Neutral Citation No: [2022] NICoroner 5	*Ref:*	**HUM11935**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	**02/09/2022**

IN THE CORONER'S COURT IN NORTHERN IRELAND

IN THE MATTER OF AN INQUEST INTO THE DEATHS OF LAWRENCE JOSEPH McNALLY, ANTHONY PATRICK DORIS AND MICHAEL JAMES RYAN

RULING ON ENGAGEMENT WITH CORONER'S INVESTIGATOR AND WITNESS EVIDENCE

HUMPHREYS J

Background

[1] On 12 September 2022 the inquest into the deaths of Michael Ryan, Anthony Doris and Laurence McNally will open at Banbridge Courthouse. It is not in dispute that these three men were shot dead by members of the British Army at Coagh on 3 June 1991. The circumstances surrounding the deaths are disputed.

[2] In the course of case management, an issue has arisen relating to the provision of evidence to the coroner. Devonshires Solicitors represent a cohort of the soldiers involved in the incident ('the military witnesses'). It has been indicated that the military witnesses do not wish to engage with the coroner's investigators but rather to furnish their own witness statements, prepared in conjunction with their lawyers.

[3] The question which falls for determination is whether this is a permissible course of action, or whether such statements be received by the coroner, in light of the statutory provisions and the relevant witness protocol.

The Legal Framework

[4] Section 36 of the Coroners Act (Northern Ireland) 1959 ('the 1959 Act') empowers the making of rules to regulate the practice and procedure to be adopted at or in connection with inquests. The rules made pursuant to this power are the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 ('the 1963 Rules').

[5] Section 17A of the 1959 Act gives a coroner the power to require a person to attend a hearing and:

> "(a) to give evidence at the inquest,
>
> (b) to produce any documents in the custody or under the control of the person which relate to a matter that is relevant to the inquest, or
>
> (c) to produce for inspection, examination or testing any other thing in the custody or under the control of the person which relates to a matter that is relevant to the inquest."

[6] By section 17A(2):

> "A coroner who is making any investigation to determine whether or not an inquest is necessary, or who proceeds to hold an inquest, may by notice require a person, within such period as the coroner thinks reasonable—
>
> (a) to provide evidence to the coroner, about any matters specified in the notice, in the form of a written statement,
>
> (b) to produce any documents in the custody or under the control of the person which relate to a matter that is relevant to the investigation or inquest, or
>
> (c) to produce for inspection, examination or testing any other thing in the custody or under the control of the person which relates to a matter that is relevant to the investigation or inquest."

[7] Section 17A(6) a person who fails without reasonable excuse to comply with a requirement under section 17A (1) or (2) may be fined up to £1000 by the coroner. Section 17B provides that this power is additional to any other power the coroner may have in respect of compelling witnesses and punishing persons for contempt of court.

[8] Section 17A(8) states:

> "Nothing in this section shall prevent a person who has not been given a notice under subsection (1) or (2) from giving or producing any evidence, document or other thing."

[9] The obligations imposed by section 17A are subject to the caveat in section 17B(2) that:

> "A person may not be required to give or produce any evidence or document under section 17A if…he could not be required to do so in civil proceedings in a court in Northern Ireland"

The Witness Protocol

[10] On 6 October 2020 the then Presiding Coroner, Huddleston J, introduced a Witness Protocol for Legacy Inquests ('the Protocol'). It recognises that the engagement with witnesses is a matter for the coroner and the procedural guidance contained in the Protocol is subject to the exercise of coronial discretion.

[11] In general terms, the Protocol is part of a system of case management which is intended to ensure that legacy inquests are conducted in a manner which is transparent, fair and proportionate as well as in a prompt and expeditious manner.

[12] The Protocol anticipates that witnesses will be interviewed by an appropriately trained member of the Legacy Inquest Unit (LIU) and, following such interview, a witness statement will be produced. The Protocol states:

> "The Coroner fully expects that the statement will be signed by the witness at the conclusion of the interview"

[13] Once a statement has been produced, it is a matter for the coroner to determine whether it is potentially relevant to the inquest in which case it is disclosed to the Property Interested Persons (PIPs) (subject to public interest immunity, anonymity and necessary redactions).

Article 2

[14] The submissions of the Next of Kin (NOK) are to the effect that there is "absolutely no question" that Article 2 of the European Convention on Human Rights (ECHR) is engaged in relation to this inquest. Following the Supreme Court decision in *Re McQuillan* [2021] UKSC 55, it is clear that the genuine connection test requires both:

(i) The temporal connection of not less than 10 years between the death and the date of entry of the Convention in the state; and

(ii) A requirement that the major part of the investigation must have been or ought to have been carried out after the entry into force of the Convention for that state.

[15] If the genuine connection test is not met, the Article 2 requirements may still arise by an application of the 'Convention Values' test.

[16] I have not heard any argument on this question but will proceed, for the purposes of this ruling, on the basis that Article 2 is indeed engaged.

