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IN THE CORONERS COURT IN NORTHERN IRELAND

BEFORE THE CORONER OF NORTHERN IRELAND
ANNE-LOUISE TOAL

IN THE MATTER OF AN INQUEST TOUCHING UPON THE DEATH OF HUGH GERARD CONEY

RULING ON WHETHER SECTION 18(1)(b) OF THE CORONERS ACT (NORTHERN IRELAND) 1959 APPLIES TO THE INQUEST

Introduction

[1] An issue has been raised on behalf of the Northern Ireland Prison Service (NIPS) as to whether section 18(1)(b) of the Coroners Act (Northern Ireland) 1959 ("the 1959 Act") applies to the above inquest.

[2] The deceased, a detainee at the Maze/Long Kesh internment camp, died on 6 November 1974, as a result of injuries he received when he was struck by a bullet whilst attempting to escape with a number of other detainees. This court will examine the circumstances of his death in detail and will look at, amongst other issues, whether the firing of any bullet was justified.

[3] This inquest was opened on 27 February 2023 and oral evidence was heard from two detainees who had also attempted to escape at the same time as the deceased, together with the next-of-kin and a civil engineer expert as to the layout of the site.

[4] After hearing this evidence, I was alerted to the fact that the NIPS would be seeking to raise the issue of whether there was reason to suspect the death occurred whilst the deceased was in prison. If there is such a reason to suspect the death occurred whilst the deceased was in prison, this would necessitate the inquest being heard by a jury. As such, the inquest was adjourned to deal with the issue by way of written submissions (which were received on 20 March 2023) and oral submissions

(which were heard on 23 March 2023). It is on foot of these I produce this written ruling.

[5] All the existing Properly Interested Persons (PIPs), which now include the next-of-kin, the Police Service of Northern Ireland (PSNI)/ the Ministry of Defence (MOD) and the NIPS, were given the opportunity to provide submissions in respect of the matter. The PSNI/MOD advised they were taking a neutral stance and provided submissions outlining the various legal principles and how, they say, these apply to the particular facts of the death. The NIPS provided submissions to likewise effect. Coroner's counsel also provided a written note on the key issues to be considered. The next-of-kin did not provide any written submissions but indicated at the oral hearing that, in their view, it appeared the threshold for section 18(1) of the 1959 Act was met in the circumstances. I thank all counsel for both their written and oral submissions, which I found useful in reaching a determination on this issue.

The legal principles

Statutory scheme

[6] This is an inquest which arises from a direction by the Attorney General under section 14 of the 1959 Act. Section 14(1) makes clear that the provisions of the 1959 Act apply to such an inquest and the coroner shall proceed to conduct the inquest in accordance with those provisions.

[7] Although a coroner has a broad discretion as to the holding of an inquest [cf. sections 11(1) and 13(1) of the 1959 Act], there are two occasions which mandate that a coroner hold an inquest. Namely, on foot of a direction by the Attorney General under section 14(1) of the 1959 Act or where there is a death of any prisoner in a prison.

[8] The requirement to hold an inquest into the death of a prisoner is not in fact contained within the 1959 Act nor in the Coroners Rules (NI) 1963, but instead the statutory basis is found in section 39(2) of the Prison Act (NI) 1953 ("the Prison Act"):

> "The coroner shall hold an inquest into the cause of death of any prisoner in a prison within his area, and, where practicable, sufficient time between the death and the holding of the inquest shall intervene to allow the attendance of the next-of-kin of the prisoner."
> [Emphasis added]

[9] Akin to the requirement to hold an inquest, the definitions of "prisoner" and "prison" are likewise not found in the 1959 Act. These are defined at section 47(1) of

the Prison Act for the purposes of that Act. These may provide a useful guide to interpretation for coroners exercising their duty under the 1959 Act.

