

IN THE CORONER'S COURT IN NORTHERN IRELAND

STATEMENT OF MR JUSTICE HUMPHREYS, PRESIDING CORONER

RE OUTSTANDING LEGACY INQUESTS

17 NOVEMBER 2023

1. Until 2019 the Coroners Service for Northern Ireland ("CSNI") had responsibility for legacy inquest cases. These inquests include some of the most sensitive, complex and high-profile deaths that occurred during the conflict in Northern Ireland.
2. In February 2019, funding for the Legacy Inquest Project was announced and the Legacy Inquest Unit ("LIU") was established to deliver the then Lord Chief Justice's (LCJ) plan to hear legacy inquests within a five-year timeframe. The LIU was designed to provide legal, administrative and investigative support, as required by the Presiding Coroner and coroners dealing with legacy inquests.
3. During 2019-20 the structures and processes were put in place to support the delivery of the five-year plan. The initial legacy inquest caseload under the LCJ's five-year plan comprised of 53 inquests relating to 94 deaths. In November 2019 ten inquests were identified as Year 1 cases and assigned coroners. In June 2021, a further tranche of eight inquests were identified and assigned coroners as Year 2 cases, and in March 2022 nine further inquests were identified and assigned coroners as Year 3 cases. A number of legacy inquests which were underway prior to the establishment of the LIU were continued under the auspices of the LIU and are referred to as Year 0 cases.
4. The current position of the Year 0, Year 1, Year 2 and Year 3 cases is as follows:

Year 0 cases

Ballymurphy - inquest concluded; findings delivered.

Kathleen Thompson – inquest concluded; findings delivered.

Kingsmill - hearings concluded but a new witness has since emerged –being considered by the coroner.

Francis Rowntree - hearings concluded and provisional findings delivered.

Loughgall – work is ongoing on PII with a further PH scheduled for 14 December.

Stalker / Sampson - work continues in preparation for a further phase of the PII hearings.

Year 1 cases

Patrick McElhone – inquest concluded; findings delivered.

Neil McConville – inquest concluded; findings delivered.

Thomas Mills – inquest concluded; findings delivered.

Stephen Geddis inquest concluded; findings delivered.

Leo Norney – inquest concluded and findings delivered.

Thomas Friel – completed and findings delivered but quashed by the High Court on 6 November 2023.

Patrick Crawford - part-heard and listed for 2 weeks commencing 11 March 2024.

Daniel Doherty & William Fleming - part-heard and listed for 4 weeks from 6 November 2023.

Sean Brown - opened in March 2023 and due to resume in January 2024.

Gareth O'Connor – not yet listed but 2003 death and so not subject to the Legacy act.

Year 2 inquests

Desmond Healey – part heard and almost complete – to resume for one day in December 2023 to conclude.

Coagh – part heard and almost complete – one remaining potential witness.

John Moran - part heard and almost complete – adjourned pending a judicial review challenge.

Hugh Coney – listed in February & March 2024.

Fergal McCusker - part-heard – listed to resume hearings in November 2023 and February 2024.

Springhill - part-heard – at hearing for 3 weeks from 6 November 2023 and for a further 12 weeks from 22 January 2024.

Sam Marshall - part-heard - a further preliminary hearing is scheduled for 9 November 2023.

Seamus Dillon – part heard - further two weeks listed in April 2024.

Year 3 inquests

Kevin and John McKearney & Charles and Teresa Fox - opened in January 2023 with date now set for January 2024 for McKearney inquest only.

Francis Bradley - opened in April 2023 with a date set to resume in February 2024 for six weeks.

Liam Thompson - opened in April 2023 and is listed for a further three weeks February & March 2024.

Patrick Duffy - opened in April 2023 and next hearing date to be confirmed.

Joseph Campbell - opened in March 2023 and a preliminary hearing is listed for 10 November 2023.

Clonoe - opened in September 2023 and is listed to resume in November 2023.

Raymond McCord – listed for hearing in February & March 2024.

Alexander Patterson – preliminary hearing in December 2023, not yet listed for hearing .

Gerard Slane & Terence McDaid – preliminary hearing held on 26 October 2023, not yet listed for hearing.

