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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No:

Delivered: 26/01/2024

IN THE CORONER'S COURT IN NORTHERN IRELAND

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**BEFORE THE CORONER
HER HONOUR JUDGE BAGNALL**
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IN THE MATTER OF AN INQUEST INTO THE DEATH OF PATRICK DUFFY

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RULING IN RELATION TO LISTING THE INQUEST
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Introduction

[1] This inquest is to consider the circumstances of the death of Patrick Duffy. It is not in dispute that Mr Duffy was shot and killed on the 24 November 1978 at 2 Maureen Avenue, Derry. He was shot and killed in the course of an operation by what is referred to as a special military unit ("SMU").

[2] Following a process of case management, a five-year plan was devised to efficiently timetable the hearing of legacy inquests. This inquest was allocated a point in the plan for hearing in year 3 of 5 to be heard sometime between April 2023 and March 2024. There has been some slippage in that five-year plan but in the usual course of events the inquests would be each been held largely in accordance with the timetable.

[3] This inquest was assigned to me on 11 May 2022 and was opened on the 21 April 2023. I agreed to follow what has been described as a 'modular' approach. In short summary, that was to enable some limited evidence to be called at a hearing at a stage when the case was not ready for final hearing. I assessed that to be an appropriate process which would not negatively impact on the likely timescale for completion of the case. Moreover, I considered it important to the Next of Kin of Mr Duffy ("the NOK") that some evidence should be heard to ensure the case had commenced.

[4] The first evidence hearing took place on 21 April 2023. The case was opened by my counsel. I then received evidence from the family who gave me a very clear pen picture of the deceased. I also heard from Mr Murphy, an engineer, who had provided the family with a report some 20 years ago. He proved that report in evidence and indicated his willingness to update that report for the purposes of this inquest.

[5] At the end of that hearing the case was adjourned to allow investigations to progress, the most pressing of which concerned disclosure.

[6] I have held preliminary hearings to ensure progress was being made in the preparation of the inquest. A considerable amount of work has been completed in this case:

- a) PSNI non sensitive material has been disclosed to all Properly Interested Persons (“PIPs”).
- b) PSNI sensitive material has been received and the PII process should be completed by February 2024.
- c) MOD non sensitive material has been disclosed to the PIPs.
- d) MOD sensitive material will not be completed until July 2024. I will return to this issue later.
- e) MOD Personnel Files, these have been identified but will require PII.
- f) PPS non sensitive material has been disclosed to the PIPs.
- g) Attorney General material has been received. The disclosure of this material will not delay this case.
- h) FSNI material has been disclosed to the PIPs.
- i) Open Source material is presently being obtained and considered.
- j) The Coroners’ Office identified 18 potential military witnesses all of whom have been traced or confirmed deceased. Interviews with non-SMU military witnesses have commenced.
- k) The Coroner’s Office has requested the MOD carry out additional searches for other sensitive material. This work has yet to begin.
- l) Mr Murphy, consulting engineer has been retained on behalf of the Coroner, he previously provided a report for the Next of Kin in 2003, the Coroners’ Office is updating his instructions.
- m) Professor Crane has been retained on behalf of the Coroner and a letter of instruction is being prepared.
- n) Ms Ann Kiernan, a forensic ballistics expert has been retained on behalf of the Coroner to provide a ballistics report and a letter of instruction is being prepared.

[7] It suffices to note that for much of the period after the first module it was considered possible to have this case ready to be heard and concluded prior to 1 May 2024. The importance of that date is discussed below.

[8] It is regrettable that latterly issues have arisen in relation to the disclosure of sensitive information, and in particular that from the Ministry of Defence (MOD) with a possible impact on when this case can be listed for final hearing.

[9] In response to a direction given by me at a preliminary hearing on 4 October 2023, written submissions dated 17 October 2023 were lodged on behalf of the MOD and the PSNI. In those submissions it was indicated that significant further work

would be necessary before the MOD would be in a position to complete the process of providing sensitive materials for dissemination. The submissions did not provide an indicative date for the completion of the process but indicated that completion of the necessary work to allow for a hearing before 1 May 2024 would present enormous challenges .

