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IN THE CORONERS COURT IN NORTHERN IRELAND

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BEFORE THE CORONER OF NORTHERN IRELAND
HHJ McGURGAN

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INQUEST INTO THE DEATH OF LEO NORNEY

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ANONYMITY, SCREENING AND VIDEO LINK APPLICATIONS
M1, M2, M3, M4, M18, M62

ANONYMITY AND VIDEO LINK APPLICATION - M20, M61

and

VIDEO LINK APPLICATION BY MR BILL DAVIDSON

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Introduction

[1] The inquest touching on the death of Leo Norney was formally opened on 4 November 2021 and adjourned. It is due to recommence on 25 April 2022.

[2] Leo Norney was 17 years old and died having been fatally shot by members of a four-man foot patrol of the Black Watch Regiment in Ardmonagh Gardens, Belfast on the night of 13 September 1975. On the night he died Leo Norney had been travelling in a black taxi with a number of other people. Witnesses say the taxi was stopped by another army patrol and the vehicle and occupants were searched. Upon exiting the taxi alone, Leo was walking along Shepherd's Path, Whiterock Road, when it appears he was struck by three high velocity bullets. Another bullet struck a fence behind Mr Norney's position and fragmented. There were no independent witnesses to the shooting and no other person was shot in the incident.

Background

[3] In my provisional ruling on these applications, issued on 5 April 2022, I indicated that I would allow some time for the interested persons and legal representatives of the witnesses affected by the ruling to address me on the

provisional ruling if they wish to do so. No representations have been received. I now issue a final ruling in advance of the inquest recommencing.

[4] I have received applications on behalf of the military witnesses M1, M2, M3, M4, M18, M62 for anonymity, screening and to give evidence via video link, from M20 and M61 for anonymity and to give evidence via video link and from Mr Bill Davidson to give evidence via video link. All are due to give evidence at this inquest.

[5] On 9 April 2021 I heard oral submissions on behalf of M1, M2 and M3 who were then represented by the Crown Solicitor's Office. I also heard oral submissions on behalf of the next of kin in respect of the military witnesses M1, M2 and M3. The submissions addressed the legal principles applicable, however, I acknowledged that further medical evidence, threat assessments and applications from other military witnesses were outstanding. At the conclusion of oral submissions, I invited applications for a further hearing to allow for further oral submissions once all outstanding material had been received. No applications were received. I have now had the benefit of reading what I consider to be complete applications and will proceed to give my final ruling in respect of M1, M2 and M3 and all of the other military witness applications received since 9 April 2021.

The Applications

[6] Common to the applications of M1, M2, M3, M4, M18, M20, M62 is a legal submission prepared by the Crown Solicitor's Office. I have received separate legal submissions on behalf of M61 and Mr Bill Davidson.

[7] I have considered all the legal submissions presented in respect of the applications which deal with Article 2 of the ECHR and the common law. I have considered the main authorities in this area, in particular, *Re Officer L* UKHL 36 and *Re C, D, H and R* [2012] NICA 47. Each case is fact sensitive and so I have been careful to apply the law to the specific facts of this case.

[8] I have received generic risk assessments in respect of M1, M2, M3, M4, M18, M20, M61 and M62. The risk of attack from dissident republican elements in Northern Ireland remains, although it is classified as 'low', meaning that an attack is highly unlikely. If a military witness were to give evidence in Northern Ireland without anonymity the risk could potentially rise above the low threat band. The threat in GB also has the potential to rise, however, it is unlikely to rise above the low threat band.

[9] Various associated annexes are provided in support of the legal submissions made by the Crown Solicitor's Office on behalf of M1, M2, M3, M4, M18, M20 and M62:

(i) Police recorded security situation statistics 1 June 2017 to 31 May 2018.

(ii) Police recorded security situation statistics 1 October 2019 to 30 September 2020.

(iii) An extract from the House of the Oireachtas of the Garda Commissioner, 11 November 2015.

(iv) An extract from the Northern Ireland Affairs Committee, 25 October 2017.

(v) Extract from Hansard – 17 December 2018 - Security Situation in Northern Ireland.

