

LEGACY INQUEST UNIT

STATE OF READINESS EVENT 7TH JUNE 2019

PRESIDING CORONER'S STATEMENT

Good morning to you all.

I want to start by thanking you all for coming today. In particular I recognise that there are bereaved family members of those deceased here and I understand that this is an important day for you.

Since the announcement on 28th February 2019 of funding for legacy inquests, work has been ongoing to put in place arrangements so that the Lord Chief Justice's plan to hear legacy inquests within a 5 year timeframe can be delivered. The purpose of today's hearing is to provide you with an overview of how that plan is being put into practice. I have been asked to do this by the Lord Chief Justice as I am currently the Presiding Coroner for Northern Ireland. You will be aware that the previous review was conducted by Lord Justice Weir.

I am not dealing with issues in individual legacy inquests at this hearing. Each outstanding legacy inquest is listed for a preliminary hearing in September of this year. At those preliminary hearings, I will look individually at each inquest and hear about the particular issues in that inquest.

When the Lord Chief Justice held his legacy engagement event in February 2016, he stated that, contingent on necessary resourcing and the cooperation of relevant organisations, it should be possible to hear legacy inquests within a reasonable timeframe, which he saw as being about five years. This is what we now refer to as 'the Lord Chief Justice's five year plan'.

This plan includes the establishment of a dedicated Legacy Inquest Unit to provide legal, administrative and investigative support, as required, by the Presiding Coroner and Coroners dealing with particular legacy inquests.

The Lord Chief Justice's plan also includes oversight of all legacy inquests by the Presiding Coroner and envisages improvements to case management, disclosure and case allocation arrangements.

As I said earlier, funding for the Lord Chief Justice's five year plan was announced on the 28th February 2019. We are now in Year Zero. Year Zero is being used to put into place the structures and processes necessary in order that delivery of the five year plan can begin in April 2020, which is the start of Year 1. I understand that all organisations involved in legacy inquests are putting in place appropriate structures and arrangements to support delivery of the five year plan. This is a welcome development.

Before I look forward in more detail, I want you to be assured that, even with limited resources, matters have not stood still since the Lord Chief Justice met with families in February 2016. Since then, seven legacy inquests have been completed. Six legacy inquests are currently at hearing or awaiting findings and I anticipate that these inquests will be completed over the coming months.

The current legacy inquest caseload comprises 54 cases relating to 95 deaths. This includes 3 cases, relating to 3 deaths, referred to the Coroner by the Attorney General since December 2018.

All legacy inquests have come to be within the Coroner's jurisdiction in one of two ways.

The first way is by having been reported directly to the Coroner when the death was discovered. In some of these cases, a Coroner closed the matter without an inquest and subsequently reopened them.

The other way legacy inquests have come to be within the jurisdiction of the Coroner's Court is where, under section 14 of the 1959 Coroners Act, the Attorney General has referred the death to the Coroner for an inquest to be held. Of the 95 deaths with which legacy inquests are concerned, 44 have been referred to the Coroner by the Attorney General.

The Coroner has no control over what deaths are reported or referred to him or her. Nevertheless, no matter how a legacy inquest has come within the jurisdiction of the Coroner, once it does, the Coroner is under an obligation to deal with it in accordance with the relevant legal principles. In particular it should be remembered that inquests are inquiries into the circumstances surrounding a death. An inquest is not a criminal trial. It is not for the Coroner to determine any question of criminal or civil liability.

The purpose of an inquest is to find out who the deceased person was; how, when and where they died; and to provide the details needed for their death to be registered. Where Article 2 of the European Convention of Human Rights is engaged there is an obligation on the state to ensure that there is a proper and thorough review of the circumstances surrounding that death. This includes ascertaining in what circumstances the deceased came by his or her death.

Where Article 2 applies, the obligation falls on a number of agencies, including, in the case of legacy inquests, the Lord Chief Justice as President of the Coroners Court, the Presiding Coroner and all of the judges who sit as Coroners.

Inquests are also inquisitorial in nature and should not be overly adversarial, not least because the process can be traumatising for those involved. Inquests also work best when all those with an interest take a collaborative approach to bringing the inquest to a conclusion.

These legacy inquests will be subject to robust and ongoing review and case management by the judiciary. To that end, I encourage all those involved in legacy inquests to engage and to be creative in coming up with practical solutions that assist with bringing these inquests to a conclusion in accordance with the Lord Chief Justice's 5 year plan.