[10] "Prisoner" is defined at section 47(1) as including "any person lawfully committed to any prison" [Emphasis added] and "prison" at section 47(1A) as:

> "(1A) In this Act 'prison' includes any prison or other institution for the treatment of offenders, not being—
>
> (a) a young offenders centre;
>
> (b) a remand centre; or
>
> (c) a juvenile justice centre
> but this Act, …, shall have effect in relation to young offenders centres and remand centres and to persons detained therein as it has effect in relation to prisons and prisoners.
>
> (2) A reference in this Act to any prison shall be construed as including a reference to all land and buildings used for the purposes of or in connection with that prison." [Emphasis added]

[11] The meaning of "lawfully committed" is then defined at section 18 of the Prison Act which states:

> "(1) Every prisoner sentenced by any court to imprisonment … or ordered to be detained in a young offenders centre or committed to a prison on remand or pending trial or sentence or otherwise shall be deemed to be in the lawful custody of the governor of the prison in which he is detained.
>
> (2) A prisoner shall be deemed to be in lawful custody while he is confined in, or is being taken to or from, any prison and while he is working, or is for any other reason, outside the prison in the custody or under the control of an officer of the prison or while he is temporarily detained, pending trial or sentence, in any lock-up and while he is being taken to any place to which he is required or authorised by or under this Act or the Treatment of Offenders Act (Northern Ireland) 1968 to be taken, or is kept in custody subject to and in accordance with any such requirement or authorisation." [Emphasis added]

[12] In addition to the mandatory requirement to hold an inquest into the death of a prisoner in a prison contained within the Prison Act, section 18(1) of the 1959 Act provides that such an inquest must be heard by a jury as opposed to a coroner sitting alone.[1] Section 18 provides:

> "18. **Jury must be summoned in certain cases**
>
> (1) If it appears to the coroner, either before he proceeds to hold an inquest or in the course of an inquest begun without a jury, that there is reason to suspect that—
>
> (a) [repealed by 1980 NI 6]
>
> (b) the death **occurred in prison**; or
>
> (c) the death was caused by an accident, poisoning or disease notice of which is required, under or in pursuance of any enactment, to be given to a government department, or to any inspector or other officer of a government department or to an inspector appointed under Article 21 of the Health and Safety at Work (Northern Ireland) Order 1978; or
>
> (d) [repealed by 1980 NI 6]
>
> (e) the death occurred in circumstances the continuance or possible recurrence of which is prejudicial to the health or safety of the public or any section of the public;
>
> he shall instruct the Juries Officer to summon a sufficient number of persons in accordance with the Juries (Northern Ireland) Order 1996 to attend and be sworn as jurors upon such inquest at the time and place specified by the coroner.
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> (2) If in any case other than those referred to in sub-section (1) it appears to the coroner, either before or in the course of an inquest begun without a jury, that it is desirable to summon a jury, he may proceed to cause a

[1] with the exception of the now repealed provision permitting non-jury inquests in "natural" prison deaths during the COVID-19 pandemic

> jury to be summoned in accordance with the said sub-section.
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> (3) In subsection (1) the reference to the Juries Officer is a reference to the Juries Officer for the division which includes the place specified by the coroner under that subsection; and 'Juries Officer' and 'division' have the same meanings as in the Juries (Northern Ireland) Order 1996.
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> (4) This section and section 39(3) of the Prison Act (Northern Ireland) 1953 (prison officers etc not to be jurors) shall apply where a death occurs on service custody premises within the meaning of section 300 of the Armed Forces Act 2006 as they apply where a death occurs in prison." [Emphasis added]

[13] There has been some judicial consideration of both the legal interpretation of the words "in prison" and the exercise of the "reason to suspect" test by the courts in England and Wales. There has to a lesser extent also been consideration of the latter in this jurisdiction.

The authorities on the meaning of "in prison"

[14] Turning first to the former, there have been a number of English cases which have considered the legal definition of "prison". In *R v Inner London Northern District Coroner, ex parte Linnane* [1989] 1 WLR 395, the deceased was sentenced to a term of imprisonment, but due to prison overcrowding, he commenced serving his sentence at a police station. He was later found unconscious in his cell and was taken to hospital where he died the following evening.