(vi) Extract from Hansard – 21 January 2018 - Northern Ireland: Security Situation.

(vii) BBC Report – 'Londonderry alerts designed to frustrate investigation'- 22 January 2019.

(viii) Dail Eireann Debate – Northern Ireland – 29 January 2019.

(ix) A report of the Independent Reviewer, Justice and Security (NI) Act 2007 – 1 August 2016 – 31 July 2017.

(x) An extract from the Guardian newspaper re Republican dissident terror threat level in Britain – 26 October 2018.

(xi) Irish News – 'Parcel bombs sent to addresses in Britain' – 15 March 2019.

[10] In addition I have read personal statements from the military witnesses (except for Mr Davidson). Most applications are supported by medical evidence. The applications and associated documents have all been disclosed to the next of kin with redactions applied to the minimum extent necessary to maintain anonymity.

Submissions on behalf of the Next of Kin

[11] I have also received a legal submission on behalf of the next of kin prepared in response to M2's application which has been adopted as part of the next of kin's response to the applications of M1, M3, M4, M18, M20 and M62, for which the next of kin have also made additional observations. The next of kin oppose the applications made by these military witnesses.

[12] I have carefully considered in their entirety the legal submissions and additional observations presented on behalf of the next of kin which deal with Article 2 of the ECHR, the common law, and the importance of open justice.

The Law

Open Justice

[13] In dealing with this type of application the starting point is that as far as possible "open justice" requires the identity of key witnesses to be made public. This helps preserve public confidence and ensure that a full and meaningful inquest is conducted. I also bear in mind that the inquest proceedings must be effective, particularly as regards fullest possible participation of the next of kin. This approach is in line with Colton J's comments in the *Inquest into the death of Manus Deery* (an unreported preliminary ruling quoted by HHJ McFarland (as he then was) in the *Inquest into the death of Marion Brown* (22 May 2017))

[14] The principle of open justice is not an absolute rule. Lord Diplock in *Attorney General v The Leveller Magazine* [1979] AC 440 stated:

> "However, since the purpose of the general rule is to serve the ends of justice it may be necessary to depart from it where the nature or circumstances of the particular proceedings are such that the application of the general rule in its entirety would frustrate or render impracticable the administration of justice or would damage some other public interest for whose protection Parliament has made some statutory derogation from the rule. Apart from statutory exceptions, however, where a court in the exercise of its inherent power to control the conduct of proceedings before it departs in any way from the general rule, the departure is justified to the extent and to no more than the extent that the court reasonably believes it to be necessary in order to serve the ends of justice."

ECHR

[15] Article 2.1 of the European Convention on Human Rights states:

> "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

[16] The threshold for departing from the principle of "open justice" is high. Under section 6 of the Human Rights Act 1998 the court has a positive obligation to take steps to protect life. The obligation arises when there is a risk to the Article 2

ECHR rights of the military witnesses if they are not afforded protection from being publicly identified. The risk must be "real and immediate" which means "one that is objectively verified, and an immediate risk is one that is present and continuing." (*Re Officer* L (para.[20]).

[17] Applications of the type made by military witnesses have been subject to extensive consideration in this jurisdiction. The legal position has been set out and clarified in the Court of Appeal's judgment in the case of *In the Matter of an Application by Officers C, D, H & R for Leave to apply for Judicial Review*, where Girvan LJ considered a "real and immediate risk" in the context of serving and retired police officers giving evidence in a contentious inquest. In my view a similar context applies to the applications in this inquest. Girvan LJ stated at paragraph [41]:

> "...a real and immediate risk points to a risk which is neither fanciful nor trivial and which is present (or in a case such as the present will be present if a particular course of action is or is not taken). In a stable and law abiding society the risk of homicidal attacks on individuals is fortunately rare and statistically will be a very uncommon occurrence. Before the state can be fairly criticised for failing to prevent a homicidal attack it is right that the circumstances must bring home to the state authorities that a person is under a threat of substance. In the French text of the judgment in Osman the term for a real risk is menace d'une manière reélle. In the context of Northern Ireland which has been subjected to decades of homicidal attacks on individuals by organised terrorists the threat to life has been real, though for the bulk of the population it is not a threat directed at them individually so that for most the risk is not present and continuing in the sense of immediate to them. For some, such as members of the police force, the level of threat has been and continues to be at a much higher level and it is much more immediate. It cannot be considered as anything close to fanciful and it is significant. The requirement to give evidence imposed on officers involved in this inquest will, according to the evidence, increase a present threat possibly significantly depending on the nature of the evidence and other unknown contingencies arising out of the inquest. The risk accordingly must qualify as real, continuous and present."