[10] At a preliminary hearing on 26 October 2023 I directed that the MOD and PSNI provide a well-defined timeline containing an estimate for the completion of disclosure taking into account of:

- (a) the PII processes to be completed and
- (b) searches, to include both those in train and to be carried out.

[11] The response from the PSNI and MOD was contained in a written submission of the 13 November 2023, in which it confirmed that the PII process could not begin until 29 January 2024. They set out a timetable of work which is dependent on the work commitments of a limited number of SMU Subject Matter Experts (“SME”) who are currently committed to servicing other inquests which have already been listed. The timeline provided states that the MOD will not have a finalised bundle of material suitable for dissemination to the PIPs until 8 July 2024.

[12] In relation to the PSNI sensitive material PII process, it was stated that was not possible to give a definitive timeframe due to the number of applications being processed but it was expected that a PII hearing could be completed by late February 2024.

[13] In summary, the position was reached whereby the PSNI disclosure was likely to be completed within time to allow for a concluded inquest hearing by 1 May 2024, but the disclosure of MOD sensitive material could not be completed until a date in around July 2024, which is of course long after the 1 May 2024 deadline.

[14] The NOK did not accept the timeline put forward by the MOD. It was submitted on their behalf that this is not a very complicated inquest, and that the allocation of more resources could readily address the alleged difficulties.

[15] At a preliminary hearing on 14 December 2023, in light of the competing submissions, particularly those on behalf of the NOK which challenged the MOD’s asserted timeline, I considered the issue of such importance that I should not simply accept the factual submissions of MOD and I directed that a proper evidential basis should be provided by the MOD for the timeline by way of oral evidence from a witness with personal knowledge of the issues. Moreover, the hearing of evidence at an open hearing gave the opportunity to test what was being asserted.

[16] A hearing was convened for 11 January 2024 but had to be adjourned due to the illness of the MOD's witness. The hearing was relisted as soon as possible and took place on 19 January 2024.

[17] On 19 January 2024 I received evidence from Ms Lucy Ahad, who is Deputy Director in the directorate for judicial engagement policy in the MOD and has particular responsibility for NI legacy issues, including inquests. Ms Ahad confirmed she is the senior manager with responsibility for the case managers who coordinate work across the MOD, and she has input into inquests. She told me that she did not consider it possible to complete the outstanding work on disclosure by 1 May 2024 and indeed, after having looked at this issue carefully and the timetable already presented to the court, the 8 July 2024, was the best possible estimate. She confirmed she had not come to this conclusion lightly. She explained that the time to complete the work stretched to July because of the volume of work faced by the MOD at this time.

[18] Ms Ahad stated that her department has been faced with an unprecedented number of inquests going ahead between now and the end of April. She explained the pressure on resources in her department. When asked if the timetable could be reduced, Ms Ahad said that she had tested this but had come to the conclusion that it could not. She explained that the team working on legacy inquests had been resourced on the basis of a five year plan, but that this is not the environment they were now working in, with 20 inquests ongoing and 14 listed at present.

[19] A further issue for completion of sensitive disclosure is that this is an SMU case which necessitates the involvement of an SMU SME. She said that the workload for those working on inquests is unprecedented and, given the nature of the issues involved, including national security, everything had to be considered carefully and could not be rushed.

[20] Ms Ahad set out the work yet to be completed in this case:

- a) Complete searches
- b) Relevancy review
- c) Sensitivity review, which can be time consuming
- d) Co-ordinate with PSNI
- e) Create bundles
- f) Obtain opinion from counsel
- g) Make ministerial referral

[21] Ms Ahad was asked about additional resources and whether that could ameliorate the difficulties with disclosure. Ms Ahad advised the court that it is simply not a realistic proposal to recruit more individuals to carry out the work particularly that concerning the SMU at this juncture as there is a very limited pool of people with the appropriate knowledge, expertise, and security clearance, and furthermore it would take time to train them.

[22] Ms Ahad confirmed there was only one SME servicing all the SMU inquests and this has contributed to the timetable for completing disclosure of sensitive material in this inquest. She also gave evidence that even with additional resources the timeframe to complete disclosure and tracing would not be reduced by any meaningful amount and certainly not sufficiently to allow it to be completed before 1st May 2024.

