

THE PRESIDING CORONER FOR NORTHERN IRELAND

LEGACY INQUESTS

CASE MANAGEMENT PROTOCOL

A. PURPOSE

1. The purpose of this Protocol is to set out a clear pathway for case management in legacy inquests, with particular reference to disclosure, which will assist in each inquest being dealt with in the most proportionate and efficient way.

B. APPLICATION OF THIS PROTOCOL

2. This Protocol applies as appropriate to outstanding legacy inquests of which in September 2019 there are 52, relating to 93 deaths. This includes 3 cases, relating to 3 deaths, referred to the Coroner by the Attorney General since December 2018.

3. Decisions on the application of this Protocol to other inquests may be made by the Coroner on a case by case basis.

C. GENERAL PRINCIPLES

4. This Protocol is a guide to assist with general case management issues which may arise in legacy inquests. It sets out guiding principles and overriding objectives.

5. This Protocol is not intended to cover every circumstance that may arise in a legacy inquest and where necessary, matters relating to individual legacy inquests will be dealt with on a case-by-case basis taking into account this Protocol as appropriate.

6. This Protocol may be subject to amendment, revision or expansion from time to time at the discretion of the Presiding Coroner and after such consultation, if any, that the Presiding Coroner deems appropriate.

7. The overriding objectives of this Protocol are to ensure that:

- a) each legacy inquest is fully and properly investigated in accordance with relevant legal principles;

- b) each legacy inquest is managed in a way that is transparent, fair and proportionate;
- c) there is full and effective participation of all Properly Interested Persons in each legacy inquest, particularly bearing in mind the needs of the next of kin;
- d) a timely and effective approach is taken to disclosure to the Coroner in each legacy inquest; and
- e) each legacy inquest is progressed to hearing and conclusion as promptly and expeditiously as possible, with minimal delay, taking into account the Lord Chief Justice's five year plan, effective from April 2020, for the completion of all legacy inquests.

8. The cooperation of all Properly Interested Persons and providers of disclosure is paramount to ensuring that the overriding objectives of this Protocol are achieved in each legacy inquest. All those concerned are reminded that inquests are inquisitorial in nature and shall be conducted in this manner.

D. THE LEGACY INQUEST UNIT

9. The role of the Legacy Inquest Unit (LIU) is to support as required the Presiding Coroner and the Coroners assigned to particular legacy inquests. This includes ensuring adherence to this Protocol. The Presiding Coroner and the Coroners may be supported also by counsel instructed by LIU legal advisers to act in a legacy inquest. All members of LIU staff and Coroners' counsel are security cleared to requisite levels.

10. Correspondence with the Presiding Coroner or an assigned Coroner under this Protocol shall be through the LIU. Correspondence from the LIU is issued on behalf of the Presiding Coroner or assigned Coroner.

11. Relevant LIU contact details will be provided to Properly Interested Persons and to disclosure providers in each legacy inquest. LIU staff is available to meet with legal representatives and disclosure providers as appropriate to facilitate the smooth operation of this Protocol.

E. PROPERLY INTERESTED PERSONS

12. The role of a Properly Interested Person is to assist the Coroner in conducting a full and proper investigation in accordance with the relevant legal principles.

13. Designation as a Properly Interested Person is a matter of discretion for the Coroner and will be considered on a case-by-case basis in each legacy inquest. Typically, the Properly Interested Persons in any legacy inquest will include the next of kin of the deceased person.

14. Decisions on the status of a Properly Interested Person will be taken by the Coroner at as early a stage of the inquest process as possible. Anyone seeking designation as a Properly Interested Person shall make an application in writing to the Coroner, unless the Coroner is satisfied it is not necessary to do so. The application shall set out the applicant's proper interest in the inquest; any risk of criticism it is said that they may face as a result of the inquest proceedings; any direct or significant role they are said to have played in the matters relating to the death of the individual or other matters within the provisional scope of the inquest; or any other significant interest they have in the inquest.

