer present with senior counsel describes that senior counsel wished to call "*certain of the soldiers who had been nearest to the scene of the shooting such as Lis and Kelleher to deal with the fact that no warning shouts were heard from the accused prior to the shot being fired.*"
- (i) The list of depositions (i.e. the witnesses who were called at the Pl hearing in Cookstown) includes the following soldiers:
 - (i) Major Barkway-Jones;
 - (ii) Corporal Wood;
 - (iii) Lance Corporal Lis;
 - (iv) Private Kelleher;
 - (v) M19;
 - (vi) M17.
- (j) The decision not to call some soldiers was made by senior counsel, without objection by the DPP Office lawyers. Senior counsel considered that their evidence would harm the prosecution case, and that a prima facie case could be proven without their evidence.
- (k) Prior to the consultation and Pl it was not anticipated that Michael Dermot McAleer (a possible civilian witness who had provided a witness statement) would be called to give evidence, but after consulting with the soldiers senior counsel asked for a consultation with him to consider whether he should be called as a witness at trial. There is no note to confirm if a subsequent consultation took place and there is no record confirming Mr McAleer was called as a prosecution witness at trial.
- (l) There were no attempts by anyone outside of the prosecution team to influence which witnesses were called.

[107] During the course of the inquest the junior crown counsel at the time, now Mr Nick Hanna QC, contacted my senior counsel to assist and he subsequently confirmed the contents of the notes were correct. I thank Mr Hanna for coming forward.

[108] Other information from the PPS file was gisted as it contained some accounts through counsel of Lance Corporal Jones' position. Obviously this is second hand information which I assess accordingly but nonetheless I considered it relevant. At the hearing on 7 January 2021 I was told that Mr Henry had confirmed to counsel for the next of kin when asked that, through senior counsel acting for him, Lance Corporal Jones had offered to plead guilty to manslaughter in the criminal trial. I stress that criminal or civil liability is specifically not my concern however I did disclose some extracts of information which relates to the account given by Lance Corporal Jones as follows:

- (i) Extract from a note made by a prosecution lawyer of a telephone call received from senior counsel for the defence on 29 January 1975:

“... Mr Creaney said that the deceased, Mr McIlhone, was mistaken for an IRA man who was high on the wanted list. When the accused brought him into the field he ran away and the accused shouted to him to stop and cocked and pointed his rifle at him. When he did not stop the accused lost his head and pressed the trigger instinctively and without having any intention of killing....”

- (ii) Extract from a letter from senior defence counsel to senior prosecution counsel dated 3 February 1975:

“...Jones was not the soldier who spoke to [Peter McElhone] abusively after the shooting. According to his superior, Jones was in a shocked and dazed condition, and claimed he did not intend to shoot McIlhone.

When in the field, McIlhone apparently “took off” suddenly and without warning. Jones was placed in a quandry: he had been covering the lad with his rifle, and cocked it after shouting to McIlhone to stop. He claims that he discharged the weapon instinctively but is adamant he had no intent to kill McIlhone....”

[109] I have also considered parts of the judgment given by MacDermott J on 27 March 1975 which records Lance Corporal Jones' account as follows:

(i) At page 6 of the judgment:

"The accused says he first came in contact with the deceased before he ever reached the McElhone farm. Passing another meadow which was pointed out as being in the top left corner of photograph two, which seems to be about a quarter of a mile short of the McElhone's the accused was detailed by his section commander to question a man on a tractor. This with some difficulty the accused learnt to be Patrick McElhone - and by difficulty I mean a difficulty of communication and not due to hostility or awkwardness. He gave him no cause for suspicion and the accused re-joined his section and they made their way to McElhone's farm. There after assisting in the searching, he saw the deceased arrive and go into the house and he accepts that it was he who went to the house and got the accused out. He is not clear if he went with the deceased to where Sergeant Harrhy was or not, the Sergeant being on the road near the gap. As his reason for getting the deceased out of the house was in order that Sergeant Harrhy could question him, it was he whose task it was to do the main questioning, I am sure the accused did go over with the deceased to the Sergeant. The accused says he took no part in the questioning but went back to the yard, "fiddling about", re-searching, and then when he saw the Sergeant moving to the right, towards a cement lorry which had arrived, he went over and spoke to him. As a result of that conversation the Sergeant, he says, sent him to get the accused back. The deceased by this time was walking down the hill away from the farm and the accused says he jogged after him, jogging, because he was in full kit plus pack, rather than in battle order. Going down the hill he called and the deceased did not appear to hear and opened the meadow gate and went in. Then occurred the events leading up to the shooting to which I will return."

