Neutral Citation No: [2024] NICoroner 9 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* **SCO12419** *ICOS No:* *Delivered:* **01/02/2024**

IN THE CORONER'S COURT IN NORTHERN IRELAND

_____

IN THE MATTER OF AN INQUEST INTO THE DEATHS OF JOHN DOUGAL, PATRICK BUTLER, NOEL FITZPATRICK, DAVID McCAFFERTY AND MARGARET GARGAN ('THE SPRINGHILL INQUEST')

_____

RULING (NUMBER 6)
ON APPLICATIONS BY MILITARY WITNESSES
FOR ANONYMITY, SCREENING AND REMOTE EVIDENCE

_____

SCOFFIELD J (sitting as a coroner)

Introduction

[1] This is an inquest into five deaths which occurred on 9 July 1972 in the Springhill and Westrock areas of Belfast. A brief summary of the factual background is contained in my ruling of 27 February 2023 ('Ruling No 1'): [2023] NICoroner 24. This ruling concerns a variety of applications which have been made by former military witnesses (FMWs) – that is, persons whom it is proposed to call as witnesses who were soldiers at the time of the events in question but who are now retired from that role – who seek anonymity and/or screening and the facility to provide their evidence by way of remote video-link.

The applications on the part of military witnesses / PIPs

[2] The following witnesses (some of whom have also been granted properly interested person status in the proceedings) have applied for anonymity: SM10, SM16, SM17, SM57, SM79, SM92, SM93, SM95, SM100, SM104, SM106, SM108, SM113, SM114, SM123, SM207, SM209, SM278, SM279, SM344, SM346, SM348 and SM349. As is obvious, all of these witnesses were provided with ciphers on a provisional basis in the expectation that some of them might seek anonymity in due course.

[3] Most of those FMWs who have sought anonymity have also sought screening. Where screening is sought, it is generally requested that the witness be screened from everyone save the coroner, court staff, legal representatives and the families of the

deceased. In one case, a FMW (SM113) is content not to be screened if they are granted anonymity and permitted to give their evidence remotely. In another case (that of SM16), no application for screening has been made. Some unrepresented FMWs have applied for anonymity but not screening; although it is possible that a further application in that regard may be made in due course.

[4] The represented FMWs who have applied for anonymity have also consistently applied for the facility of providing evidence from a remote location via a live video-link, so that they do not have to travel to Northern Ireland.

[5] A number of witnesses have also requested additional assistance by way of special hearing measures. There is also one application on the part of a FMW (SM231) for excusal on medical grounds, although supporting medical evidence in relation to this is awaited. A small number of FMWs have yet to confirm their position in relation to any such applications.

[6] I have received written applications from FMWs; oral submissions in support of the applications from counsel for the MOD; and written and oral submissions from counsel for those witnesses or PIPs represented by Devonshires Solicitors. All of the applications are opposed by the next of kin (NOK) represented by Ó Muirigh Solicitors; and I have received a variety of written and oral representations from several different counsel for those NOK in opposition to the applications. The non-state and non-military PIPs supported and adopted the opposition to the applications which was presented by the NOK. I am grateful to all counsel for their submissions.

Video-link applications

[7] It is open to me to permit oral evidence to be provided remotely and I have already done so in a number of instances for civilian witnesses giving evidence in these inquest proceedings. I was invited by a number of counsel for the NOK to determine this aspect of the FMWs' applications first, since it is conceivable that, if these applications are granted, that may sound on the question of anonymity and screening.

[8] A power to use live links is presently contained in section 57 of, along with Parts 1 and 2 of Schedule 27 to, the Coronavirus Act 2020 ("the 2020 Act"). This power is currently scheduled to expire on 24 March 2024 (see the provisions of the Coronavirus Act 2020 (Extension of Provisions Relating to Live Links for Courts and Tribunals) No 2 Order (Northern Ireland) 2023). In order to give a direction for participation by live link under these proceedings, I must be satisfied that it is in the interests of justice to do so (see para 2(4) of Part 2 of Schedule 27). In deciding whether to give such a direction, I must consider all the circumstances of the case.

[9] One matter to which regard must be had under the 2020 Act is that of public health. In my view, public health interests are not a highly material consideration in this case. They are not, however, completely irrelevant. Although the public health

situation has improved markedly since the introduction of the 2020 Act, there are regular reminders that variants of the coronavirus are still present in society and can pose a risk to some of its members. A number of the FMWs have identified issues which they suggest render them clinically vulnerable or immuno-suppressed, or rely upon having partners who are, and have therefore expressed concern about the increased Covid-related risks of travelling. The power to permit live-link evidence under the 2020 Act is not, however, limited to addressing public health concerns, albeit that was the context for their introduction. The test is whether the facility is in the interests of justice in all the circumstances.