[15] The coroner held that he was not bound by section 8(3)(b) of the Coroners Act 1988 ("the 1988 Act") which, akin to section 18(1) of the 1959 Act, required that a coroner hold the inquest with a jury where, inter alia, there was reason to suspect that the death occurred "in prison" or the death occurred while the deceased was "in police custody." The coroner took the view that as the deceased had died in hospital, he had had not been "in police custody" when he died. The coroner's decision was quashed, the Divisional Court holding that at the time of his death the deceased had been a prisoner serving his sentence, and although he had not been physically held by any specific police officer, he had been "in police custody" within the meaning of section 8(3)(b) of the 1988 Act. Accordingly, had the coroner properly directed himself, he would have had reason to suspect that the death had occurred while the deceased was in police custody and would have been bound to compel a jury.

[16] I note neither the coroner nor the Divisional Court appear to have considered whether the death occurred "in prison" under section 8(3)(a) of the 1988 Act, given the circumstances of the case, however, the authority is nonetheless instructive. The Divisional Court said (per Taylor LJ at 400B):

> "In this case, one has to ask the question: what was the deceased's status at the time that he was in hospital? He was a sentenced prisoner serving his sentence. The argument on behalf of the coroner really amounts to this, from the moment he got into the hospital, the deceased was no longer a prisoner in the sense of being in the custody of the police serving his sentence, but was simply a patient at the hospital. Had he made a miraculous recovery, there would have been nothing in those circumstances, as counsel for the coroner conceded, to prevent him walking out. He would not have been escaping from custody in doing that although the police could no doubt come and rearrest him... He was not in the physical custody [of the police] in the sense of being physically held by, or arranged to be physically held by, any specific officer, but he was in the legal custody of the police *or at any rate (and this is sufficient) there must have been, to anyone properly directing themselves on the circumstances then existing, reason to suspect that he was in police custody."* [Emphasis added]

[17] In *Nicoll v Catron* (1985) 81 Cr App R 339, where a prisoner escaped custody from a police yard, the Divisional Court took a different approach and held that a prisoner had not escaped from a prison when he escaped from a police station yard.

[18] A number of additional authorities were referred to in the submissions of the PSNI/MOD which highlight the differing approaches to the legal interpretation of "prison."

[19] In *R v Robert Francis Moss* (1986) 82 Cr App R 116, the Divisional Court considered the legal meaning of "prison" for the purposes of the offence of aiding a prisoner to escape or to attempt to escape "from a prison" under section 39 of the Prison Act 1952. A prisoner was remanded in custody in one of HM Prisons. He was taken to a magistrates' court where he was remanded in custody for another week. While there the appellants helped him to escape and were charged under section 39 of the Prison Act 1952. The court held that the offence under section 39 plainly dealt with a prisoner who was in a prison and nothing else, so the offence was limited to a prisoner in a prison, Borstal, or remand or detention centre, and did not cover other forms of imprisonment or legal custody. This appears to be notwithstanding that section 13(2) of that Act provided that "a prisoner shall be deemed to be in legal custody while he is confined in, or is being taken to or from,

any prison and while he is working, or is for any other reason, outside the prison in the custody or under the control of an officer of the prison."

[20] In *R v Abbott* [1956] 1 WLUK 301, a different approach was again taken. The Court of Appeal held that if a prisoner was outside a prison on a routine working party and he escaped, he was escaping from prison.

"Reason to suspect" authorities

[21] Turning then to the exercise of the "reason to suspect" test, this was considered in *R (Fullick) v HM Senior Coroner for Inner North London* [2015] EWHC 3522 (Admin). At para 34 the court set out an approach that has been referred to with approval (including in this jurisdiction in *The inquest touching upon the death of Donohoe* [2022] NI Coroner 9):

> "34. In the first place it is well known that the 'reason to suspect' test has a low threshold and is objective in its nature. Coroners are familiar with the phrase 'reason to suspect.' It is to be found not only in section 7 of the Coroners and Justice Act 2009, but also in section 1 of the Act. Under section 1 the 'reason to suspect' test is the well-understood starting point for the coroner's duty to investigate a death. A coroner who is made aware that the body of a deceased person is within that coroner's area must as soon as practicable conduct an investigation into the death when the coroner has *reason to suspect* that the death is violent or unnatural, or the cause of death is unknown, or the deceased died while in custody or otherwise in state detention.
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> 35. The phrase 'reason to suspect' is not defined in the 2009 Act, but it is well known to the common law, particularly in the context of arrest. In *Dumbell v Roberts* [1944] 1 All ER 326, 329 the requirement that a constable should before arrest satisfy himself that there do in fact exist reasonable grounds for suspicion of guilt was described as a 'very limited' requirement.
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> 36. 'Reasonable suspicion' has never been equated with prima facie proof. The latter consists of admissible evidence; the former can take into account matters that could not be put in evidence at all: *Hussien v Chong Fook Kam* [1970] AC 942, 949; see also *Al Fayed v Commissioner of Metropolitan Police* [2004] EWCA Civ 1679, [50]. 'Reason to suspect' does not require positive proof or even formulated evidence; any information giving 'reason to