5. Excluding the year 0 cases, six inquests have concluded and findings delivered. A further 16 inquests are part heard and four others are under active case management by assigned coroners. 13 inquests are listed for hearing between now and April 2024. 18 coroners, of different judicial tiers, are currently committed to legacy inquests.
6. There are ten Year 4 & 5 cases which have not yet been assigned to a Coroner:

- (i) **Patrick McVeigh;**
- (ii) **Daniel Rooney;**
- (iii) **Elizabeth McDonald & Gerard McGleenon;**
- (iv) **Gerard Casey;**
- (v) **Richard Jameson;**
- (vi) **Jackie Coulter & Bobby Mahood;**
- (vii) **Gerard Lawlor;**
- (viii) **Kevin McAlorum;**
- (ix) **Craig McCausland;**
- (x) **Robert Moffett.**

7. The Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 received Royal Assent on 18 September 2023. Section 1 defines “the Troubles” as “the events and conduct that related to Northern Ireland affairs and occurred during the period beginning with 1 January 1966, and ending with 10 April 1998”.
8. Insofar as inquests are concerned, section 44 inserts a new section 16A into the Coroners Act (Northern Ireland) 1959 which provides that any existing inquest into a death resulting directly from the Troubles must be closed by the coroner responsible on 1 May 2024 unless, by that date, the only part of the inquest that remains to be carried out is the coroner or any jury making or giving the final determination, verdict or findings, or something subsequent to that.
9. A new section 16B of the 1959 Act prohibits a coroner from deciding to hold an inquest into a Troubles related death and the Attorney General from giving a direction under section 14 requiring such an inquest to be held.
10. By section 63(3) of the 2023 Act, section 44 does not come into force until 1 May 2024.
11. Challenges to the compatibility and legality of the 2023 Act have been launched and are due to be heard in the High Court next week by Colton J.
12. Of the ten unallocated inquests within the five year plan, six are not subject to the Legacy Act since the deaths did not occur within the defined period of the Troubles. These are Jameson, Lawlor, McAlorum, Coulter & Mahood, McCausland and Moffett.

13. In recent times nine additional legacy inquests, relating to eighteen deaths, and which did not form part of the original five-year plan, have been the subject of directions from the Attorney General under section 14 of the 1959 Act:

- (i) **The New Lodge Six - Ambrose Hardy, James Sloan, James McCann, Tony Campbell, Brendan Maguire & John Loughran;**
- (ii) **Thomas Burns;**
- (iii) **James Elliott;**
- (iv) **Patrick Kelly;**
- (v) **Robert Anderson;**
- (vi) **Thomas Casey, Sean Anderson, Phelim McNally, Dwayne O'Donnell & Thomas Armstrong;**
- (vii) **Ian Sproule;**
- (viii) **Thomas Lockard;**
- (ix) **Martha Campbell.**

14. Of these, only the death of Thomas Lockard did not occur during the period of the Troubles as defined by section 1 of the 2023 Act.

15. I have taken this opportunity to set the position in relation to all ongoing and outstanding legacy inquests in order that all practitioners, interested persons and the public are aware of the complete picture as far as the five year plan is concerned.

16. I have received submissions from a number of properly interested persons involved in these outstanding inquests. I have taken all of these into account although time constraints mean that I am not able to set them all out. For the most part, PIPs accept that there is no real prospect of an unallocated inquest concluding prior to 1 May 2024. The PSNI and MOD make the point that imposing further disclosure obligations upon them would have an adverse effect on the progress of the inquests which are part heard.

17. A number of the next of kin reference the legal challenges and the attendant uncertainty surrounding the future of the 2023 Act. In some cases, it is clear that there will be a dispute as to whether the investigative obligation imposed by article 2 ECHR applies in light of the decision of the Supreme Court in *Re Dalton's Application* [2023] UKSC 36.