15. Designation as a Properly Interested Person shall entitle the individual or organisation to receive disclosure of relevant materials from the Coroner; to be informed of the date and time of preliminary hearings and the inquest hearing; to make legal submissions on matters as required; and to examine witnesses who are called to give evidence. The Coroner will ensure the effective participation in the inquest of each Properly Interested Person.

F. DISCLOSURE PROCESS

General

16. This part of the Protocol has been developed with the aim of promoting an effective and collaborative approach to disclosure in legacy inquests as set out by the Lord Chief Justice in relation to legacy litigation in Flynn v Chief Constable of the Police Service of Northern Ireland [2018] NICA 3.

17. For the assistance of the Coroner and in order to facilitate the prompt and expeditious completion of any legacy inquest, the Coroner may request the legal representatives for the next of kin to provide him/her with a list of any potentially relevant material held by their clients.

Disclosure obligation

18. Section 8 of the Coroners Act (Northern Ireland) 1959 places an obligation upon the Police Service of Northern Ireland to provide disclosure to the Coroner. That duty is ongoing.

19. Under the 1959 Act, the Coroner may also request information/disclosure from other bodies. In accordance with the European Convention on Human Rights, public authorities are obliged to assist the Coroner in performing his or her function in the holding of an Article 2-compliant inquest. The State's investigative duty under Article 2 requires that state authorities provide disclosure. Section 6(1) of the Human Rights Act 1998 renders it unlawful for a public authority to act in a way which is incompatible with a Convention right.

20. Disclosure of all potentially relevant material to the Coroner shall take place as soon as is reasonably possible after the Coroner requests disclosure. In any event, the Coroner expects that the disclosure process outlined below should take no more than 6 months. The Coroner expects also that all queries raised by him/her during the disclosure process shall be dealt with promptly.

Step 1: Disclosure Request Letter and Response

21. Upon the scheduling or provisional scheduling of a legacy inquest for hearing, the Coroner will issue a disclosure request letter ('DRL') to any organisation or individual who appears likely to be in custody or control of material that is potentially relevant to the inquest. This is the start of the disclosure process under this Protocol. Those receiving a DRL are referred to in this Protocol as 'disclosure providers'. The DRL will request that all information of potential relevance to the death under coronial inquiry is provided to the Coroner and, without prejudice to the principle of disclosure of all potentially relevant material, may also specify issues/areas of inquiry in which the Coroner is particularly interested at this stage of the process, for the assistance of the disclosure provider.

22. A DRL to a state body usually represented in inquests by the Crown Solicitor will be sent to her Office ('CSO') for onward transmission to the disclosure provider.

23. To assist the Coroner, within 7 days of receipt of the DRL, CSO shall advise the Coroner of the state bodies on whose behalf it is instructed in the subject inquest and identify an appropriate point of contact for each such organisation. The point of contact ('POC') shall be a named individual able to answer inquest-related queries

and attend hearings as directed by the Coroner. Should the POC change during the process, the Coroner shall be notified immediately of the new POC's details.

24. Where the Coroner is informed that the disclosure provider is legally represented other than by CSO, a copy of the DRL will be sent to the relevant legal representative and references in this Protocol to CSO are to be read as applying to that legal representative.

Step 2: Collecting potentially relevant material in line with the disclosure obligation

25. From receipt of the DRL, the disclosure provider shall begin to identify, collect and collate potentially relevant material for disclosure to the Coroner. The Coroner expects CSO to work closely with its clients to ensure they understand what is required.

26. Potentially relevant material includes all records held relating to the subject death and comprises (but is not limited to): hard copy records, electronic records, HET Records, Duty Officer's Reports, officer's notebooks, log sheets, intelligence records, maps, sketches, diagrams, photographs, inquest records, investigation files, correspondence, Rules of Engagement, personnel files requested by the Coroner, records held on Secret/Top Secret systems and physical evidence.

Step 3: Disclosure to the Coroner of potentially relevant material

27. Where possible, disclosure of unredacted non-sensitive potentially relevant material shall be made available to the Coroner in an electronic format that has been agreed with LIU. All disclosure material provided, whether electronically or in hard copy, shall be collated and scheduled.