(ii) Page 8 of judgment:

"...The accused says he asked the sergeant "Are you sure that man (meaning the deceased) is not in the folder (the folder being the container of intelligence information in the sergeant's possession and which included

photographs of terrorists and names of others who might be in, or on the fringe of terrorism or who might be able to give useful information about terrorists or acts of terrorism).”

(iii) Page 11 of judgment:

“The accused does not claim that on the 7th August he knew the deceased’s name was on the list in the Sergeant’s folder. He says he has since learnt that it was.”

(iv) Page 12 of the judgment:

“The accused agrees there was a briefing, but said in Court in terms that before the shooting he did not know the deceased was on the list.”

(v) Page 13 of judgment:

“By the time he reached the gate he had caught up with deceased who was then about 8 yards from him and going into the field – he shouted “Halt” – to use his own words “it was more of an order” the deceased looked over his shoulder – by this time the accused had his rifle up at his shoulder – the deceased made an immediate break for it – the accused cocked his rifle and fired one round – in doing so he did not sight through the magnifying sight with which his rifle was fitted but a quick snap shot, by which I get the picture of the soldier looking over or along his barrel at the target rather than through the sights – the deceased who was running fell.

(vi) Page 19 of judgment:

“I accept that it was part of the soldier’s briefing that three farms including that of McElhones were places where terrorists might be hiding.”

(vii) Page 20 of judgment:

“Mr Curran submitted that the only suspicious act of the deceased was his running off after being called on to halt – and he suggested to accused that he might have done so because he was startled and the accused accepted that as a possibility. With the advantage of hindsight accused

indeed frankly admitted that he was not justified in shooting..."

(viii) Page 20 of judgment:

The accused made a statement "that he shot because there was nothing else he could do."

(ix) Page 23 of judgment:

"warning shots...are not part, it appears, of his training"

[110] In addition, MacDermott J made some assessments of Lance Corporal Jones as follows:

(i) Page 11:

"...this accused struck me as the type of conscientious soldier who would not just hang around..."

(ii) Page 12:

"I found this accused to be an impressive witness.... To me he emerged as a genuine person, and I believe honest. Time and time again he had the opportunity to give a helpful and yet to him a dishonest answer and declined to do so....I am satisfied that neither the accused or the Sergeant is sufficiently shrewd or subtle to have preserved a concocted story intact in the face of close, but fair cross-examination."

(iii) Page 14:

"For my part I am satisfied that his account of what happened is true."

(iv) Page 21:

"I have no hesitation in finding as a fact that at the time he fired the accused honestly and reasonably believed that he might be dealing with a terrorist and indeed at the vital moment his belief if he had paused to analyse it, was that in fact he was dealing with a terrorist who was seeking to flee. To-day we know he was mistaken, but as I have just said, I am satisfied that this was a reasonable and honest belief at the time."

(v) Page 22:

“He did not strike me as a cavalier, reckless soldier ready to shoot first and ask questions afterwards. I am satisfied that he fired because he thought it was his duty so to do and that that was a reasonable and proper way to discharge his duty in the circumstances.”

(vi) Page 23:

“The only time he showed irritation in the witness box was when it was suggested that he should have dropped his rifle and ran after the deceased.”

[111] The transcript of the criminal trial could not be obtained however we have a summary of the evidence given set out in a trial report from senior Crown Counsel, Mr Curran QC. I record some extracts of this as follows:

(i) Page 1, paragraph 1:

“....He agreed that he had met the deceased Patrick McElhone about 5 o'clock on the evening of the killing when the young man was in a tractor, he had some conversation with him, he was unable to understand exactly what was being said to him by Patrick McElhone but eventually got him to spell out his name, and wrote it down as Patrick McElhone. He agreed that he had left that young man at 5 o'clock and went up to the farmhouse with the rest of the platoon on and at the time he left him he was a perfectly ordinary farm labourer as far as he was concerned and in no way suspicious.”

(ii) Page 1, paragraph 2:

“...it was agreed...by the accused himself that when he was in the farmyard about 6 o'clock the same day, the boy Patrick McElhone walked in through the farmyard and he the accused saw him and for some reason went over to the farmhouse, possibly with Lance Corporal Bennett as the Crown believed, and beckoned the boy out of the house. He then said that he had really brought him out to bring him over to Sgt HARRY and have him checked off in case he was on a list of people, a list containing not only the names of suspected persons but of residents in the

area, and people who through living in the area might know of others who were wanted men.”