[18] In *C and Others,* Girvan LJ examined the approach adopted by the Coroner to the applications in which the Coroner had refused anonymity and screening and added at [46]:

> "In the context of the officer's refused anonymity in (and) screening the Coroner proceeded on the basis that the risk was not at a sufficient level to engage the need for positive action under Article 2. However, in each case it was recognised that there was a real possibility of the officer's personal security being undermined. This would depend on the nature of the evidence, how this would be examined in the course of the inquest and whether or not it was considered controversial. Those are all matters which would emerge over a period of time. The officers were already within the level of moderate threat. If they gave evidence without the benefit of anonymity/screening there was a possibility of a rise within the moderate band or beyond. Against that fluid and unpredictable background and in the context of an on-going terrorist campaign in which police officers very much remain as higher risk targets compared to the general population, the evidence points, in the words of Soering, to substantial grounds for believing that they faced real risks of a murderous attack. The risk could not be dismissed as fanciful, trivial or the product of a fevered imagination. What the evidence before the Coroner showed is that the relevant officers were at real risk of terrorist attack. The State authorities know that the evidence, if given openly, could expose the witnesses to an increased risk, that that increase in risk could be significant and that the incalculable extent of that increase depended on what the witness might say in the course of the evidence, how controversial his evidence might be perceived to be and how he might be questioned in the course of the investigation. Arrangements for anonymity and screening will reduce and may well remove the risk of the increased chances of a terrorist attack. These factors point to the conclusion that the coroner was in error in concluding that the need for action under Article 2 did not arise. Since the need for operational action under Article 2 was in play the coroner in acting as a public authority is required to address the issue of what proportionate response is required in the circumstances."

Common Law Test

[19] The Court is also obliged to consider the common law duty of fairness. The principles of the common law duty of fairness were described by Lord Carswell in *Re Officer* L, at para. 22 as:

> "distinct and in some respects different from those which govern a decision made in respect of an Article 2 risk. They entail the consideration of concerns other than the risk to life, although ... an allegation of unfairness which involved a risk to the lives of witnesses is pre-eminently one that the court must consider with anxious scrutiny." Subjective fears, even if not well founded, can be taken into account, as the Court of Appeal said in the earlier case of R v Lord Saville of Newdigate, ex p A [2000] 1 WLR 1855. It is unfair and wrong that witnesses should be avoidably subjected to fears arising from giving evidence, the more so if that has an adverse impact on their health. It is possible to envisage a range of other matters which could make for unfairness in relation of witnesses. Whether it is necessary to require witnesses to give evidence without anonymity is to be determined, as the tribunal correctly apprehended, by balancing a number of factors which need to be weighed in order to reach a determination."

[20] There is scope for the common law test to apply where the Court determines there is not a real and immediate threat to the witness's life, but arguments of fairness still arise (*Re Officer* L, at paras 29 and 22). In *Re A and Others' Application (Nelson Witnesses) [2009] NICA 6,* Girvan LJ considered the common law test:

> "[23] What the common law requires is fairness to the individual witness in all the relevant circumstances of the individual case. The determination of what is fair requires the carrying out of a balancing exercise. The nature of such an exercise necessarily requires putting into the scales the arguments and factors favouring the granting or withholding of anonymity. The passage from Lord Woolf should not be read as stating a broad overriding principle that the common law duty of fairness in any case where a claimed risk to life and subject fears arise requires that anonymity should be granted in the absence of compelling reasons. How the balance is struck in individual cases will, of course, be fact specific. Where there is a risk to the life of a witness the extent of the risk is a highly relevant factor to be put into the scales. Common sense and humanity would lead to the conclusion that the greater the risk the more persuasive the case for anonymity and the more the court would have to be persuaded that the countervailing factors are even more persuasive so as to lead to a refusal of anonymity or, in the words of Lord Woolf, there would

have to be some compelling reason for refusing anonymity. Using the terminology in Ex parte Brind [1991] AC 969 there would have to be a competing public interest of sufficient importance to justify withholding anonymity.