[10] My powers under the 2020 Act are expressly additional to, and do not limit, any other power to direct or permit evidence to be given remotely. It has been recognised that there are common law powers on the part of a coroner holding an inquest which to regulate the proceedings, which extend to permitting the giving of evidence from a remote location. Little guidance has been provided in relation to the test for the exercise of such a power, but it seems to me, from first principles, that this is a matter of discretion for the coroner bearing in mind the need to ensure the fairness of the proceedings; the achievement of best evidence; respect for the principle of open justice; and an overarching test of what is in the interests of justice.

[11] Keegan J (as the current Lady Chief Justice then was), sitting as a coroner in the Ballymurphy Inquest, addressed these issues in a ruling in that inquest (see [2021] NICoroner 6). In the course of that ruling, she said this:

> "In addition, the issue of live link evidence arose and this was something that I granted in many of the applications as witnesses were outside the jurisdiction, fearful of coming to the jurisdiction and in some cases exhibited medical issues which would necessitate a provision of special measures. Of course, this inquest occurred pre- the Coronavirus Act 2020 which allows for live link but I applied by common law discretionary powers in the inquest to allow for live link. Subsequently I have also utilised this hybrid format in the *McElhone* inquest reported at [2020] NI Coroner 1 which I concluded in January 2021…
>
> I have no doubt that this method is a valuable tool in dealing with legacy inquests which will pertain after the Coronavirus Act 2020. There is a statutory regime regarding criminal trials in which live link is used, the test for special measures being whether or not this would be 'likely to improve the quality of the evidence given by the witness.' This medium is frequently used in other jurisdictions including the civil and family jurisdictions

> with the main focus being to improve the quality of the evidence..."

[12] In the ruling in the *McElhone* inquest referred to above, Keegan J returned to this issue and said:

> "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."

[13] More recently, Humphreys J, when he was the Presiding Coroner for Northern Ireland, addressed this issue in his ruling on similar applications in the inquest into the deaths of Lawrence Joseph McNally, Anthony Patrick Doris and Michael James Ryan ("the Coagh Inquest"): see [2022] NICoroner 8. He had already granted anonymity to a variety of military witnesses in that inquest on the basis of public interest immunity (PII). Humphreys J referred to the observations of Keegan J which I have mentioned above and also observed that evidence from military witnesses had been permitted to be given remotely in a number of further inquests in recent times (into the deaths of Stephen Geddis and Kathleen Thompson). One might now add the Coagh and Clonoe Inquests to that list. He went on (at para [11]) to reject the submission that the giving of remote evidence was an interference with open justice:

> "It is important to recall that, fundamentally, a coroner's inquest remains an inquisitorial process, even in the context of controversial legacy killings. No jury has been convened and I am the decision maker in respect of disputed facts. In order to make the decision-making process as effective as possible, the inquest will always seek the best evidence. If a witness gives evidence remotely, he or she will still be seen and heard by me. Insofar as it is suggested that the use of live link constitutes an interference with open justice, I reject that. The focus must be on whether the use of remote technology assists the inquest process in receiving evidence and using time and resources in an efficient and effective way."

[14] The comments from Keegan J and Humphreys J make clear that the use of video-link can, and often now is, considered to be a useful and valuable approach

within the coronial jurisdiction. This is particularly the case in relation to long and complicated legacy inquests and especially where elderly FMWs live outside the jurisdiction. Keegan J's observations indicate that relevant considerations will include alleviating stress, inconvenience and expense which may arise from having to travel a significant distance to court; and allaying security fears in relation to travel to this jurisdiction. Humphreys J's observations make clear that the efficiency of the inquest process – using time and resources efficiently and effectively – is also an important consideration. In England and Wales, the rule expressly dealing with the use of live video links in inquest proceedings – rule 17 of the Coroners (Inquests) Rules 2013 – permits a direction for this to be given where it will improve the quality of the evidence being given or "allow the inquest to proceed more expediently." This was noted by HHJ McGurgan, sitting as a coroner, in granting requests for such facilities for FMWs in the Geddis Inquest. It may not be the case that the granting of such applications for FMWs living outside the jurisdiction in legacy inquests is now standard practice on this basis; but there is a clear direction of travel towards that. Of course, any such witness who would prefer to attend in person may always do so. There may also be cases where it is particularly important for a witness to attend in person.

[15] The key concerns in relation to the granting of such applications are whether this will unduly interfere with the principle of open justice or will reduce the quality of the evidence (or the ability of the coroner to assess it). The first of these objections has been dismissed by Humphreys J. I agree that the grant of a live-link facility does not, of itself, interfere with open justice. Subject to the granting of any further application for protective measures, the witness will still give their evidence in open court and be visible to the coroner, legal representatives and those members of the public following the proceedings.