(iii) Page 1, paragraph 3:

“According to the accused he took no further interest in the deceased Patrick McElhone at that stage but went along searching the farmhouse and did not bother any further, until at some stage a few minutes later, he again for some reason unexplained went over to Sgt Harrhy after the sergeant had apparently finished dealing with young McElhone and when according to the accused Patrick McElhone had proceeded up the road away from the farmhouse towards the meadow, where ultimately he was shot on his own.”

(iv) Page 1, paragraph 4:

“In any event Lance Corporal Jones spoke to Sgt Harrhy and asked him something to the effect had Patrick McElhone been on his list and the Sergeant claimed that he knew nothing about that but said to Lance Corporal Jones to go fetch him back and at that juncture on Jones’ own account, he started to jog up the road after Patrick McElhone. He did not shout on him to halt when he first saw him because McElhone had disappeared over the brow of the hill. He got up to the top of the crest of the hill, saw him about 30 yards away, did not call him then, but proceeded on down the road jogging after him. He then claimed he did shout ‘halt’ or ‘hi there’ or something to that effect but it made no impact whatever on Patrick McElhone who did not look up or in any way indicate that he had heard him, and in cross examination Jones admitted that it might well be that the deceased Patrick McElhone did not hear him shout. However, when Patrick McElhone proceeded on down the road walking, he opened the gate of the meadow, according to the accused, walked into the meadow and by this time the accused was catching up on him - the accused got as far as the gateway into the meadow and at that time he claims Patrick McElhone was about 8 yards from him and he then shouted to him to halt, and at that time apart from having his face blackened as the other members of his platoon had, Jones had his rifle as it were at the ready, but not cocked. In any event when he shouted halt on this occasion from 8 yards away, according to him

Patrick McElhone glanced over his shoulder, must have seen Jones, and stated to run off, and at that moment Jones then cocked his rifle and fired a snap shot at the deceased which shot in fact went through his back took a piece of this heart out and killed him."

(v) Page 2, paragraph 3:

"...the accused admitted in the box that it was wrong for him to open fire, he admitted in the box that there were a number of things he could have done such as for example obeyed the yellow card and call out a warning that he was about to fire, or for example fire an aimed shot as it says in the yellow card, it was agreed by him ... that it would have been easy from that short range to shoot the fleeing figure in the leg - it was agreed it was an open meadow and no danger of the deceased running anywhere in particular where he could not have been ultimately surrounded and arrested. It was agreed that he was unarmed - it was not thought he was armed - it was agreed there was no danger to Lance Corporal Jones or any of his unit - it was agreed there had been unlike the McNaughton case, no incident earlier that day involving any attacks upon the security forces and that they had been received courteously by McElhones in their farm..."

(vi) Page 2, paragraph 4:

"It was also agreed that the SLR rifle had an effective range of at least 300 metres and that a shot from that sort of range into the trunk was certain to seriously wound or kill."

[112] Finally, some contemporaneous media reports of the trial and the evidence of Lance Corporal Jones are as follows:

(1) Belfast Telegraph, 28 March 1975:

"Jones told the Court that he had been told to bring McElhone back for questioning. He called on McElhone to halt, but he 'broke away' and he fired a snap shot."

(2) Newsletter, 28 March 1975:

“Jones, who denied the charge, claimed that he fired a ‘snap’ shot because Mr McElhone was running away and refused to stop when called on to do so.”

(3) Irish News, 29 March 1975:

“Jones told the court that McElhone who was being brought in for questioning broke away and he fired a “snap shot’.”

(4) Irish Times, 29 March 1975:

“Jones had told the court that he had been ordered to fetch McElhone for questioning. He called on McElhone to halt, but he broke away so he fired a shot at him.”

(5) Irish Press, 28 March 1975:

“Jones had told the court that he had been ordered to fetch McElhone for questioning. He called on McElhone to halt, but he broke away so he fired a shot at him.”

(6) Tyrone Courier, 2 April 1975:

“Jones told the court that McElhone, who was being brought in for questioning, broke away and he fired a ‘snap shot’.”