[29] In carrying out the balancing exercise required to be carried out and determining the applications for anonymity the following factors in favour of anonymity must be taken into account.

(i) The applicants have genuine subjective fears as to the safety of their lives if their names are disclosed by the Inquiry to the public.

(ii) Such fears are by no means fanciful. The security advice pointed to a moderate risk, that is to say a possible though not likely risk to life. Such a risk could thus not be ruled out. The assessment of the degree of risk within that category of moderate risk cannot be calculated with any degree of certainty and much depends on ongoing security and political developments in a situation which, while improved compared to the past, remains uncertain. This uncertainty makes the subjective fears of the individuals the more readily understandable and rational. Regard must be had to the unpredictability of the actions of 'disorganised and dangerous' criminals. These factors apply a fortiori in the case of the appellants who reside in the Mid-Ulster Triangle.

(iii) The history of terrorism in Northern Ireland shows that those involved in terrorism operate unpredictably, at times randomly and often opportunistically. Terrorists do not necessarily determine their victims on the basis of a logical analysis of the evidence or by reference to a careful weighing of the compelative competitive arguments of why one witness should be attacked before another. Accordingly, the fact that the witnesses' evidence is merely routine does not necessarily significantly reduce the risk of life flowing from being named as a former member of the Royal Irish Rangers.

(iv) The fears of the witnesses that because they are named as former members of the RIR they will thereby become potential legitimate targets arise from the evidence of how terrorists have behaved in the past.

(v) The evidence obtained from the witnesses is in use in the Inquiry and the anonymity of these appellants does not affect the value or weight of that evidence which goes to routine factual matters that are sufficiently uncontentious and clear for the Inquiry to be able to conclude that it is unnecessary for any of the appellants to be called to give evidence in public. There does not need to be any public scrutiny of that evidence which essentially is not in dispute. The fact that the sources of the factual material which is not in contention have been accorded anonymity up to now has caused no practical difficulties to date.

(vi) The names and identities of the individuals are, of themselves, of no relevance to the factual evidence adduced from them and the public have no real interest in knowing their names.

(vii) Withholding the names of these individuals will not hamper any of the parties to the Inquiry or the public from understanding the evidence of the tribunal or its final report.

(viii) Since the evidence is uncontentious and routine anonymity can in no way inhibit the Inquiry in seeking the truth in carrying out a full and effective investigation. The evidence is neither central nor decisive.

(ix) There is no question of any tendency on the part of the witnesses to be dishonest which could justify open and public scrutiny in cross-examination.

[30] In turning to the countervailing factors that militate against anonymity the Inquiry founds its decision to refuse anonymity on the ground that it is not necessary in the interests of fairness when considering the powerful reasons why the Inquiry should be as open as possible. It gave particular weight to the objectively verified risk

which in each case is assessed at the lower end of the moderate bracket.

[31] While it is entirely correct to say that it is generally highly desirable that an Inquiry such as this one should be conducted in as open a manner as possible that general desirability must not divert attention away from the need to focus attention on the individual cases of the individual appellant witnesses. Assuming in the absence of specific security evidence that the Inquiry Panel was correct to place the objective risk to the individuals at the lower end of the moderate bracket, the fact remains that there is a risk to life which gives rise to a legitimate and rational concern on the part of the witnesses concerned. The Inquiry's concern about public perceptions in relation to the granting of anonymity to the appellants clearly substantially influenced its decisions but the Inquiry did not consider the reasonableness or justification of adverse public perceptions. It did not consider the question whether a public perception that granting anonymity to these appellants undermines or tends to undermine the credibility of the inquiry would be a fair and rational viewpoint. In the context of the case law relating to apparent bias in the case of judges or tribunals (which raise issues of perception) it is clear that the test to be carried out is by reference to the fair minded and informed observer. In the most recent pronouncement of the House of Lords in this field in *Helow v Secretary of State for the Home Department* [2008] UKHL 62, [2008] 1 WLR 2416 Lord Hope pointed out that such an observer is fair-minded, the sort of person who always reserves judgment on every point until he or she has seen and fully understood both sides of the argument, is not unduly sensitive or suspicious and who is informed taking the trouble to inform himself or herself on other matters that are relevant. Where there are strong factors which point in favour of the granting of anonymity the desirability of openness cannot of itself be a sufficient countervailing factor otherwise anonymity could never be granted in a public inquiry in which the powerful desirability of openness is always going to be present since such inquiries are supposed to be 'public' inquiries. A fair-minded member of the public, however, properly informed as to the relevant considerations pointing in favour of anonymity to these witnesses in the context of their evidence could not legitimately draw adverse