[16] Some of the submissions made on behalf of the NOK appeared to me to proceed on the basis that attendance in person was necessary as a matter of fairness because civilian witnesses had (largely) attended in person to date and that doing so, with the stress of appearing in a courtroom with a large number of lawyers present and in the glare of the public, was a necessary corollary of the inquest's scrutiny function. For my part, I find those submissions unpersuasive. It is right that most of the civilian witnesses have attended in person to date. However, most of them live in Belfast rather than much further afield. Most of them will also not have equivalent fears for their safety (whether those fears are merely subjective or not) as do the FMWs when travelling to and staying in Northern Ireland for the purpose of giving evidence. Where there is any basis for a civilian witness preferring to give their evidence via live-link, they can apply to do so; and several such applications have been granted, even though the witness might live close to the courthouse where the inquest was sitting. It is also not, in my view, a necessary part of the inquest function to ensure that a witness, even one who potentially bears responsibility for a death which is being investigated, is 'put through the wringer' by making the arrangements for their appearance as uncomfortable or stressful as possible. The scrutiny function is discharged by their being required to give

evidence and required to answer relevant questions (subject to any privilege they may lawfully assert) in public. It is *the proceedings* which must take place within the full glare of the public; it is not that every participant must be physically present in the courtroom.

[17] I do not underestimate, nor would I denigrate, the desire of the NOK to see military witnesses give evidence in person; nor the potential significance to them of such witnesses being questioned whilst physically present in a court in this jurisdiction. However, the issues for me are the effectiveness and efficiency of the inquest, particularly in a case where, as all PIPs are all too aware, there is an element of time pressure in the conduct of these proceedings arising from the provisions of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 ("the Legacy Act"). These considerations are, of course, always subject to the question of whether the evidence-gathering process will be unduly affected or impeded by the grant of live-link facilities, to which I now turn.

[18] Some of the NOK submissions have referred to the guidance issued by the Office of the Lady Chief Justice in relation to physical (in-person), remote and hybrid attendance at court. This indicates that, from May 2023, all participants in proceedings should attend court in person unless a judge has directed that they can attend remotely applying the interests of justice test in that individual case. This statement of the usual approach does not take matters further, since the present FMW applications are for a departure from the usual approach. However, the LCJ's guidance goes on to state that civil cases which require assessments of credibility will require in-person attendance. (It is unclear whether this is referring only to counsel and solicitors, rather than witnesses, but I assume for present purposes that it provides guidance that witnesses should generally attend in these circumstances.)

[19] This issue was specifically addressed, in some detail, by Humphreys J in the ruling in the Coagh Inquest referred to above (at paras [12]-[15]). He indicated that an assumption that the use of remote technology is unsuitable in relation to witnesses whose credibility is under challenge does not reflect judicial experience. He cited a Chancery judge who had expressed the view that he was not in any way disadvantaged in his ability to assess the reliability or credibility of witness evidence using remote technology, adding that, "If anything, the opposite was the case." This was largely because the judge considered himself to be in a better position to see and hear the witness than if they were separated by the usual distance between bench and witness-box in a traditional courtroom; and also because the witness was put more at ease in their surroundings, which "assisted in getting the best evidence from them." The judge also referred generally to the misplaced emphasis which can sometimes be put on an assessment of demeanour in judging a witness's credibility and reliability, as opposed to concentrating on the *substance* of what they say and its consistency or inconsistency with other evidence given by them or other witnesses (see generally the discussion of this issue by Leggatt LJ in *R (SS) (Sri Lanka) v Secretary of State for the Home Department* [2018] EWCA Civ 1391, at paras [33]-[43]).

[20] Humphreys J went on to quote the observations of Lieven J in the Family Division of the English High Court that it is not possible to say as a generality whether it is easier to tell whether a witness is telling the truth in court rather than remotely (see *A Local Authority v Mother* [2020] EWHC 1086 (Fam), at para [27]); and that, rather than a witness being more likely to tell the truth if they "feel the pressure of the courtroom", it could "work the other way round" with some witnesses feeling less defensive and more inclined to tell the truth when giving evidence from a less intimidating setting (at para [28]). She did not feel able to reach any conclusion on what would be most likely to elicit the most truthful evidence. For his part, Humphreys J, as the Presiding Coroner and drawing on his experience and that of others, determined that the military witnesses in the Coagh Inquest should be permitted to give their evidence by live link for the following reasons (at para [15] of his ruling):

> "(i) I am quite satisfied that there will be no reduction in the quality of the evidence given to the inquest;
>
> (ii) I will have every opportunity to assess the credibility of each of the witnesses;
>
> (iii) The principle of open justice will not be interfered with;
>
> (iv) The experience of recent inquests is that there has been no downside to the use of remote technology for the giving of oral evidence;
>
> (v) There will be significant practical benefits to the inquest in terms of efficiency, flexibility and the saving of time and valuable resources."