[23] Ms Ahad described ongoing processes to recruit additional personnel to assist in disclosure. She had recommended a programme of recruitment. However, when asked whether these additional recruitments would happen and, if so, when she was unable to give any dates. These are, at most, possible additional resources which may become available at some date in the future.

[24] Ms Ahad was questioned by Mr Hutton KC, who is now leading counsel for the NOK. He fully tested Ms Ahad's assertions. Mr Hutton made a number of points, including the apparent risks of reliance on a system which appears to depend on the input of one SME expert. However, notwithstanding the questions put to her, Ms Ahad made no concessions to her evidence of the likely timescales for the MOD sensitive disclosure.

The Northern Ireland Troubles (Legacy and Reconciliation) Act 2023

[25] The above issues are of particular importance in light of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023. Section 44 provides a 'cut off' date of 1 May 2024 whereby any legacy inquest that has not completed, or completed save for the delivery of the verdict, will be automatically stopped.

[26] Without that legislation, this case would follow the usual path of obtaining all potentially relevant documentation and evidence, followed by a substantive hearing, whenever that point is reached. My focus has been on trying to complete those processes, save for my final decision, by 1 May 2024.

[27] It is the position of the Next of Kin that in light of section 44 of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 this inquest should be listed for hearing, regardless of its state of readiness. One central point relied upon by the NOK is that if a date is set the MOD would prioritise the progress of disclosure and appropriate resources would be allocated. It is common experience in many jurisdictions that the provision of formal hearing dates can focus minds and efforts, often to the benefit of the proceedings. As a general observation and approach I can see force in this submission.

[28] The NOK also submit that this case is very straightforward. The issues they say are narrow, namely whether the person or persons who shot the deceased can justify their use of force, and that these points could be easily covered in short evidence and the whole inquest could be concluded in around two to three weeks. Their central submissions is that the case can and should be listed for hearing in enough time to conclude prior to 1 May 2024.

[29] By supplemental submissions of 12 December 2023 Senior Counsel on behalf of the Soldiers A, C, and D set out the preparatory work to be undertaken after the MOD sensitive material has been disseminated. Not only has the court to hold a PII hearing, but the soldiers will not be able to provide statements until they have had sight of the expert reports and the sensitive material which will be the subject of the PII process. In addition to this, they reserve their right to obtain their own expert reports once they have seen the reports commissioned on my behalf.

[30] In essence, it is said by the former military witnesses that the 1 May 2024 deadline should not result in the case being listed if it is not ready. The completion of the sensitive disclosure process does not of itself indicate when a case is ready to start. Some more time will be required to assimilate the MOD sensitive material. I express no formal view on that but acknowledge some time may be required, although the extent of that time is not clear. Moreover, there may be case management powers open to me to expedite that aspect of the case.

[31] The MOD acknowledge the need to list the case as soon as appropriately possible but submit the case will not be ready before 1 May 2024 and should not be listed.

[32] I should make one further point clear. The MOD submissions include that the indicated timescale was given in the context of the documentation known to exist at this time. Further, that it is thought further investigations will be required that would give rise to additional material. In short, that the July 2024 was a best estimate and that in fact it was likely to be longer that in light of this additional work.

[33] I have not placed any significant emphasis on this additional submission. The further investigations are referred to in rather oblique terms. That may well be for entirely proper reasons, but it does not particularly assist me in making my assessment at this point in time. Moreover, no party has invited me to hold a closed session to discuss any matter that cannot be put in open. I am also presently disinclined to hold any closed hearing that would probably result in delaying this important issue.

Discussion

[34] The following core points arise:

- a) Do I accept the MOD's asserted timescale that sensitive disclosure will not be completed until around July 2024.
 - b) In light of my decision on a) should I list this case for a final hearing.
- (a) *My decision on the evidence*

[35] I have carefully considered Ms Ahad's evidence, including those points put in the questioning of her.

[36] I generally accept Ms Ahad's description of the time it will take to complete the disclosure of MOD sensitive information. No challenge was made to her truthfulness. I accept her evidence was broadly accurate. She was careful to acknowledge the limitations on her evidence. She gave indicated timescales and when pushed made clear these were intended to be realistic and informed estimates of the likely time tasks would take. It is important that she has specifically enquired if anything can be done to speed up the disclosure process in this case. Her evidence was, in summary, that the process cannot be materially expedited.