28. Where the disclosure provider has potentially relevant material which is sensitive i.e. potentially relevant material subject, or potentially subject, to a claim of public interest immunity (PII), it shall inform the Coroner in writing as soon as that material is ready for disclosure to the Coroner. Such material is referred to in this Protocol as 'sensitive material'.

29. On each occasion that disclosure is provided, the material being disclosed shall be accompanied by a Disclosure Schedule which identifies each document provided and has been signed off by the POC. The title of the Disclosure Schedule shall state whether it relates to sensitive or to non-sensitive material and the

Schedule shall be protectively marked as appropriate. For each document being disclosed, as a minimum, the Schedule shall include the information detailed below. This list is not exhaustive and as much information shall be included as will assist the Coroner in reviewing the material and assessing it for potential relevance.

30. A Disclosure Schedule shall include the following information, if known, about each document:

- (a) where the material is protectively marked, its level of security classification ;
- (b) a brief summary or description, for example, 'statement of PC Smith';
- (c) author;
- (d) date(s); and
- (e) format, for example, original hard copy, microfiche, electronic record.

31. The Disclosure Schedule shall include also:

- (a) details of searches undertaken and any outstanding or further searches to be conducted;
- (b) details or location of potentially relevant materials which have or may have been held by the disclosure provider but which are no longer in its possession and details of any destruction orders;
- (c) details of any potentially relevant documents which are known to be incomplete, illegible or missing. Where a legibility issue arises, the disclosure provider shall provide the best available copy and the Schedule shall contain a written assurance that the best available copy has been produced; and
- (d) details of any potentially relevant material which the disclosure provider objects to (i) disclosing to the Coroner or (ii) save for sensitive material, to the Coroner disseminating to the Properly Interested Persons, together with reasons for any such objections.

32. Where the information in paragraph 31 has been provided to the Coroner in a Disclosure Schedule, that information need not be repeated in any further Disclosure Schedule save where it requires to be updated.

33. Unless the Coroner otherwise directs, all potentially relevant material disclosed to the Coroner shall highlight any proposed redactions and be accompanied by a Schedule of Proposed Redactions signed off by CSO identifying each proposed redaction and the reason for it. Where it is proposed that large sections of text be redacted, for example, full paragraphs or full pages, a narrative explanation for the proposed redaction shall be provided, including a description of the document.

34. Disclosure material may be provided to the Coroner on a rolling basis, provided the disclosure exercise is progressed expeditiously and in accordance with deadlines set by the Coroner. The Coroner will expect regular progress updates at times to be advised during the disclosure process. If the disclosure takes, or is going to take, longer than is expected in the circumstances of the case, a timely explanation shall be provided in writing to the Coroner who may convene a hearing to deal with the matter.

35. Once disclosure to the Coroner is complete, unless the Coroner otherwise directs, the disclosure provider or their legal representative shall provide to the Coroner a sworn affidavit confirming, but not limited to: the steps taken to identify and disclose to the Coroner potentially relevant material including details of all locations searched; that disclosure is complete to the best of the disclosure provider's knowledge; and that the disclosure provider will adhere to the continuing obligation to disclose potentially relevant material to the Coroner during the course of the inquest proceedings.

Step 4: Determination of potential relevance by the Coroner

36. Upon receiving disclosure material, the Coroner will proceed to determine its potential relevance. Where the material being disclosed is sensitive, the Coroner will arrange to review the material at the location where it is held, unless arrangements are made for this to occur at another appropriate location.

37. In order to alleviate potential delay at this stage of the process, the Coroner expects a collaborative approach to be taken to dealing with redactions proposed by disclosure providers and any potential redactions identified by the Coroner. To this end, if necessary, the Coroner's legal representative and CSO shall meet at the

earliest possible stage to discuss proposed redactions. This will enable the Coroner to make an early determination of the provisional redactions, if any, to be applied before potentially relevant material is disseminated to Properly Interested Persons. Redactions may be made to non-sensitive material for reasons including Article 2 and Article 8 of the European Convention on Human Rights, non-potential relevance and legal professional privilege.