I mentioned earlier that the 5 year plan includes the setting up of a Legacy Inquest Unit. This has been done and the Unit is based in Laganside House. The Lord Chief Justice and I are being kept fully informed of progress by the Chief Executive of the Northern Ireland Courts and Tribunals Service. I am assured to see that good progress has been made already.

Work is ongoing to ensure that the Unit is appropriately resourced by April 2020 to provide legal, administrative and investigative support to the Presiding Coroner and to the Coroners dealing with particular legacy inquests.

I appreciate that for many families, the main issue is when their loved one's inquest is going to be heard. This must be the cause of considerable anxiety. I recognise also that other families may wish to await the outcome of other investigations.

It is for the Presiding Coroner to decide the sequence in which legacy inquest cases will be heard during the period of the five year plan. These will be difficult decisions and constructive collaboration and engagement by all involved will be very important in this process. There is significant

preparatory work to be undertaken and many of these inquests will be very complex. There will be engagement with families during the sequencing process and all views will be taken into account when reaching these difficult decisions.

The Lord Chief Justice has previously spoken of a thematic approach to listing of legacy inquests following discussions he had with the international human rights community about the principles that should underpin an Article 2 compliant model for dealing with legacy cases. The UN's Special Rapporteur and the Council of Europe's Human Rights Commissioner expressed concerns to the Lord Chief Justice about the piecemeal nature of the inquest system and warned that we could miss the bigger picture if we focus solely on a series of individual cases. Without the full context, the inquest findings could be incomplete in some cases.

From this engagement, the idea of a thematic approach emerged. This would aim to draw out all of the relevant linkages in a structured and systematic way. This is why consideration of a thematic approach will be undertaken as part of the process.

There are potential benefits of linking certain cases. Of course, some cases have already been linked to some extent, for instance, if a particular incident resulted in multiple deaths. It may make sense to group a number of the cases together where there are common themes to ensure that the wider picture is available. The danger of cases proceeding separately is that an issue could arise about the possibility of cross-referencing other cases during inquest proceedings.

Where linkages are identified and inquests listed accordingly, the Coroner may consider whether a modular format would be workable. This would allow linked inquests to run, perhaps with a break in between.

No matter what arrangement is put in place, a separate inquest finding will still be provided in every case.

There will be a number of other factors to be taken into account in reaching a decision on when an inquest will be held. When the Lord Chief Justice met families in February 2016, he identified the state of readiness as a potential starting point. Other potential factors he identified were the age of the case and, particularly, the age of the relatives involved in the case.

So, before a decision is made on how to approach the process of sequencing legacy inquests, I wish to engage with families and other stakeholders, such as those with responsibility for providing disclosure to the Coroner.

Firstly, I wish to hear views on principles that I could be guided by when determining the approach to sequencing. A number of written submissions on sequencing principles were made during Lord Justice Weir's Review which have been of considerable assistance to me. I now invite legal representatives from all interested parties to provide, through the Legacy Inquest Unit, any update to those submissions. These will help to inform the decision on the overall approach to listing legacy inquests for hearing and the factors that might be taken into account.

Secondly, I want to obtain relevant, up to date information in specific inquests. Accordingly, at the September preliminary hearings, I will hear submissions in each inquest on the specific factors that may impact on the sequencing of that inquest.

Decisions on sequencing of inquests will be made on an ongoing basis. I expect that the first tranche of cases for hearing during Year 1 will be sequenced shortly after the conclusion of the preliminary hearings in September. This will allow preparation work on those inquests to proceed expeditiously.

I ask that everyone engages with the sequencing process constructively and with patience and understanding. I do not underestimate the level of concern and anxiety that there is around this issue, from the point of view of all of those engaged in the process, be that bereaved families, civilian, police or military witnesses.

Turning to practical arrangements, in line with what the Lord Chief Justice said on 12th February 2016, the plan is that these inquests will be heard by a range of different judicial office holders. I anticipate some of the most complex inquests being heard by a High Court Judge. A number of the other inquests will be heard by a County Court Judge and the remainder will be heard by a Coroner.