> inferences against the overall credibility of the Inquiry from the according of anonymity to witnesses in circumstances justifying it. It would certainly be premature for it to reach that conclusion at this stage of the Inquiry."

[21] I have considered the recent decision of the English Court of Appeal in *Chief Constable of West Yorkshire Police v Dyer [2020] EWCA Civ 1375*. In *Dyer* the Court of Appeal considered the application of the common law test to an application for the screening of anonymised police witnesses. The Court emphasised the need to perform a balancing exercise of fairness to a witness against the requirements of open justice.

Evidence by Video Link

[22] Coroners enjoy a wide discretion as to how inquests are conducted which includes departing from the 'norm' of witnesses being seen and heard in person to allow for evidence to be given by video link. McCloskey J (as he then was) in *Re Steponaviciene* [2018] NIQB 90 said of the discretion, at paragraphs 48 to 50:

> "[48] The basic legal rules and principles seem to me uncontroversial. The coroner (assisted or not by a jury), is an inquisitor. Every inquest, as its name suggests, is primarily an inquisitorial process. The Coroner exercises a broad discretion with regard to the inquiry which is to be conducted. There are no opposing parties as such and no lis inter-partes. Those persons or agencies who participate in inquest proceedings do so on the invitation and on the exercise of the discretion of the Coroner. The strict rules of evidence do not apply. The main trappings of conventional civil litigation are absent. Furthermore, the outcome does not represent victory or defeat for any particular person or agency.
>
> [49] The above assessment stems largely from the consideration that inquest proceedings, unlike civil litigation, do not feature opposing parties who do battle with no, or little, common ground on the central issues, in confrontational mode and with each out to secure victory over the other. The main adversarial features of civil litigation, in particular pleadings, elaborate mechanisms regulating disclosure of documents, interrogatories, obligatory disclosure of certain evidence, sundry interlocutory mechanisms, cross examination of parties and witnesses, judgments, remedies, enforcement,

> appeals and awards of costs, are absent, in whole or in part.
>
> [50] In inquest proceedings, in sharp contrast, the public interest dominates from beginning to end. It does not do so at the expense of other interests, in particular those of bereaved families and possible perpetrators of the death concerned, including their employers, as this is to apply the wrong tool of analysis. Rather, the fundamentally inquisitorial process of the inquest accommodates, and balances, all of these interests in a fair and proportionate manner. This is one of the most important criteria by reference to which contentious issues relating to matters of procedure, the reception of evidence, disclosure of documents, directions to the jury, findings/verdicts and kindred issues fall to be evaluated and resolved."

[23] Since the current coronavirus pandemic, Coroners, when dealing with the evidence of military witnesses in legacy inquests, have increasingly decided to hear this evidence by live video link. This decision may also be made on the basis of an express statutory provision.

[24] Section 57 and Schedule 27 of the Coronavirus Act 2020 provide for the use of live links in legal proceedings, including inquests, in this jurisdiction. Paragraph 2 of Sch. 27 permits the Coroner to direct that a person may give evidence by video link where it is in the interests of justice to do so, having regard to all the circumstances of the case, including the views of the applicant, the views of the interested persons and the public health interests.