[21] Huddleston J, in the Doherty and Fleming Inquest, appears to have taken the view that it was indeed more likely that military witnesses will give full and truthful accounts if their evidence is not 'overshadowed' by concerns for their safety in attending court personally in Northern Ireland. In a ruling on anonymity and screening in that inquest ([2023] NICoroner 17, at paras [11]-[12]), he said this:

> "[11] In addition and looking at the fact finding with which this Inquest is tasked, it seems to me on balance, that is preferable that witnesses be able to appear in person without concerns over their safety overshadowing their main purpose on the day which is to give a truthful account to the best of their recollection about what happened.

> [12] In terms of the investigative function of this Inquest it is preferable in my view that witnesses are encouraged and feel sufficiently secure to be able attend and give the best evidence which they can to the Inquest and be subjected to questioning by those that represent the PiPs. That is the way, in my view, by which we are more likely to establish the truth of what happened to cause the deaths of Messrs Fleming & Doherty in relation to events which occurred nearly 40 years ago and where there is substantial conflicting factual evidence to resolve. To reduce any such concerns, I am prepared to grant [anonymity and screening] to PW5 and *on a provisional basis* the remaining DMSU officers."

[22] In a separate ruling in that inquest – [2023] NICoroner 16 – Huddleston J also granted permission for military witnesses to give their evidence by live-link. He too rejected the submission that this was an impingement on open justice. He considered that it was in the interests of justice for such a facility to be granted taking into account, inter alia, the witnesses' location outside the jurisdiction; their age and reduced ability to travel easily; and security concerns.

[23] In the present inquest, all of the FMWs who have applied to give their evidence remotely live in Great Britain (at addresses known to my office). The vast majority of the FMWs have indicated that they are quite content to provide oral evidence voluntarily but have expressed themselves not to be in a position to travel to Northern Ireland. This is generally for a variety of reasons, relied upon individually and cumulatively, relating to concerns about their health, safety and well-being (or sometimes those of their partners, for whom they provide care). The military witnesses range in age from 69 to 90, with most in their mid-70s. Many of them have a variety of medical conditions common for individuals of those ages including heart conditions, pulmonary disease, high blood pressure, arthritis, restricted mobility, hearing difficulties, cancer of various types and diabetes. As I have mentioned above, a number also remain concerned about Covid-19 and its variants. I have taken into account the NOK's submissions (led by Mr McIlroy on this point) on the lack of detailed medical evidence in some cases. That is partly because of the speed with which many of the applications have been put together (given that the hearing schedule in this inquest was expedited); and both the CSO and Devonshires have indicated that further medical evidence could and would be provided in many cases, should I so direct. However, the more basic point is that these applications do not have to be based upon an assertion that a witness *cannot* travel to Northern Ireland; or that there would be serious medical concerns or issues caused by them doing so. The test for the grant of the facility to provide remote evidence is much broader than that.

[24] I accept that for many (if not all) of these witnesses, travel to Northern Ireland would be daunting. That is not, of course, a reason in itself for granting an

application for remote evidence. At the same time, it is not an irrelevant matter since a reduction in stress on the part of a witness can significantly contribute to the achievement of best evidence. As discussed in further detail below, the threat to military personnel in Northern Ireland is higher than it is in Great Britain. I accept that many (if not all) of these witnesses do have genuine fears about travel to this jurisdiction. A striking feature of the applications is that there was a very consistent theme of FMWs not returning to Northern Ireland after their military service here. To whatever extent those fears are objectively justified, I accept that there are genuinely held subjective fears about attending to give evidence in this jurisdiction and the risk of being identified, attacked, followed or photographed in this jurisdiction, either at court, travelling to or from court, or whilst staying in Northern Ireland (if that is necessary). There is also, no doubt, an additional element of vulnerability felt by retired soldiers who no longer operate within the protective structure which comes with active military service. The potential concerns highlighted above in relation to defensiveness and/or security concerns overshadowing a witness's evidence clearly arise.

[25] Travel to Northern Ireland would, in all cases, be likely to be inconvenient and time consuming. It will also be costly, with the expense falling on the public purse. Since this inquest has been proceeding with a degree of flexibility and pace in light of the provisions of the Legacy Act, the additional complications of arranging and potentially having to re-arrange travel, rather than permitting a witness to attend remotely, are factors which are entitled to some weight.

[26] Taking these factors together, I am satisfied that it is in the interests of justice in all of the circumstances of this inquest to allow the FMWs who have applied for the facility to give their evidence remotely to do so. This is now a relatively common practice in such inquests. It does not in my view represent any significant inroad into the principle of open justice; and may well, in fact, assist in the obtaining of best evidence from these witnesses.

[27] I was not convinced by the submission that a different approach could or should be taken to a witness or witnesses whose evidence could be described as placing them in the category of a "key" witness (with SM10 being put forward in this regard). In the first instance, it is often difficult to know in advance how important a witness's evidence might be. Second, for the reasons given above, I do not consider that having an important witness physically in court necessarily enhances the evidence they give. Third, it also seems to me wrong to penalise a witness (as they might see it) for having provided important evidence in their written statement in advance.