18. Counsel for the NOK have advanced the following arguments:

- (i) *McCaughey* [2011] UKSC 20 remains good law and was not overturned by the UKSC, and this requires all inquests carried out post the critical date of 2 October 2000 to be conducted in accordance with article 2 requirements;
- (ii) *McQuillan* held that PSNI investigations into deaths in the 1970's did not have to be article 2 compliant but this did not relate to inquests;
- (iii) *Dalton* has reinforced the position since no party sought to invoke the Practice Statement in respect of *McCaughey* – decisions of the highest level are not overturned by inference or implication;
- (iv) The principle of legal certainty supports the continued application of article 2 to legacy inquests.

19. The position of the state agencies is that *Dalton* means that any death which occurred prior to 2 October 1988 and, in the general run, prior to 2 October 1990, cannot be subject to the article 2 requirements. The deaths in *McCaughey* are actually within the ten year period. The jurisprudence, it is said, is best viewed as a continuum with a revised approach being taken by the courts both in Strasbourg and the UK as to the applicability of article 2, crystallising in *McQuillan*. There is no coherent distinction to be drawn between PSNI investigations and inquest hearings. Either, as a matter of domestic law, the article 2 investigative obligation is engaged or it is not. It cannot be engaged in one forum and not the other.

20. I am, of course, not in a position to resolve any of these legal issues but I recognise the impact they may have on the future of any investigation, inquiry or inquest. It is likely that this point will be adjudicated upon by coroners in the near future.

21. In two cases, *Burns* and *Kelly*, the NOK submit that these inquests could be case managed and completed by 1 May 2024. Both relate to a single death in a single incident and, it is said, ought to occupy a modest amount of court time. Reliance is placed on the year 1 case of *Patrick McElhone*, where the evidence heard by the coroner was dealt with in five days. The state bodies maintain that moving from allocation to conclusion in 5 months is unrealistic. It is noteworthy that *McElhone* was allocated to a coroner in November 2019 and the evidence concluded in December 2020, some 13 months later.

22. In the cases of McVeigh and Rooney, it is stressed that a recent investigation into the activities of the MRF has taken place, following a direction from the DPP, and a prosecution decision is expected in December 2023. For that reason, it is said that much evidence will be available and an inquest could take place before May 2024.
23. I am, of course, conscious of the obligation imposed on coroners both by Rule 3 of the Coroners (Practice and Procedure) Rules 1963 and, where appropriate, article 2 of the ECHR to act promptly and to hold inquests as soon as practicable.
24. The ability to comply with such obligation is tempered by the finite nature of resources. As will be evident, there are a series of inquests which are part heard and where coroners intend to complete hearing evidence over the course of the next five months. The net result of this is that resources have been stretched to their limit. These are resources in terms of LIU solicitors and support staff, legal representatives and disclosure experts in the various state agencies, courtrooms and court staff, counsel with expertise in the field, expert witnesses and coroners.
25. Coroners have displayed a willingness to bring the inquests they are managing to conclusion before 1 May 2024. In order to achieve this, they will require the focussed input of all concerned.
26. The unfortunate, but inevitable, effect of the position which all PIPs and practitioners find themselves in is that there are simply no resources available which would enable me, in my role as Presiding Coroner, to allocate responsibility for any of the remaining legacy inquests to coroners at the moment. Even if I were to do so, experience indicates that it would be very difficult for an inquest to come to a conclusion prior to 1 May 2024. I recognise the disappointment, upset and anger this will cause to the relatives whose loved ones have died and who have an expectation that an inquest will be held to find out how the death occurred.
27. However, I am aware of the nature and extent of the challenges which have been brought against the Legacy Act, including the provisions relating to inquests. The new sections 16A and 16B of the Coroners Act are not yet in force and their future remains uncertain. It would not therefore be appropriate for me to take a final view in relation to the future conduct of the unallocated

inquests. I have determined that the best course of action to take is for a further review to take place once the judgment of the High Court has been handed down. At that stage its implications can be considered.

28. In relation to those inquests which are not Troubles related, within the statutory definition, I propose to allocate those for case management to coroners following the conclusion of the current cohort of part heard inquests.

29. I wish to thank solicitors and counsel for their written and oral submissions and for their ongoing commitment to the fulfilment of the purpose of the legacy inquest process.

MR JUSTICE MICHAEL HUMPHREYS
PRESIDING CORONER
16 NOVEMBER 2023