[25] Para. 6(2) of Sch. 27 states that:

> "6(2) A "live video link", in relation to a person ("P") participating in proceedings, is a live television link or other arrangement which—
>
> (a) enables P to see and hear all other persons participating in the proceedings who are not in the same location as P, and
>
> (b) enables all other persons participating in the proceedings who are not in the same location as P to see and hear P."

[26] The current guidance (updated on 23rd February 2022) issued by The Lady Chief Justice sets out the current policy in regard to attending court proceedings in

person.[1] The overriding objective is to ensure that the administration of justice continues to be delivered within a safe environment for those attending and working in courts. Under the guidance, the Coroner will only require attendance in person where it is in the interests of justice to do so. It is for the Coroner to apply the "interests of justice" test and to decide, having regard to all the circumstances, whether attendance is required.

Ruling

[27] In coming to my final ruling I have had full regard to the principles as stated in the relevant authorities. I have taken account of all that was said in those cases and not simply those passages cited above. I have considered whether anonymity and/or screening and the provision of evidence by video link should be granted. In doing so I have also considered the risk factors in combination rather than individually as it is the cumulative risk to the applicant that is important.

[28] I am mindful that my overriding objective is to, as far as possible, ensure that a full, effective and fair inquest is conducted into the death of Leo Norney and to ensure the fullest possible participation of interested parties. This requires that, wherever possible and appropriate, witnesses should give evidence in open court and without anonymity or screening. Any departure from the principle of open justice requires careful justification, as is clear from the various authorities. In coming to my final decision, I have fully considered and weighed in the balance the public interest in open justice.

[29] In deciding applications for screening in the context of the evidence of a military witness, who has been granted anonymity, being heard by way of video link, I also must consider whether the additional protection of screening is justified.

[30] The use of video link to allow military witnesses to provide their evidence, means that travel to Northern Ireland is not required. This alleviates a major cause of the fear expressed by the applicants from a security perspective and also from a health perspective in respect of the increased risk of contracting COVID-19. The grant of anonymity provides sufficient additional protective measures to a witness who is giving evidence via video link. In such circumstances, the risk of giving evidence without screening becomes too remote to justify granting an application. For the same reasons, applying the common law test does not justify the granting of screening.

[31] My final ruling in regard to each of the applicants is as follows:

(i) M1 is retired and living in the UK. In his personal statement he says that he has only visited Northern Ireland once since leaving the army due to concerns regarding his security. He states that he is "genuinely fearful of giving

[1] https://www.judiciaryni.uk/sites/judiciary/files/media-files/Covid-19%20-%20Update%20-%2023%20Feb%2022.pdf

evidence without protective measures." He has been living in the same area for 45 years and fears that if his name is made public his whereabouts and that of his family could be identified, thereby endangering his personal safety. A GP report states that he is not fit to travel to Northern Ireland due to ongoing back and leg pain. M1 is a central witness in this inquest as he was part of the Black Watch patrol from which the shots that killed Leo Norney emanated. In my view Article 2 is engaged in this case and anonymity should be granted. M1 should be permitted to give his evidence by live video link. In such circumstances screening is not justified. He also satisfies the common law test.

(ii) M2 is retired and living in the UK. There are two medical reports, one from his GP and another from a consultant psychiatrist. M2 suffers from post-traumatic stress disorder, recurrent depressive disorder and alcohol dependence syndrome. If he is required to give evidence in the absence of anonymity he is likely to suffer a very significant deterioration in his depressive illness. M2 is very concerned about his personal safety in the absence of anonymity. M2 is a central witness in this inquest as he was part of the Black Watch patrol from which the shots that killed Leo Norney emanated and has provided a statement to the Coroner in which he describes in detail the events that led to the death. In my view Article 2 is engaged in this case and anonymity should be granted. M2 should be permitted to give his evidence by live video link. In such circumstances screening is not justified. He also satisfies the common law test.

(iii) M3 is retired and living in the UK. In his personal statement he says that he has only visited Northern Ireland once since leaving the army due to concerns regarding his security. This visit was in relation to the original inquest in September 1976. He states he is concerned that should his name and identity become known it would place him and his family at risk. There is a report from a consultant psychiatrist in which he has been diagnosed with post-traumatic stress disorder. If his identity were to be revealed, it is likely to lead to a deterioration of his condition and to him potentially becoming suicidal. M3 is a central witness in this inquest as he was part of the Black Watch patrol from which the shots that killed Leo Norney emanated. In my view Article 2 is engaged in this case and anonymity should be granted. M3 should be permitted to give his evidence by live video link. In such circumstances screening is not justified. He also satisfies the common law test.

