

Neutral Citation No: [2023] NICoroner 12

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Ref: [2023]NICoroner12

ICOS No:

Delivered: 06/09/2023

IN THE CORONER'S COURT IN NORTHERN IRELAND

BEFORE THE CORONER HIS HONOUR JUDGE McGURGAN

IN THE MATTER OF INQUEST INTO THE DEATH OF LEO NORNEY

ANONYMITY AND SCREENING RULING ON SOLDIERS' M1, M2 AND M3

[1] I delivered my conclusions in court at a hearing on 30 June 2023. On the same date I supplied my detailed written findings.

[2] I shall not rehearse the detailed findings in this case, they stand as a whole and can be seen in the written document already supplied. In very short summary, I found that:

- (a) Leo Norney was shot and killed on 13 September 1975.
- (b) He was shot by L/Corporal Basil McKay (deceased) who was the lead officer in an army patrol.
- (c) At the time he was shot Mr Norney was unarmed and posed no threat to the army patrol. The shooting was unjustified.
- (d) The other members of the patrol covered up the true circumstances of the shooting and did so for many years.

[3] I made clear on 30 June 2023 that this inquest was closed subject to one remaining issue, a review of my previous orders on anonymity in respect of M1, M2, M3, M4, M18, M62, M20 and M61. I gave the Properly Interested Persons the opportunity to make any further submissions on the issue.

[4] I have received submissions from:

- (a) McCartan, Turkington and Breen Solicitors on behalf of M2, dated 5 July 2023.

- (b) Madden and Finucane Solicitors, on behalf of the next of kin, dated 7 July 2023.
- (c) The Crown Solicitor's Office, on behalf of the MOD, dated 7 July 2023.
- (d) McCartan, Turkington and Breen Solicitors on behalf of M3, dated 7 July 2023.
- (e) Devonshires Solicitors on behalf of M1, dated 9 July 2023.

[5] In summary, the next of kin make submissions inviting me to reveal the identity of those soldiers involved in covering up the true circumstances of the death of Leo Norney. The legal representatives of M1, M2 and M3 assert that anonymity should remain in place in respect of their clients. It is also submitted on behalf of M1, M2 and M3 that there is no material change in circumstances which warrants the Coroner reviewing the provision of anonymity for their clients. On behalf of the Ministry of Defence it is submitted that the increased threat level since 28 March 2023 warrants anonymity remaining in place for those for whom anonymity has been previously granted.

[6] I have taken into account all that is said in these submissions. It is not for me as Coroner to make any comment or finding in respect of which former military witnesses, if any, could be considered for criminal prosecution. I am prohibited from expressing any conclusion on criminal or civil liability. I do observe that criminal offences may have been committed, thus I have decided to refer my findings and the further evidence received by the inquest to the DPP.

[7] Having provisionally granted anonymity to former soldiers at the outset of the inquest process, I formally granted anonymity in a final ruling delivered on 22 April 2022. The final anonymity ruling was delivered for the purposes of the inquest hearing and formed part of the basis upon which former military witnesses would give their evidence to the inquest. I kept anonymity under review throughout the course of the inquest.

[8] The inquest continued to hear evidence throughout April, May, September and November 2022. Now that the inquest has concluded hearing evidence (including evidence not previously available to me in October 2021) and I have delivered my findings, I consider it appropriate, before the closure of the inquest, to finally review my decision of 22 April 2022 in respect of anonymity for M1, M2, M3, M4, M18, M62, M20 and M61. I have given particular consideration to the anonymity of M1, M2 and M3 as it is those former soldiers about whom I have received submissions in the context of alleged criminal liability.

[9] In my view it is necessary to review my anonymity ruling of 22 April 2022 on the basis of a material change in circumstances, namely the further referral to the DPP of my findings and additional evidence, which is material that was not included in my initial referral to the DPP on 25 October 2021.

[10] In my judgment anonymity should be maintained in respect of former military witnesses to the inquest. The core reasons for that are as follows:

- (a) The NIO raised the threat level of NI-related terrorism in late March 2023. The threat was raised from “substantial” to “severe”. This level change post-dated the original anonymity orders in this case.
- (b) I see no reason to think that the threat level to these individual witnesses has decreased since the time of the original orders. My findings support the potential involvement of some of those individuals (and in particular M1, M2 and M3) in serious criminal activity surrounding the death of Leo Norney. In my assessment, those findings would tend to increase the threat/risk to the individuals rather than diminish it.
- (c) I have reported my findings to the DPP pursuant to Section 35(3) Justice (NI) Act 2002. It follows that some of the former soldiers for whom anonymity has been granted could be subject to criminal prosecution. As I have indicated it is not for me to determine which, if any, of the soldiers should, or could, be prosecuted. In the event that criminal proceedings are brought against any of those individuals, or in the event any give evidence as witnesses in any future criminal trial, they may seek anonymity. If I were to lift anonymity at this stage that would deny those individuals the right of applying for anonymity in those separate proceedings.
- (d) I acknowledge that these events happened a long time ago but that of itself does not obviate the need for anonymity orders to be made, where it is appropriate to do so. Such orders are of course an in-road into open justice and one that I do not take lightly.

[11] In my assessment the decision not to lift anonymity does not render this inquest non-compliant with Article 2 ECHR. This has been a very broad investigation of the death of Leo Norney, as reflected in the over 50 pages of findings. A substantial number of witnesses have been called, even though these events date back many years. Whilst the Article 2 obligations are of means and not result, this inquest has resulted in the identification of those found to be responsible for the death, the lawfulness of the use of force and other activity surrounding the death. L/Cpl McKay has been named.

[12] Moreover, any Article 2 compliance assessment has to take account of the broader state systems to investigate the death, which includes referral for criminal investigation and also the availability for civil claims. For so long as these other important levers of justice remain in operation, it is not appropriate for me, as Coroner, to determine or influence any future associated anonymity decisions. Therefore, I order that my decision of 22 April 2022 in so far as it grants anonymity to M1, M2, M3, M4, M18, M62, M20 and M61 should remain in place for the purpose

of my findings being delivered and the referral of those findings to the DPP pursuant to Section 35(3) Justice (NI) Act 2002.

[13] In light of the findings set out above, I have now discharged all my functions relating to this inquest and the inquest is closed.