38. The Coroner and/or Properly Interested Persons may raise further queries in relation to provisional redactions in preparation for the inquest. The Coroner expects PIPs to raise any such queries in a timely manner. All redactions remain provisional and subject to final determination by the Coroner.

39. Applications to the Coroner for PII are not covered by this Protocol save to note that, where the Coroner determines that sensitive material is potentially relevant, as a general principle and in accordance with the overriding objectives of this Protocol, all reasonable steps will be taken by the Coroner and disclosure providers to explore how potentially relevant information contained in sensitive material might be provided to the Properly Interested Persons. Methods which may be considered include, but are not limited to: issuing a gist which describes or summarises the potentially relevant material and provision of a corporate witness statement to contextualise the potentially relevant sensitive material.

Step 5: Dissemination of potentially relevant material to Properly Interested Persons

40. After the Coroner has determined which material is potentially relevant and provisional redactions may be applied, the potentially relevant provisionally redacted material shall be made available by CSO to the Coroner for onward dissemination to the Properly Interested Persons. At the same time, a set of this material shall be made available for the Coroner to retain. Where possible, this disclosure material shall be provided electronically.

41. CSO shall ensure that all material to be disseminated to Properly Interested Persons, whether in hard copy or electronically, shall be collated, fully indexed and explicitly identified as 'redacted non-sensitive' or 'redacted - sensitive'.

Step 6: Determination of Provisional Scope

42. The Coroner may proceed to determine the provisional scope of the inquest. Oral or written submissions on scope may be taken from Properly Interested Persons

at the Coroner's discretion. Any determination of scope by the Coroner shall remain provisional until the conclusion of the inquest proceedings.

Retention of materials deemed not potentially relevant

43. All material disclosed to the Coroner which is not initially deemed potentially relevant by the Coroner shall be retained by the disclosure provider and available to the Coroner, if required, until the conclusion of the inquest.

Case management during the disclosure process

44. The Coroner will actively case manage the disclosure process in order to avoid delay and to enable determination of any disputes at the earliest possible stage. The Coroner will rule periodically on potential relevance and redactions as required.

45. Any issues arising in relation to compliance with this Protocol or with the Coroner's disclosure request shall be immediately notified to the Coroner in writing by CSO. In any event, the Coroner will require regular updates at times to be agreed during the disclosure process.

46. At any stage during the disclosure process, the Coroner may give such directions as he/she considers necessary or may convene a hearing to deal with contentious matters or with a view to ensuring appropriate focus on the disclosure process by the disclosure providers.

47. At the end of the disclosure process, the Coroner will list the matter for a Case Management Review (CMR). This will specifically deal with disclosure. The Coroner will make any necessary decisions on disclosure at this stage taking into account the provisional scope of the inquest, any issues raised by the next of kin or other Properly Interested Persons, and the overriding consideration of proportionality.

G. CASE MANAGEMENT OF INQUESTS

48. In advance of the inquest hearing, in addition to the CMR, the Coroner will hold Preliminary Hearings to deal with case management and other preliminary issues. The timing and frequency of PHs will be at the discretion of the Coroner and will depend upon the issues in each individual inquest.

49. In addition to any other PHs the Coroner may hold, the following case management PHs may be held:

(i) Listing Preliminary Hearing (LPH)

The LPH will be held within 2 months of the CMR to identify and deal with outstanding issues relating to listing of the inquest hearing such as, but not exclusively, witness list, venue, experts, date and time frame for hearing of the inquest.

(ii) Case Readiness Preliminary Hearing (CRPH)

The CRPH shall be held no later than 6 weeks before the hearing date to deal with final directions for hearing, anonymity, screening and any other outstanding issues. One week in advance of the CRPH, all properly interested persons shall send to the Coroner an issues paper of no more than 1 page.

iii. Final PH

There will be a final PH 2 weeks before the inquest hearing to ensure all is in order to allow the case to proceed.

The Hon. Mrs Justice Keegan
Presiding Coroner
September 2019