(iv) M4 is now in his eighties and has lived in the same area of the UK since 1940. He is concerned that if his identity were to become known, his life would be placed in danger. There is a GP report in which it is said he suffers from heart failure, hypertension and has had a previous stroke. He is not considered unfit to attend the inquest, however, giving evidence by video link would be much easier for him. In 1975 M4 was the Company Commander of D

Company Black Watch. He was not present at the scene when Leo Norney was fatally shot. He attended the scene after the shooting and spoke to one of the soldiers. In my view Article 2 is engaged in this case and anonymity should be granted. M4 should be permitted to give his evidence by live video link. In such circumstances screening is not justified. He also satisfies the common law test.

(v) M18 is retired and lives in the UK. He has not returned to Northern Ireland since retiring from the army and is genuinely fearful of returning to Northern Ireland to give evidence without anonymity as he is concerned that should his identity becoming known it would place him and his family at risk. There is a medical report describing M18 as suffering from polymyalgia rheumatica and the fatigue he suffers as a side effect of the medication he has been prescribed. He does not feel medically fit to travel to the inquest. He commanded 14 Platoon of D Company, Black Watch – M18 was not in command of the section responsible for the death of Leo Norney. M18 attended the scene after the shooting. In my view Article 2 is engaged in this case and anonymity should be granted. M18 should be permitted to give his evidence by live video link. In such circumstances screening is not justified. He also satisfies the common law test.

(vi) M20 is now in his eighties and lives in the UK. He has not been back to Northern Ireland since retiring from the army over 40 years ago. He has a real concern that if his name and identity were to be released in connection with this inquest that his personal safety and that of his family may be compromised. M20 was the Company Sergeant Major for D Company, Black Watch. He attended the scene after the shooting along with M4 and spoke to L/Cpl McKay. In my view Article 2 is engaged in this case and anonymity should be granted. M20 should be permitted to give his evidence by live video link. He has not explicitly requested to be screened. In any event, the circumstances are such that giving his evidence by live video link has been granted and I do not therefore consider that screening would be justified. M20 also satisfies the common law test.

(vii) M61 is 70 years old and suffers from chronic obstructive pulmonary disease which is causing anxiety and stress. It is said this would make travelling to Northern Ireland very difficult. He states that he has formerly been threatened by an IRA member whom M61 says he arrested on a previous Northern Ireland tour. He states the IRA member knows his name and he fears for his safety and that of his family. M61 was a Cpl in D Company, Black Watch Regiment and a friend of Cpl McKay. He was one of the first soldiers to arrive at the scene after the shooting. In my view Article 2 is engaged in this case and that anonymity should be granted. M61 should be permitted to give his evidence by live video link. He has not applied to be screened. In any event, the circumstances are such that giving his evidence

by live video link has been granted and I do not therefore consider that screening would be justified. He also satisfies the common law test.

(viii) M62 was a Lieut. Colonel with Army Legal Services at the time of the death of Leo Norney. He is now in his mid-eighties. He compiled a report regarding the prosecution of soldiers from Black Watch Regiment for offences in connection with planting ammunition. He states that he has real and genuine concerns about a risk of harm to his safety and that of his family if he is identified through involvement in this inquest. In my view Article 2 is engaged in this case and that anonymity should be granted. M62 should be permitted to give his evidence by live video link. In such circumstances screening is not justified. He also satisfies the common law test.

(ix) Mr Bill Davidson has difficulty in travelling to Northern Ireland due to problems returning to the UK when working abroad. He wants to keep his travelling to a minimum due to the risk of contracting COVID-19. He has not applied for anonymity has not applied to be screened. I therefore make no determination in regard to the engagement of Article 2. He satisfies the common law test and the statutory basis for being permitted to give his evidence by live video link.

HHJ McGurgan
Coroner
22nd April 2022