[113] In addition, compensation was sought by the next of kin and concluded after the criminal trial. I have been provided with papers in relation to this by the MOD which I have read. These include the opinion of Senior Counsel that civil liability should be admitted and it ultimately was. The case was settled and damages were paid.

[114] Within the papers disclosed to me is a copy of the “Instructions by the Director of Operations for Opening Fire in Northern Ireland.” This document is known as the “Yellow Card” and this version is dated November 1972. This was a card issued to every soldier and it contained instructions as to when a soldier could open fire. While the Yellow Card did not have legal force see *R v Clegg* [1995] 1 AC 482 (HL) at 491E it was “drafted to give short and simple instructions which could be easily understood by soldiers” and a court will “have regard to the relevant provisions of the Yellow Card in considering whether the force used by the soldier was reasonable in the circumstances” *R v Clegg & another*, NICA 30 March 1994.

[115] The Yellow Card in force on 7 August 1974 contained instructions to soldiers that they should never use more force than the minimum necessary to enable them

to carry out their duties, and should always first try to handle the situation by means other than opening fire. It provided that the soldier should only fire aimed shots and that, save in three cases, if a soldier had to open fire, a warning was to be given before doing so. Even then, the circumstances in which a soldier could open fire were limited. The Yellow Card clearly states in paragraph 7b that a warning must “state that fire will be opened if the orders are not obeyed.”

Conclusions from the evidence

[116] I have had the benefit of hearing some oral evidence and I have assessed all of this in reaching my conclusions. I have also considered all of the papers and the written submissions of counsel. This text does not recount each and every aspect of the voluminous material I have considered and so it should not be assumed that where some detail is not specifically mentioned I have not considered it. I have considered the totality of the evidence in reaching my findings.

[117] I have taken into account that this is a historical event and the issues with memory and recall after a period of time. There is a context to this case as with all legacy cases in that this occurred during the so called Troubles when there was terrible violence in Northern Ireland and attacks in this area.

[118] The core issue in this case is now uncontroversial. Mr McElhone was shot by a soldier, Lance Corporal Roy Alun Jones, a member of the Royal Regiment of Wales. Mr McElhone was unarmed. The shooting cannot be justified by the State. That is the core finding as this was the major issue canvassed at the inquest. I must also try to allay rumour and suspicion. The case has already been examined in the criminal and civil spheres. The inquest performs a different function.

[119] Having listened carefully to the evidence, I can add some narrative findings to the core finding that this death was not justified. Firstly, I can dispel the notion that Mr McElhone was in some way “backward” or “slow.” That suggestion has undoubtedly caused pain to the family over the years and I accept their evidence that it is untrue. Mr McElhone lived at home and appears to have been a quiet enough young man but he had social life and was a farmer and is not known to have had any intellectual deficits.

[120] Other findings have been sought as to the specifics of this event and also as to the investigation. I will deal with these in turn where I can. I do this in the context of the core issue having been conceded. That means that on any version of events this shooting was unjustified. I appreciate that the family of the deceased want to know as much as possible about the death of their loved one. However, all interested persons should appreciate that the fine details of these events from so long ago are hard to establish with precision. Many witnesses are deceased and there are conflicting versions of this event which occurred some 46 years ago. Also, whilst I am obliged to investigate by law, I am not conducting a trial or dealing with

matters of criminal or civil liability. In fact, in this case, unlike many others in the legacy field, those issues have already been determined in other fora.

[121] I have formed a view on some matters as follows. In doing so, I have been greatly assisted by some of the military witnesses and the RUC witnesses who came forward and gave evidence before me. In particular, I mention the following. First, Mr Bedford struck me as a straightforward man who was doing his best to help me. He was quite clear that there was no excuse for the killing. He also told me that he was told to keep his mouth shut and I believe him on that. He said he heard no warning from Lance Corporal Jones and that this was wrong. The logistical position of this witness is important as he was overlooking the road from a raised position albeit he was lying flat. I accept that he may not have had a perfect view if lying down but I think he was well placed to hear what was going on and he had some vision of the road. I therefore accept his evidence that he saw Mr McElhone walking down the road with Lance Corporal Jones.

[122] Also, in his evidence, Lance Corporal Lis said that he was told not to talk about this incident and he said quite clearly that in his view there was no justification for this shooting. He said that any man running away in the field would have been caught given his location overlooking the meadow where Mr McElhone was shot. I accept this evidence. I also found his apology to the family to be genuine and real.