suspect' will suffice: *R v Inner London Coroner, ex parte Linnane* [1989] 1 WLR 395, 398.

37. For our purposes we adopt the approach of Hickinbottom J in the coroner case of *R (Davey) v HM Coroner for Leicester City and South Leicestershire* [2014] EWHC 3982 (Admin) at [7]:

' 'Reason to suspect' is a low threshold for the triggering of the obligation to empanel a jury, 'suspicion' for these purposes being a state of conjecture or surmise arising at the start of an investigation in which obtaining a prima facie proof is the end (Hussien v Chong Fook Kam) [above].'

38. Applying the test objectively, we are satisfied that there was sufficient material before the coroner such that the mandatory provisions of section 7(2)(b) applied. There is reason to suspect that the death resulted from the omission of a police officer in the purported execution of the officer's duty. Ms Jones may not have been a detainee in custody at the police station, but she was a vulnerable visitor, as the police knew from the afternoon's earlier events. At the very least she needed looking after.

39. In broad terms the question to be answered therefore is as follows: Could or should the police have done more? We do not presume to answer that question; we do not express a view one way or another about it. That will be a matter for the jury to consider in all the particular circumstances of this case, having heard the evidence and been properly directed by the coroner.

40. For our part we are satisfied that the coroner had, on the information before her, reason to suspect the matters set out in section 7(2)(b). Hence, the mandatory requirement for a jury inquest was satisfied. The coroner erred in law in concluding the contrary." [Emphasis added]

[22] The "reason to suspect" test was also considered in *ex parte Linnane,* where the Divisional Court observed:

"… the phrase which is the preamble to the specific provisions of subsection (3), 'there is reason to suspect,' does not require positive proof or even formulated

> evidence. The question is usually to be decided at a preliminary stage although, as indicated in the subsection, it may arise for decision during the inquest. Therefore, any information giving 'reason to suspect' will suffice [at p398]." [Emphasis added]

The submissions made on behalf of the NIPS

[23] The submissions provided by the NIPS in support of the contention that section 18(1) of the 1959 Act applies, can be summarised as follows:

(1) They submit that the deceased had been interned by way of Interim Custody Order (ICO), which had been signed by the then Secretary of State for Northern Ireland, William Whitelaw. They submit the discussion at paras 3-11 in *R v Adams* [2018] NICA 8, setting out the legislative framework in respect of the legal basis for Mr Adams internment, is equally applicable to that of the deceased and reveals there was no suggestion that imprisonment on foot of an ICO was distinguished from detention in custody in a prison under other legislative provisions. They submit that the deceased was lawfully detained by the State at the time of his death.

(2) They set out that from August 1971 internees were detained at a range of military sites, including RAF Long Kesh, known as Long Kesh Detention Centre. However, in or around mid to late 1972 "ordinary" prisoners (who were not detainees) were moved to Long Kesh Detention Centre and it was renamed HM Prison Maze.

(3) In a document entitled "Northern Ireland Prisons – A Briefing Note" (Prison Department - Northern Ireland Office - Sept 1986) reference is made to "six penal establishments in Northern Ireland." This note lists the Maze Prison at para 1.4 and states that it "was first opened as Long Kesh Internment Centre in September 1971. It began to receive convicted prisoners in 1972 when it was renamed HM Prison Maze…" Various other contemporaneous NIPS documents also refer to the Long Kesh/Maze site as HM Prison, Maze.

(4) As to the location of the death, they submit that, although it appears that the deceased emerged from a tunnel outside a "perimeter" fence, there was a further barbed wire fence which the deceased had not traversed. In any event, whether an escape was being attempted or had just been successfully completed, they say is not determinative as to whether there is reason to suspect that the relevant death occurred "in prison" for the purposes of section 18(1) of the 1959 Act.