[28] As in the Coagh ruling, I recognise that there is a need to make further directions in order to ensure the integrity of the inquest process, that public access to the hearing is maintained, and that the arrangements put in place for the giving of remote evidence are satisfactory to me as coroner. In light of this, the following directions should be complied with:

(a) The witness shall only give evidence from a location which has been notified to the Legacy Inquest Unit (LIU) and which is considered as suitable for that purpose. It will be a requirement that the location has access to a reliable internet connection adequate for the purpose of remote connection to the proceedings. Appropriate testing of the connection and facilities will be required before the evidence commences.

(b) Unless permitted for some exceptional reason, the witness should be accompanied by no more than one other person in the room from which they are giving evidence. Where any other person is to be present in the room with the witness (for instance, for the purpose of assisting them with the technical facilities, locating or following documents, etc.), (i) their identity and role should be notified to LIU in advance and (ii) they should be visible on screen with the witness, so as to ensure that there is no improper interference with the evidence-gathering process. Where practicable, it is preferable that any person in attendance to give assistance (where this is required) is a solicitor or representative of the LIU.

(c) The public and media will have access to the inquest proceedings, via Sightlink, during the witness's evidence (subject to the ruling on screening below).

Anonymity

[29] The anonymity and screening applications are made on the basis of articles 2, 3 and 8 ECHR and also common law fairness. The FMWs rely in particular upon the case of *Re Officer L and Others* [2007] UKHL 36; [2007] 1 WLR 2135. That case concerned the application on the part of police witnesses in the Robert Hamill Inquiry for protective measures. In it, Lord Carswell helpfully discusses the legal principles in this area. The key question for article 2 purposes is what is reasonable in the circumstances to mitigate a real and immediate risk to life. The approach to be taken to whether a real and immediate risk to life arises in this context was clarified in *Re Officer C and Others* [2012] NICA 47 and *ZY v Higgins and Others* [2013] NIQB 8. The threshold is a high one but one which, nonetheless, in the context of determined and resourced terrorist groups seeking to attack members of the security forces in Northern Ireland is frequently met. For my part, I do not consider that articles 3 or 8 of the Convention are likely to add much, if anything, to the analysis. In particular, article 8 may be more readily engaged but will also weigh less heavily in any balance to be struck between the witness's rights and the principle of open justice or article 10 issues. These applications are routinely dealt with on the basis of article 2 and common law fairness.

[30] Common law fairness might lead to a different result, even where anonymity and/or screening were not required on article 2 grounds. That is principally because there is a greater role for subjective fears (even if not well-founded) to play a role in

the analysis of what fairness requires in this context. In *Re Officer L* Lord Carswell suggested that a request for anonymity should first be considered by reference to the common law test, with "an excursion" into the territory of article 2, if required, because a risk to the witness's life "would be created or materially increased if they gave evidence without anonymity."

[31] A number of threat assessments from the PSNI and Security Service have been placed before me, relating to a number of the FMWs who have made these applications. They are in a now standard form; and the NOK, whilst making the reasonable point that there is not a threat assessment for each witness, have also made the reasonable concession that any further assessment to be obtained will likely be in materially identical terms. I proceed on that basis.

[32] The threat assessments available each assess the risk to the FMWs, as retired soldiers, as LOW but indicate that there is a possibility that their personal security may be undermined should they not be granted anonymity; and that, if not granted anonymity and screening, the threat in Northern Ireland from dissident republicans "could potentially rise above the LOW threat band." The threat is assessed as unlikely to rise above the LOW threat band in Great Britain; but there is the potential for the threat to increase and there is no reassurance provided that it would not do so; nor that it would be unlikely to rise within the LOW threat band.

[33] The submissions made on behalf of those FMWs represented by Devonshires set out, by reference to reliable and publicly available sources, some detail of the present security situation and threats from, or activities of, dissident republican terrorist groups. These included Europol's Terrorism Situation and Trend Report 2022 which indicated that such groups maintain the intent and capabilities to conduct attacks "with police, military and prison officers as the preferred targets."

[34] A point specific to the present proceedings, which has been emphasised in some of the submissions, is that the incident(s) to which this inquest relates are known colloquially as "the Springhill Massacre" (or sometimes, "the Forgotten Massacre" or "Belfast's Bloody Sunday"). The perception or contention that those soldiers who were responsible committed a massacre is said to potentially increase the attraction of such soldiers as targets. It certainly increases the FMWs' perception as to the risk of attack.

[35] Threat assessments in materially similar terms have been considered in a number of legacy inquests in recent years where FMWs have sought anonymity. Anonymity is regularly granted on this basis, both on article 2 grounds and at common law. In my view, the threat assessments are sufficient to establish that there is or may be a material increase in risk to the FMWs in the event that they provide evidence in the inquest without the benefit of anonymity. That is sufficient to warrant consideration of what protective measures are reasonable and appropriate to mitigate that risk.