I also want to specifically mention disclosure which has been a perennial problem affecting the smooth running of inquests. In order for this plan to progress there will have to be provision of all relevant disclosure in a timely manner. With that in mind, I have developed a draft Case Management Protocol. The draft sets out how I intend to approach case management of inquests generally. It also sets out the approach I wish to be taken with regard to disclosure of potentially relevant material to the Coroner and how this will be disseminated to the families.

The draft Protocol requires the full cooperation of all organisations that hold information of potential relevance to an inquest. These organisations will be

required to assure the Coroner that all steps have been taken to identify and disclose potentially relevant material to the Coroner. In that regard, I am encouraged by recent interaction with Police Service of Northern Ireland and the Ministry of Defence who have engaged with a view to improving practice in this area. I hope this continues.

I have engaged with legal representatives and disclosure providers by seeking their views on the draft Protocol. I hope that everyone will approach this exercise constructively.

To aid this engagement Legacy Inquest Unit staff are available to meet to discuss the draft Protocol. I encourage everyone concerned to take the opportunity to meet the staff and talk through any issues they may have.

I will review and take account of all responses to the draft Protocol before I settle it.

Also of central importance to the progress of legacy inquests is that the locations and sources of potentially relevant materials are identified. This will inform requests for disclosure and assist understanding of what is, or is not, likely to be available. I hope it will ensure that the late uncovering of potentially relevant materials is avoided.

Accordingly, I have asked the Police Service of Northern Ireland, the Ministry of Defence and the Police Ombudsman to identify all databases and archives where materials relating to legacy matters are stored.

That information is to be provided to me in the coming weeks. When I receive it I will share as much of that information as possible with the legal representatives of the families concerned.

Additionally, I have asked Forensic Science Northern Ireland to provide details of all information held for outstanding cases.

Also to facilitate expeditious progress, at my request, the Police Service of Northern Ireland, the Ministry of Defence, the Police Ombudsman and the Public Prosecution Service have helpfully provided me with details of a single point of contact for legacy inquests within their respective organisations.

I see the single point of contact as a means of strengthening disclosure arrangements, avoiding delay and improving communications. I expect the appointed points of contact to engage constructively and collaboratively with the Legacy Inquest Unit as it supports the Coroners who will be dealing with these cases.

In addition the Legacy Inquest Unit is developing a draft Witness Protocol which will apply to the range of witnesses who appear in these inquests. This protocol will set out the general approach to be adopted by the Coroner to tracing, contacting witnesses and obtaining statements from them. Coroners will also be guided as to appropriate means for the taking of evidence from witnesses who have vulnerabilities.

I recognise that no protocol can cover every circumstance that may arise. Matters relating to individual witnesses will continue be dealt with on their merits on a case-by-case basis. In some cases, it may be appropriate to take submissions from Properly Interested Persons before a decision is taken on how to proceed.

I hope to be in a position to seek views on the draft Witness Protocol during this summer.

I would like now to tell you more about the September preliminary hearings that I will be holding.

Most outstanding inquests have been listed for a preliminary hearing during September. A provisional hearing schedule has been provided to legal representatives. I emphasise that cases have been provisionally scheduled for preliminary hearing by reference to the solicitor representing the families concerned as that appears to be the most efficient method.

The preliminary hearings provisional schedule does not yet include the set of inquests known collectively as 'the Stalker and Sampson inquests'. These will be listed for preliminary hearings on a date to be confirmed. Also, the three legacy inquests in which findings are pending and the legacy inquests at hearing are not included in the provisional schedule as they are already subject to judicial management.

At the September preliminary hearings, among other things, the court will wish to hear about state of readiness and the position with regard to disclosure. I will wish to be informed about specific factors that may impact upon sequencing and I will hear views on where an inquest should be held.

To ensure that the preliminary hearings are as effective and efficient as possible, I have asked legal representatives to review and, where applicable, update the position papers they provided to Lord Justice Weir's Review. I will also consider all representations and suggestions made. I am encouraged by the attendance today of many interested parties and I look forward to working with you all.

Again, I urge that this process is approached constructively and collaboratively.

In conclusion, I say this – it is important not to underestimate the immensity and complexity of the task of having legacy inquests heard within a 5 year period starting in 2020. However, along with the Lord Chief Justice and my

other judicial colleagues, we are committed to dealing with these cases which have now been in the judicial system for some time.

Thank you for coming and for your attention. I will reconvene again when the preliminary hearings are listed. In the meantime I look forward to receiving submissions from all interested parties which will move the process forward.