[123] I am satisfied that the purpose of the Royal Regiment of Wales being in the vicinity of the McElhone house must have been to look for anything or anyone suspicious as part of general operations in the area. That is the obvious explanation in keeping with the times whereby army patrolled and searched in certain areas. It is corroborated by the witnesses including Mr McAleer who gave evidence about traffic being stopped on the road. I would have thought there was some intelligence available however none has been produced to this inquest. I find that strange given that in my experience intelligence is readily available in other cases. This was a core point for the military at the time yet there is no evidence provided. As such, I cannot make any finding that there was a specific list of those alleged to be in the IRA or connected to it or that Patrick McElhone was on a list.

[124] In any event, Mr Harrhy has now said in this inquest that Patrick McElhone's name was not on any list. He has also given evidence to me that the record of his evidence at the criminal trial and as reported in the media is wrong. The error is not a minor detail, as it relates to whether Patrick McElhone was a person of interest. Clearly that evidence was highly material at the time. Mr Harrhy now says that his evidence was misinterpreted by the judge and that there were two errors in the judgment and he was misquoted in the press. I appreciate that Mr Harrhy came and gave evidence to assist this inquest however his position is hard for me to understand and that has a bearing on how I assess his evidence.

[125] Also, I cannot comprehend how on Mr Harrhy's account two soldiers went to the door of the McElhone house of their own accord and ended up taking Patrick McElhone outside. Mr Harrhy could not really explain this to me. He did not tell me that he briefed these or any other soldier with his intelligence. Given these matters and most particularly the significant clarification of his evidence that I have recorded above, I simply cannot be sure if his evidence about what happened outside the house that day is wholly reliable.

[126] My view pertains to Patrick McElhone but also Michael McElhone who was described at various stages as being "on the run" or on the fringes of the IRA. Again, there is nothing to back this up from the evidence I have heard. In particular, I note that Mr Michael Mc Elhone was not questioned or searched. He also identified the body of his brother to police and that was without incident.

[127] I was particularly struck by the evidence of M18 in relation to Patrick McElhone. This paints a very vivid picture of Patrick McElhone's movements on the day. M18 said that he saw Mr McElhone earlier in the day when he was on a tractor around the fields and he spoke to him and there was nothing of concern. He described him as a pleasant young man who did not arouse any suspicion. I found this evidence convincing and for me it establishes that Mr Patrick McElhone clearly went about his work for the whole day in the area without any incident and without arousing attention.

[128] Therefore, and having considered all of the evidence, I cannot find a valid reason why Lance Corporal Jones and Patrick McElhone were in the field. I cannot rely on Sergeant Harrhy's evidence as I have said. Corporal Wood's evidence before me was not very certain and in core respects it was based on what Sergeant Harrhy told him about Patrick McElhone. Against that, I have had the benefit of evidence of Mr Bedford which I find credible. In particular, I accept his account that Patrick McElhone and Lance Corporal Jones were walking down the road together having left the yard. Of all of the witnesses he is the one who most convincingly gives an account of these events which was recorded at the time and is from his own knowledge. This inquest is the first time he has given his account in evidence.

[129] This account is also consistent with that of Mr and Mrs McElhone senior. I place some weight on their evidence particularly as this was given contemporaneously. They were described as straightforward people by the local RUC and they were of no concern to them. Also, they clearly allowed for searches to take place at the outbuildings and around their farm that day. I tend to think that they may not have been able to see much more once Patrick McElhone and Lance Corporal Jones left the yard to go down the road. However, their accounts of being concerned about what was happening in the yard appear authentic to me in that they were worried for their son. I accept that there was some sort of altercation between soldiers and Patrick McElhone in the yard, upon him coming out of the house, on the basis of his parents' statements. I cannot be any more specific than that and I cannot add any more detail to my findings.

[130] Having considered all of the evidence, I cannot reach any firm conclusion on the other allegations of foul language, cheering or jeering about this event or the specific allegations made by Mr McAleer.

[131] As to the investigation, I accept the point raised about the Force Order in place at the time. I accept that there has been criticism in other cases of a system whereby army personnel had some responsibility for the investigation of military shootings in Northern Ireland. However, in this case, the RUC witnesses (Detective Inspector Pickard and Detective Constable Donnan) explained the respective roles. These two witnesses were highly impressive and I accept their evidence in its totality. Even if there is an issue about how the statements were taken from military personnel, and why some were taken by the RMP, the RUC clearly had the ultimate say in this case in that the RUC recommended a murder charge and it was proceeded with. I am prepared to accept that was why RMP4 did not file a final report although I find that strange as RMP4 testified that this had never happened before in his career. Overall, it cannot be said in this particular case that there was no proper or effective investigation.