[36] In his recent decisions on anonymity and screening in the Doherty and Fleming Inquest, Huddleston J – on the basis of similar threat assessments to those placed before me – considered that "the risk to *former* members of the security forces… remains both subjectively and objectively something that is real and not fanciful": see [2024] NICoroner 1. This ruling drew upon reasoning he had set out in earlier rulings in which he rejected submissions similar to those which have been urged upon me by the NOK in these applications. In his ruling on anonymity and screening applications ([2023] NICoroner 17) he said this at para [10]:

> "While the threat assessment that I have considered suggests the risk to PW5 is LOW and that it may only 'potentially increase' if he gives evidence that still suggests that there is an objective risk. The NoK say that there is a general downward trajectory of what amounts to what I will call 'Troubles related' violence but that does not mean that there is no risk – and risk sufficient to raise, for this Inquest Article 2 issues, in respect of those who will appear. It is also appropriate that, in that context, I recognise and reflect any real risk of that security risk increasing – which I do think is a concern. (See also Keegan J on this point in Ballymurphy Inquest [2021] NI Coroner 6). Those Article 2 considerations are a material consideration for me. Those considerations of themselves suggest to me that the prudent course is to allow [anonymity and screening]. In adopting that course witnesses will have the benefit of protection and, as set out below, I do not consider the provision of special measures to create a serious impediment either to those who will be free to question them or, indeed, this Inquest in answering the statutory questions which arise."

[37] The NOK are right to draw a distinction between the position within Northern Ireland (where the threat from Northern Ireland related terrorism (NIRT) is assessed as SEVERE, meaning that an attack is highly likely) and the position in Great Britain (where the threat from terrorism is assessed as SUBSTANTIAL, meaning that an attack is likely). In addition, the threat assessments which are before me draw a distinction in this regard: in Northern Ireland, giving evidence without protective measures is assessed as meaning that the threat could rise "above the LOW threat band" (i.e. into the MODERATE band); whereas in Great Britain there is still the potential for an increase, but this is assessed as being unlikely to be above the LOW band. It is for this reason that there is some significance in my determination (above) that FMWs will be permitted to provide evidence remotely and therefore will not be required (at least in the context of this inquest) to be present in Northern Ireland.

[38] Notwithstanding this, I still consider it reasonable and proportionate to grant anonymity in these cases. The grant of anonymity would plainly be appropriate in my view if the witnesses were required to come to Northern Ireland. The question is whether they should be deprived of that protection merely because, for now, they are not required to do so. In the Doherty and Fleming Inquest, Huddleston J indicated expressly that he was going to adopt "a precautionary approach." I am urged by the FMWs in this inquest to do likewise and consider it right to do so. Stephens J's judgment in *Re Jordan's Application* [2014] NIQB 11 made clear that this was permissible and may be a prudent approach in this context (see, in particular, para [118]). In a variety of recent legacy inquests, FMWs have been granted anonymity even though they have also been permitted to provide evidence remotely. The submissions made by FMWs represented by Devonshires made reference to evidence that potential attacks on military personnel are not necessarily limited to Northern Ireland and can extend to Great Britain. The naming of a FMW will make it much easier for that individual to be traced, particularly where, as is often the case these days for most members of society, they or their family have an online presence. My decisions on the question of remote evidence will, of course, be kept under review. Something unforeseen may arise which might require a witness's personal attendance. In addition, if a witness becomes uncooperative, a subpoena requiring personal attendance may be the only appropriate way of dealing with that.

[39] Bearing these matters in mind, I consider it appropriate to grant anonymity even though the witnesses will not (presently) be required to attend court in Northern Ireland for the purpose of this inquest. I have concluded this to be the case on the basis of both article 2 and at common law. The risk to the witnesses, whilst plainly low, is not fanciful; and anonymity (unless already decisively lost) is really the least that can be provided to mitigate against this.

[40] A number of the applications on the part of the FMWs recounted traumatic experiences during their military service, in particular when serving in Northern Ireland, or in respect of other friends of relatives in the armed forces. These included being shot at or inside a building which was bombed; having been on an 'IRA target list'; or having a relative killed by paramilitary groups during military service in this jurisdiction. As noted above, a theme emerging from the applications was that many soldiers have not returned to Northern Ireland since concluding military service here. Many of them also do not routinely talk about or disclose their military career. Although there may be a degree of hypervigilance evident in the applications, I consider the witnesses' fears to be genuinely held. In all of the circumstances, I consider it fair to grant anonymity.

[41] On the above basis, I propose to grant anonymity to SM10, SM16, SM17, SM57, SM79, SM92, SM93, SM95, SM100, SM104, SM106, SM108, SM113, SM114, SM123, SM209, SM278, SM279, SM344, SM346 and SM348; that is, each of those FMWs who has applied for it, save for SM207. I am not making any decision on SM207's application for now since an issue arose in the course of its consideration which has led to a request for the facility for CSO to make some further submissions.