[37] I accept that the MOD cannot pick any particular case to work on and is obliged to share resources between the various inquests. I accept that resources which were considered broadly sufficient in respect to the five year plan are now under much more pressure.

[38] I do not pass any judgment on whether the MOD's actions to the present day are or are not sufficient. My assessment is focused on what can realistically be achieved in the future months.

[39] In summary, I accept that the MOD will not be able to complete the disclosure of sensitive material by such time to allow this case to conclude prior to 1 May 2024. That would require the present timeline - expected completion in around July 2024 - to be accelerated to completion by around the end of March 2024 at the very latest. I do not think that is realistically achievable and accept Ms Ahad's evidence on the point.

[40] My assessment of the need to complete disclosure by, at the very latest, end of March 2024 is on the basis that only very limited time is granted to the FMW's to consider that material and take further instructions, and then to allow a hearing date of three weeks with the verdict to follow. This is an estimate only and not indicative of a formal view on timetabling.

(b) Should I list the inquest?

[41] In light of my decision on issue (a) I ask myself whether the inquest should be listed for a final hearing.

[42] There is some dispute around the time estimate for this case. Estimates vary from as short as two weeks to four or more weeks. For my part I consider the inquest would take at least three weeks to complete, even if all PIPs were taking a very economic approach to the evidence.

[43] I acknowledge that I am under a statutory duty to carry out a full investigation into the death of Patrick Duffy. In general terms, this requires me to pursue all

appropriate lines of enquiry to ensure all potentially relevant information in the circumstances of Mr Duffy's death is properly considered. It is only by doing this that the interests of all PIPs can be properly protected.

[44] In my assessment it is not appropriate to list and hear this inquest in the absence of full MOD sensitive disclosure.

[45] The deceased was shot by a soldier or soldiers from the SMU. In those circumstances I consider the MOD sensitive information is very likely to be potentially relevant material and the material which has already been seen has been assessed as potentially relevant. I do not consider it appropriate to embark on the final hearing of this case when it is known that potentially relevant material exists but without it being disclosed (in whatever form is ultimately deemed appropriate) to the PIPs. That concern is all the more acute in an SMU case, where the non-disclosed material may be of very substantial importance to the case.

[46] The absence of this material impacts upon the overall inquest and any verdict's reliability, but also the respective positions of the PIPs.

[47] I acknowledge the NOK's stated position that the inquest can and should be listed. I sound a word of caution. The sensitive material may disclose matters which are of relevance to the issues they wish to explore.

[48] I further accept that it is only when disclosure has been provided that the individual soldiers can be fully advised in relation to the evidence they can or will give to this inquest. I have to bear in mind that the events which are the subject of this inquest date back some 45 years.

[49] I am the Coroner appointed to hear this case. My focus is on this case and the discharge of my duties to investigate this death. However, I do have to consider the wider pressures on the court estate. Resources are not limitless. Listing this case for three to four weeks will mean a court is unavailable to conduct any of the other very important business. I stress that this factor is not determinative of the issue.

[50] In light of all these issues I am satisfied that sadly there is no prospect of this inquest being conducted and concluded (save for my findings) in accordance with section 44 of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023. In the circumstances outlined above I do not see any sufficient merit in listing this inquest for hearing, I consider in the circumstances that would be a nugatory exercise and I am satisfied would not change the direction of travel in relation to progressing the outstanding issues, which can be addressed by ongoing case management.

Ongoing work

[51] I stress that my decision not to list this case should not be taken as a reason to stop the work being done in preparing this case. My duties to do what I can in the period up to 1 May 2024 remain.

[52] The PIPs are also under duties to assist me with disclosure. I formally direct that the ongoing work touched upon above and covered in more detail in evidence at the 19 January 2024 hearing continues.

[53] I further direct that I am provided with monthly updates of what work has been done by each of the PIPs to this case.

[54] I further consider that it will be necessary to have further preliminary hearings in this case to ensure that progress is actually being made.

[55] I acknowledge that this ruling will be profoundly disappointing to the NOK.

[56] I expressly state that I have read and taken into account all of the oral and written submissions of the PIPs on the issues discussed above.