[132] I am not convinced that the failure to formally interview Lance Corporal Jones and put a case was unlawful pre the Police and Criminal Evidence (Northern Ireland) Order 1989 ("PACE"). The charge was put fairly swiftly and Lance Corporal Jones clearly had legal advice which advised against answering questions, as was his right. Also, in terms of process, the fact remains that a soldier was charged with murder and brought for trial. I appreciate that there may be dissatisfaction with the outcome of that trial, but that is a different matter.

[133] Having considered the pathology and ballistics evidence I am of the view that the shot was aimed at the upper body mass of Mr McElhone as Ms Kiernan said. The shot was direct and clearly it would have involved the shooter taking steps to raise his rifle, aim and fire.

[134] Lance Corporal Jones accepted at his trial that he acted contrary to the Yellow Card. No one has suggested otherwise in this inquest. There is some conflicting evidence about whether or not any warning was sounded. I favour the evidence that no warning was sounded given what Mr Bedford and Mr Lis have said to me. However, even if Lance Corporal Jones shouted halt he did not warn that he was going to fire. I therefore conclude that when he opened fire Lance Corporal Jones was not acting in accordance with the Yellow Card instructions.

[135] Mr McElhone died instantaneously. I cannot be certain what his exact position was but he was clearly shot in the back. The evidence does not suggest that he was running away but even if he was he was likely to be caught given the army personnel in the area as Mr Lis has said. Mr Lis specifically explained the wide expanse of the meadow and he was clear and wholly believable when he said that he could have caught a man in Mr McElhone's position if he was running away.

[136] I agree that the military radio logs do not contain an accurate account of what took place. Rather, they paint a certain picture and suggested some potential justification for this shooting which clearly did not exist. However, in this case, those records could never hold up against the accounts given by the army and the accounts of Lance Corporal Jones himself which are recorded from the criminal trial and which I have recited in detail in the foregoing paragraphs. So, if there was some attempt to manipulate the record, it was bound to fail. At his trial, Lance Corporal Jones could offer no justification himself for his use of force and indeed the evidence I heard from military witnesses was on the same lines. I do not consider this is rightly termed a "cover up."

[137] In truth, the nature of this incident was there for all to see. The fact of the matter, confirmed by the PPS file, is that military witnesses wanted to support their colleague and so information was not readily volunteered. That is how the RUC witnesses expressed the matter to me and I think they are right on that. I also must record my clear impression that the local RUC could see that this incident was unjustified. Also, it is clear that the local RUC acted with respect towards the family at all times, a fact specifically acknowledged by Mr Michael McElhone when giving evidence to me.

[138] This inquest has put the record straight as I will record that the use of force was unjustified. Mr McElhone was an innocent man, shot in cold blood, without warning, when he was no threat to anyone.

[139] The family have waited a long time in which both Mr and Mrs McElhone senior have died. This event must have been a terrible shock to them as to all the family and the wider community. I commend the family members who have attended this inquest with dignity and respect during difficult times. At least now the remaining family can hear what I have said. Patrick McElhone was a son and a brother who tragically lost his life for no valid reason.

Verdict

- (1) The deceased was Patrick McElhone, known as Paddy, male, of Upper Limehill, Pomeroy, County Tyrone. He was single.
- (2) The deceased was born on 21 March 1950 at Omagh Hospital.
- (3) Mr McElhone lived at home with his parents. He was a farmer.
- (4) Mr McElhone died at approximately 6.30pm on 7 August 1974 in a field known as "the meadow" at Upper Limehill, Pomeroy, County Tyrone.

- (5) Mr McElhone's death was caused by a single fatal shot fired by Lance Corporal Roy Alun Jones a member of the First Battalion, the Royal Regiment of Wales.
- (6) Mr McElhone died due to injuries sustained from a bullet wound to the chest, shot from behind. It lacerated the base of the heart, the origin of the aorta and the pulmonary trunk and had made a small laceration on the front margin of the right lung. Death would have been immediate.
- (7) The deceased was unarmed and not acting in any threatening way or in any other way that would have justified his shooting.
- (8) This shooting has not been justified by the State, a fact now admitted.

Mrs Justice Keegan
Coroner

21 January 2021