I will deal with that application separately. The anonymity applications also extend to an application for redaction of identifying information contained within their evidence; and for an order restricting publication of matters which might lead to their identification. I also grant the applications for those ancillary orders or directions (save that the issue of redaction will remain subject to review and my determination as to the balance between protective redaction and the necessity of disclosure in order to ensure that important evidence necessary for the fair conduct of the inquest is not unduly withheld).

[42] The submissions pithily but effectively made by Mr McTaggart on behalf of the NOK in relation to some of the applications gave me some pause for thought in relation to the applications for anonymity on the part of SM344 and SM346 (neither of whom is presently legally represented). These witnesses were members of the Royal Military Police and, I understand, were not provided with anonymity in the course of the original inquest which was conducted in 1973. On this basis, the NOK essentially contend that anonymity has been lost.

[43] In making that submission, the NOK relied upon the fact that, in the Doherty and Fleming Inquest, Huddleston J declined to provide anonymity to two witnesses (PW9 and PW35) whose names had already been publicly connected with the inquest. PW9's identity had been part of disclosed information since April 2013; he had provided a police statement in 1984 in which he was named, with this police statement being part of the inquest papers; and he had been referred to by name in other evidence. In those circumstances, it was submitted that anonymity (and screening) would be pointless. Huddleston J agreed with this, in part only. He was persuaded that the witness's name was known to such a degree that there was "no strength whatsoever" in the claim for anonymity. The name had been known in connection with the proceedings for a significant period of time and had been repeated (over 40 times) in public in connection with the inquest proceedings. PW35's name was also "well known" in connection with the proceedings.

[44] I have considered the rulings in those cases. To my mind, Huddleston J was making the commonsense point that if anonymity has been lost to such a degree that the application is plainly pointless and granting it would therefore bring the procedure into disrepute, the application should be refused. This will be appropriate, for instance, where (as there appears to have been in those cases) there has been recent and widespread publication of a witness's name in connection with the very proceedings in respect of which anonymity is sought. I have referred to this (at para [38] above) in the shorthand phrase of anonymity having been "decisively lost." Obviously, each case will turn on its own facts and will be context-specific. However, in the case of SM344 and SM346 I do not consider them to fall into the category where the absence of anonymity in 1972-73 means that there is no purpose to be served by it being granted now. It is unclear whether there was any reporting of either witness's name some 50 years ago. There is limited, if any, evidence of their names being disclosed publicly, albeit they may have been available to someone who had accessed the original inquest papers. There is no evidence of their names having

become known in a widespread way, recently or otherwise, in connection with the present proceedings.

[45] It must always be recognised that there will be cases where, for a variety of reasons, the protection provided by the grant of anonymity or application of a cipher in proceedings such as these will be imperfect or, with ingenuity and determination, is capable of being circumvented. That does not mean that it will necessarily be inappropriate to provide what protection can be afforded, where legitimate issues or fears of risk to life arise, simply because the protection is not watertight. Each case must be assessed on its own merits. For the reasons summarised above, I am satisfied that both SM344's and SM346's case may properly be treated in common with the other FMWs' applications for anonymity and that any prior disclosure of their names in this context does not rob their applications of force.

[45] I have dealt with the anonymity applications as a batch, albeit I have considered each application individually. Some may be said to be stronger than others for a variety of reasons; but each of them shares the same basic features discussed above which have led me to conclude that the grant of anonymity is warranted.

Screening

[46] Anonymity and screening are separate measures and must be considered separately. However, they are plainly related, since a lack of screening may undermine a grant of anonymity. In *Re Jordan* [2016] NICoroner 1, Girvan LJ recognised that a failure to grant screening to a witness who had been granted anonymity would give rise to a risk of identification (see paras [127]-[128]). In his ruling on this issue in the Coagh Inquest (*supra*) Humphreys J commented that the complete denial of screening "would effectively nullify" his determination that anonymity was required in the interests of national security. In the Doherty and Fleming Inquest, even in cases where anonymity had been refused (those of PW9 and PW35), Huddleston J granted them screening on the basis that their appearance was part of their identity which was not known and could (and should) be protected, including by way of screening from the NOK.

[47] At the same time, screening may be said to represent a greater impingement on the principle of open justice and the ability of the public and the NOK to follow proceedings. Where anonymity is granted, all that is withheld is the witness's name (and other information from which they may be identifiable). The name of the witness is nonetheless available to me as coroner and to my office for use where required in the course of the coronial investigation. The cross-referencing procedure I referred to in Ruling No 3 and access to the FMW's personnel file should cater for a range of enquiries that should or could be made about the witness if their name was known. On the other hand, screening deprives the public and the NOK of the ability to see the witness giving evidence. Albeit they can hear the evidence (and leaving aside the comments made above about the potential unreliability of a witness's

demeanour in assessing credibility), screening represents an undoubted interference with the principle of open justice. In some cases – for example, in the decision of the English High Court in *R (E) v Chairman of the Inquiry into the Death of Azelle Rodney* [2012] EWHC 263 (Admin), at para [29] – there has been a recognition that the risk to an anonymised witness is limited "by giving evidence with the protection of a cypher but without screens in an environment where cameras, or phones with cameras, would be excluded."