(5) They refer to relevant legislation cited above, noting that the exact boundaries of the prison site at HM Prison Maze are not entirely clear. They highlight section 47(2) of the Prison Act which provides that a reference in that Act to

any prison for the treatment of offenders includes a reference to all land used in connection with that prison.

(6) They refer to para 3-17 of Leckey & Greer's "Coroners' Law and Practice Northern Ireland" and highlight that the deceased was in lawful custody by virtue of a properly endorsed ICO at the time of his death. Para 3-17 says as follows:

> "No problem of jurisdiction arises where a prisoner dies in what is indisputably a prison or concerning which the Secretary of State has made the declaration referred to in rule 5(1)(a) … But it is not entirely clear from any of these provisions whether a coroner has jurisdiction when a prisoner dies from natural causes in a hospital, or some other building, outside the prison precincts. Much may depend on whether "in prison" is interpreted literally or in the broader sense of "in prison custody." According to the Prison (Northern Ireland) Act 1953:
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> A prisoner shall be deemed to be in lawful custody while he is confined in, or is being taken to or from, any prison and while he is working, or is for any other reason, outside the prison in the custody or under the control of an officer of the prison or while he is temporarily detained, pending trial or sentence, in any lock-up and while he is being taken to any place to which he is required or authorised … to be taken … (Section 18(2) as amended …)
>
> In addition, the Home Office has expressed the view that it is desirable for an inquest to be held with a jury, 'in all cases of deaths occurring in any form of legal custody, even though the death may have occurred in hospital or elsewhere and even though it may have been due to natural causes.' (Circular 109/1982)"

(7) They refer to the inquest into the death of Liam Adams, where the deceased, a prisoner, had died in a hospice and the inquest was held before a jury.

(8) They submit that as regards the "reason to suspect" test, the coroner does not have to be convinced beyond all doubt that the death occurred in prison rather, I only need to consider the low threshold of whether I have "reason to suspect" that this was the place of death under section 18(1) of the 1959 Act. They submit that in all the circumstances, I may have reason to suspect that

the death occurred within the prison estate or land used "in connection with" the prison.

(9) They touch upon the issue of article 2 of the European Convention of Human Rights (ECHR) and the potential issue of jury bias. In particular, whether a jury would be sufficiently independent to hear a case of this type in this jurisdiction, as was highlighted by Morgan LCJ in *Jordan's Applications* [2014] NICA 76. They submit that as this death would fall under section 18(1) of the 1959 Act as opposed to 18(2), I do not have to consider questions in relation to the possibility that a jury will be biased and furthermore that article 2 does not supersede the mandatory statutory requirement contained in section 18(1).

The submissions made on behalf of MOD/PSNI

[24] The MOD/PSNI submissions can be summarised as follows:

(1) The deceased was detained pursuant to an ICO at HMP Maze when the death occurred.

(2) They submit if section 18(1) of the 1959 Act is satisfied it is mandatory and, unlike section 18(2), does not require consideration of issues such as jury bias.

(3) They outline the various legislative provisions, including paragraph 38 of Schedule 1 to the Northern Ireland (Emergency Provisions) Act 1973, which states:

> "**Supplementary provisions as to detention**
>
> 37(1) A person required to be detained under an interim custody order or a detention order may be detained in a prison or in some other place approved for the purposes of this paragraph by the Secretary of State."

(4) They outline the various authorities cited above, touching upon both the interpretation of "prison" and the "reason to suspect" test and submit that the reason to suspect test in section 18(1) of the 1959 Act presents a low threshold which arises at the start of an investigation in which the obtaining of prima facie evidence is the end. They submit there is no requirement under section 18(1) for certainty on the issue and highlight that Sergeant Faulkner's contemporaneous scaled plan marks the location of the shooting as within the boundary of the barbed wire fencing at the prison. This has further been considered in the expert report of Mr Gavin McGill (Consulting Engineer), which has reinforced Sergeant Faulkner's accuracy and shows the location of the death as being outside the perimeter fence but inside the perimeter of the

barbed wire enclosure at the prison. This, they say, accords with the evidence of several of the prisoners, that the shooting occurred within the final barbed wire fence.