[17] The NOK assert that there are parallels with the case of *Kelly –v- UK* when the European Court of Human Rights (ECtHR) concluded that the investigation by police officers of the use of lethal force by soldiers suffered from a lack of independence as required by Article 2. The criticism in *Kelly* arose from the fact that police officers involved in the investigation were connected, directly or indirectly, to the events at Loughgall.

Consideration

[18] The Protocol is a guidance document, designed to provide a framework within which the LIU and coroners will work to trace and identify witnesses and procure relevant evidence. The legal representatives for the military witnesses have raised issues regarding the fairness of the Protocol. These do not need to be determined for the purposes of this ruling but I do note that the document was the product of consultation with all relevant parties, including the Ministry of Defence. However, it must be recognised that the Protocol does not impose any legally enforceable obligations. These are still to be found in the 1959 Act and 1963 Rules.

[19] The coroner is entitled is serve a notice on a witness requiring evidence to be given by way of a witness statement and a failure to comply may entail legal sanction. However, there is no statutory power to require a witness to be attend before an LIU investigator for interview nor to provide a witness statement through a particular process.

[20] The position as articulated by counsel on behalf of the soldiers is that witness statements will be provided on a voluntary basis. No notice has been served pursuant to section 17A(2) on any of the military witnesses.

[21] It is submitted by counsel for the NOK that the court should decline to admit any statement forthcoming from the military witnesses. The complaint is made that such statements will have been "over-lawyered", a common complaint amongst the judiciary in various species of litigation.

[22] In their submissions, counsel for the NOK state:

> "…the soldiers' lawyers would have editorial control over how the witness's statement is to be composed, and the coroner, whose investigation this is, would have had his

> role usurped by a body lacking the requisite degree of transparency or independence"

[23] Insofar as this represents an attack on the independence and integrity of the legal professionals representing the military witnesses, I reject it. There is no evidence whatsoever that the role of the coroner would be 'usurped.' I, as Presiding Coroner for Northern Ireland, would simply never allow that to occur. Moreover, the solicitors and counsel who represent the military witnesses are experienced professionals who are well aware of their duties to the administration of justice

[24] The NOK also rely on the procedure adopted in the inquest into the death of Patrick McElhone. In that case, a number of military witnesses declined to provide statements through the LIU process and, indeed, failed to provide any statements at all, save for those obtained in the original investigation. In those circumstances, the coroner directed that oral evidence be given in the first instance and a transcript provided, with the NOK being afforded time to consider and prepare cross-examination.

[25] The Ministry of Defence (MOD) has submitted that it is simply not open to the coroner to decline to receive relevant evidence in written form and the ability to challenge the evidence of the military witnesses is preserved by the coronial process.

[26] It cannot be denied that the evidence of the military witnesses is relevant to the questions to be determined at this inquest. As such, I have concluded that the statements should be submitted to the coroner and, subject to the issues of relevance, redaction and public interest immunity will be disclosed to the PIPs.

[27] The military witnesses will be required to give oral evidence and be examined on the issues addressed in their statements, and also in respect of other matters relevant to the inquest which have not been so addressed. Any assertion that statements contained aspirational versions of events created by lawyers, and which do not reflect true events, can be carefully explored through questioning. The proposed way forward is quite different from that which prevailed in the McElhone inquest in that 'modern' statements will be provided by the military witnesses in this case and thus the legal teams for the other PIPs will have notice of their evidence. There ought therefore to be no need for any delay to permit the preparation of cross-examination although this is a matter which can be revisited, if necessary, during the course of the hearing.

[28] The comparison with the Loughgall police investigation is misplaced. It fails to recognise that there will be a full, public analysis of all the relevant issues relating to the events at Coagh, conducted by the Presiding Coroner, with all parties legally represented. To suggest that such a procedure would be denuded of its independence by the preparation and provision of statements on the part of military witnesses by their lawyers does not stand up to any scrutiny. Equally, the adequacy

and transparency of the process will be protected by the very existence of the right to cross examine witnesses and have their evidence subjected to rigorous analysis.

[29] I therefore reject any assertion that the proposed course of action renders this inquest non-compliant with Article 2 or in some way breaches the requirement of common law fairness. The fairness of the inquest proceedings will be maintained at all times.

Conclusion

[30] The obligation of the coroner holding an inquest is to address the issues set out in Rule 15 of the 1963 Rules and, where appropriate, the broad circumstances in which the death occurred in compliance with the requirements of Article 2.

[31] In order to answer these questions, it is necessary that all relevant evidence is analysed and subjected to scrutiny. Generally, in civil proceedings, there is no discretion to refuse to admit relevant evidence. There can be no doubt that statements from the military witnesses will be of relevance to the issues to be determined. I have therefore concluded that I should receive the statements which emanate from the military witnesses. The power to serve a notice under section 17A(2) will still be exercisable following receipt of such statements.

[32] If such a discretion does exist, I would decline to exercise it in the prevailing circumstances. I reject any claim that this course of action renders, or potentially renders, the inquest non-compliant with Article 2.

[33] The Protocol was the product of extensive consultation and remains the template for the best and most efficient manner of the production of evidence in legacy inquests. I would endorse its use and encourage all participants to engage with it.