[48] Where screening is granted in contentious legacy inquests, it is now relatively common for that screening *not* to extend to screening from the family of the deceased persons whose deaths are being investigated. That was the approach adopted, for instance, in the Ballymurphy Inquest, the Carson Inquest and the Jordan Inquest. Different considerations have been found to apply, and a different approach adopted, in cases where screening is requested by the assertion of PII and/or where the military witnesses in question were or are members of a special military unit (SMU): for instance, the McCaughey and Grew Inquest and the Coagh Inquest. In the latter, screening of SMU witnesses from everyone save the coroner and legal representatives was permitted; however, that was on the basis of PII and a real risk of serious harm to national security, which does not arise in the present case.

[49] In most applications, no application has been made for screening from me, the legal representatives in the case or the NOK of the deceased. The issue really is simply whether screening from others – including members of the press or public watching the proceedings (either in court or via Sightlink) – is appropriate. SM79 has requested a higher level of screening, so that in giving evidence he is only visible to me, my staff and legal representatives of PIPs in the inquest.

[50] The witness's article 2 and 8 rights have to be balanced against countervailing considerations, including the principle of open justice and the article 10 rights of those seeking to follow the inquest. In respect of screening, I do consider that there is a significant distinction to be drawn between FMWs having to attend the inquest in person and a situation where they can give evidence from a remote location. In the former instance, if they are seen in court and present in Northern Ireland, there is a greater risk of them being identified or followed coming to or leaving the court and whilst in the jurisdiction. In the latter instance, where they are visible on screen only and in a location unknown to the generality of people of following the proceedings, there is less of an issue as to a lack of screening undermining the grant of anonymity.

[51] The NOK made a powerful point that anonymity is only likely to be undermined where a clear picture of the witness's appearance is retained and that, in court, this is either impractical or entirely impossible, since photography is not permitted. One might add that those in the public gallery are some way back from the screens showing the witness giving evidence; and that the behaviour of those present in court is supervised not only by the coroner and legal representatives but by court security staff. (None of this is to cast any aspersion upon the behaviour of anyone who has been in attendance at the inquest proceedings; it is merely to bear in

mind, as one must in this context, the ways in which anonymity might be undermined by someone with nefarious intent seeking to do harm to a witness giving evidence in the inquest).

[52] The same protections do not necessarily apply where a member of the public is dialling in to the proceedings via Sightlink and where a witness would be clearly visible to them on the screen of their device or computer. In those circumstances, there is a much greater risk of a witness having their image recorded by means of a photograph or screen-shot, in a manner which *might* be useful in undermining the grant of anonymity. Albeit this risk is mitigated to some degree by the protocol which is adopted in relation to those dialling in remotely, which emphasises that such recording is prohibited, a concern about images being recorded in this way is in my view much more reasonable.

[53] Weighing each of these matters up, I have concluded that the appropriate course is to accede to the screening application in a limited way such that FMWs giving evidence remotely (a) will not be screened from those attending at court (including the NOK and other members of the public, or members of the Springhill or Westrock communities interested in the proceedings, who are in the public gallery); but (b) will not be allowed to be viewed on-screen by those watching the proceedings remotely. To my mind, this strikes a fair and proportionate balance between allowing the witnesses' evidence to be followed by the NOK (and a limited number of others who choose to attend at court) and the risk of an image of the witness being recorded which might be of use in seeking to undermine the anonymity which has been afforded to them in these proceedings. This will necessarily limit the ability of some who are following the proceedings remotely to see FMWs giving evidence (as would have been the case if I had acceded to their applications in full) but will allow some additional persons who are in attendance at court to see the witnesses giving their evidence under the conditions mentioned at para [51] above.

Conclusion

[54] For the reasons given above:

(1) I grant the application for each FMW who has applied to give their evidence by way of live-link from a remote location to be permitted to do so (subject to the practical arrangements set out at para [28] above).

(2) I grant the application for anonymity in each case in which it has been sought.

(3) I partially accede to, and partially refuse, the application for screening in each case. The FMWs giving evidence remotely will be able to be seen, on screen, by me, the legal representatives, the NOK and others attending court; but will not be able to be seen by anyone viewing the proceedings remotely from a computer or device.

[55] As always, this ruling will be kept under review if circumstances change, or some further evidence or submission is brought to my attention which warrants its reconsideration in any particular case.