The note made by coroner's counsel

[25] A note was circulated highlighting the relevant legislation and authorities, and makes the following observations:

(1) If it appears to the coroner that there is reason to suspect that Mr Coney's death occurred in prison, I must summon a jury for the inquest.

(2) In light of the clear authority indicating that the reason to suspect test sets a low threshold, the coroner need not embark on an investigation of factual issues related to whether the death occurred in prison. It will be sufficient if I have information that gives me reason to suspect that the death occurred in prison. It was submitted that there was sufficient information to pass the threshold. Such information includes:

- although some of the evidence provided to date suggests that Mr Coney may have been shot outside the perimeter of the prison, there is some doubt as to the boundary of the prison;

- the issue as to the interpretation of "prison", given the approach taken in some of the English authorities;

- the evidence provided to date which may be suggestive of Long Kesh/Maze being designated a prison at the time.

[26] The issue of jury bias raised in the submissions of the NIPS was also touched upon in the note, concluding that in light of the comments of Morgan LCJ in *Jordan's Application*, if a jury is summoned, it would necessitate the issue of possible jury bias being kept under review.

Ruling

[27] After careful consideration of all the circumstances, together with the submissions and legal guidance outlined above, I have concluded that section 18(1) of the 1959 Act is engaged as it appears to me there is reason to suspect that the death occurred in prison and this inquest should proceed to be heard by a jury.

[29] As was laid out in *Fullick*, the reason to suspect test is objective in nature and sets a low threshold which need not require prima facie proof that the death occurred in prison. I, therefore, do not need to be satisfied that the death in fact occurred "in prison." It is clear from the authorities that the mere fact that there is any information to give me reason to suspect that, or to give rise to, a state of

conjecture or surmise whether the death may have occurred in prison, is enough to satisfy the low threshold and trigger the obligation to empanel a jury.

[30] I am content that there has been such information placed before me to meet the low threshold set out in *Fullick* and give me reason to suspect that this death occurred in prison.

[31] The fact that there has now arisen a state of conjecture as to whether the Long Kesh/Maze was in fact a prison and whether the shooting occurred within what could legally be interpreted as a prison (in light of the evidence heard regarding Sergeant Faulkner's contemporaneous scaled plan, the relevant provisions of the Prison Act, including section 47(2), and the authorities cited above), only serves to emphasise this fact. I also note evidence is to be heard from prison officers and employees of the NIPS, who were to some extent involved in the management of the detainees' internment at the Long Kesh/Maze site and their return to the internment camp.

[32] In addition to a determination on whether Mr Coney's death occurred in prison, there may be issues as to whether Mr Coney could be considered a "prisoner in a prison" for the purposes of section 39(2) of the Prison Act, from which the provision contained at section 18 of the 1959 Act evidently flows. However, as is clear from *Fullick,* these issues do not need to be further investigated or determined at this stage in order to trigger the obligation contained within section 18(1) of the 1959 Act.

[33] Before moving to the issue of directions required on foot of this ruling, I intend to briefly touch on the issue of the potential for jury bias raised both in the submissions of the NIPS and in coroner counsel's note. The note of caution laid out in the factors succinctly elucidated by Morgan LCJ in *Jordan's Application* [2014] NICA 76, to be considered by a coroner in any consideration under section 18(2), highlight the potential issues that *may* arise in light of the fact this inquest will now be heard by a jury. As section 18(1) of the 1959 Act is mandatory, these are not issues I have considered in coming to my determination that section 18(1) is engaged. However, these are issues of which I am aware, and I will keep the issue of possible jury bias under review throughout the hearing, taking what steps I can at the outset to ensure that jury members understand their task and duties.

Subsequent Directions

[34] As a result of this ruling, it follows that:

(i) A jury should be empanelled as per the provisions contained within section 18(1) of the 1959 Act.
(ii) A preliminary hearing be held to agree a revised required listing time, considering the fact this inquest will now be heard before a jury as opposed to before a coroner sitting alone.

(iii) The inquest be relisted for hearing once this required listing time has been determined.