Judicial Communications Office

27 October 2022

CORONER RULES NOAH DONOHOE INQUEST TO BE HELD WITH A JURY

Summary of Ruling

Coroner McCrisken, today ruled that the inquest into the death of Noah Donohoe should be held with a jury.

An application was made by Ms Fiona Donohoe, the Next of Kin ("NoK") of Noah Donohoe, that the Coroner should summon a jury at the inquest. Section 18 of the Coroners Act (Northern Ireland) 1959 ("the 1959 Act") provides two potential avenues by which a coroner may conduct an inquest in this case with the assistance of a jury:

- Under section 18(1)(e) the coroner **shall** hold an inquest with a jury as long as the coroner is satisfied that there is a "reason to suspect that the death occurred in circumstances the continuance or possible recurrence of which is prejudicial to the health and safety of the public or any section of the public";
- Under section 18(2) the coroner has a **discretion** to sit with a jury if he considers it "desirable".

Mandatory requirement to sit with a jury

The NoK say that the death of Noah Donohoe 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", so that the holding of the forthcoming inquest with a jury is mandatory. In paragraphs [14] – [23] of his ruling, the Coroner outlined the case law which provides guidance on how section 18(1)(e) should be interpreted. The Coroner also referred to correspondence from the Department for Infrastructure ("DfI") about the steps it had taken in respect of the culvert inlet where Noah Donohoe died to address the risk of possible reoccurrence.

The NoK submitted that the work carried out by the DfI was of little reassurance and that it is not possible for the Coroner to be satisfied on the basis of material currently before him that there was no risk of possible recurrence which is prejudicial to the health or safety of the public or any section of the public. Further, it was submitted that there still exists a risk to the public, more specifically children like the deceased, from access to this specific culvert inlet and also from "presumably hundreds" of other such culvert inlets to which members of the public may have access.

The Coroner was satisfied, from a consideration of the authorities, that section 18(1)(e) of the 1959 Act requires him to look to the future as at the time of the inquest. He should summon a jury only if he is satisfied that there is reason to suspect that the death occurred in circumstances the continuation or possible recurrence of which **is** prejudicial to the health and safety of the public, namely that the risk exists presently at the time of giving this ruling. The Coroner said he had no evidence before him to support the NoK's assertion that there are "hundreds" of other risky or dangerous culvert inlets to which members of the public have access and which ought properly to be addressed by the taking of appropriate steps which it is in the power of some responsible body to

take. In such circumstances, he said he ought not to proceed on the basis of speculation or presumption that such risks may exist. On the risk posed by the culvert inlet where the deceased died, the Coroner said it would appear from the DfI response that members of the public cannot now access the culvert inlet. The grille, that Noah Donohoe may have climbed through, has been replaced by a security grille, and the metal cover is now padlocked. On that basis, taking into account the guidance provided by the English Court of Appeal and the response from the DfI, the Coroner said he was satisfied that steps have been taken to prevent such a risk from occurring in the future. For this reason, he did not consider that there was a mandatory requirement to hold this inquest with a jury and dismissed this part of the application.

Discretion to sit with a jury

The Coroner outlined the relevant case law on the discretion to sit with a jury in paragraphs [27] – [34] of his ruling. In particular, he cited the judgment in *Jordan's Application* [2014] NIQB 11 which set out the circumstances which have a bearing on the suggestion that a juror or jury might be biased. The Coroner said there are a number of factors which may potentially have a tendency to adversely affect the ability of a jury in this case to be objective and impartial. These include:

- The controversial nature of the inquest involving the death of a young Catholic boy, last seen in an area known to be predominantly Protestant/Loyalist area.
- The requirement for unanimous verdicts.
- The statutory anonymity of jurors (with the attendant difficulty of challenging for cause).
- The absence of effective safeguards against a perverse verdict.
- The persistent high-profile campaign for "Justice" and "A new, proper investigation" with flags, posters, protests and media interviews which implies the present investigation as deficient.
- The lack of any "fade factor" as described by authorities in relation to prejudice under the Contempt of Court Act 1981, if the inquest goes ahead as planned.

In *Jordan's Application*, the judge suggested that in order for a coroner to exercise his discretion properly he should conduct a balancing exercise and ask himself if "it is desirable to summon" a jury. This exercise included considering the following factors: complexity of the case; the number of documents; the number of witnesses; the length of the inquest; the need to involve the community in the legal process; and impartiality. The Coroner said that in reaching his conclusion on this issue he took the following into account:

- the very strongly held view of the NoK that a jury should be summoned;
- the widespread public concern about the circumstances in which the death occurred;
- the uncertainty surrounding the circumstances of the death;
- the precautions that can be taken to ensure that the jury comes to the case without bias or preconception; and
- the assistance that can be given to the jury to follow the evidence.

The Coroner concluded:

> "Having regard to these matters, notwithstanding my reservations and concerns I do not conclude that there is a "real risk" of a perverse conclusion or bias as per Stephens J in *Jordan's Applications*. Therefore, on balance, I conclude that it is "desirable" to have

a jury sworn in this inquest and I will exercise my discretion pursuant to section 18(2) of the 1959 Act."

He ended by warning that it is imperative that nothing should be reported or said about this inquest in a public forum, including social media, that may impinge on the ability of potential jurors to hear the case impartially and objectively.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (https://judiciaryni.uk).

ENDS

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