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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY TERESA JORDAN

AND IN THE MATTER OF THE ISSUE OF DELAY IN CONDUCTING THE INQUEST AND THE CORONER FOR NORTHERN IRELAND

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Before: Deeny LJ, O'Hara J and McBride J

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DEENY LJ (delivering the judgment of the court)

[1] Teresa Jordan is the wife of Hugh Jordan who commenced proceedings, No: 2013/2996 in the Queen's Bench Division, seeking judicial review of a series of matters arising out of the 2012 inquest into the death of their son Pearse Jordan. By Order of the Court of Appeal of 1 May 2018 she has taken over carriage of the proceedings and attended the hearing before us. These matters were heard at first instance by Stephens J, as he then was, whose judgment is reported as *Jordan's Applications* [2014] NIQB 11.

[2] Both the Coroner and the Chief Constable of the Police Service of Northern Ireland ("PSNI") appealed against that decision in 2014 and Mrs Jordan cross-appealed against certain matters in that judgment which were not in her favour.

[3] These appeals and cross-appeal have been and are still being considered by the Court of Appeal in Northern Ireland per Morgan LCJ, Sir Paul Girvan and Sir John Gillen. However, that court found it necessary to direct the issue of alleged culpable delay on the part of the then Senior Coroner and/or HHJ Sherrard, as he now is (as Coroner) should be determined by a differently constituted Court of Appeal. This judgment is concerned solely with the delay challenge. The issue of damages, whether against the Chief Constable or, in the event of us finding against

them, a Coroner will be determined in due course by the previously constituted Court of Appeal.

[4] Ms Karen Quinlivan QC appeared with Ms Fiona Doherty QC for Mrs Jordan. Mr Sean Doran QC appeared with Mr Ian Skelt for the Coroner. Mr Peter Coll QC appeared with Mr Philip Mateer for the Department of Justice which had been joined as a respondent to the cross-appeal as the sponsoring department for the Chief Constable and the Coroners. We are grateful to all counsel for their written and oral submissions. They have all been taken into account even if not expressly referred to herein.

[5] This appeal was heard on 1 May 2018. As the damages hearing is listed for 31 May it is necessary for us to give this judgment in sufficient time before that date. In order to do so we have dealt with some matters somewhat more shortly than might otherwise be the case.

[6] Counsel for Mrs Jordan accepted that the court was concerned with the issue of culpable delay. The Coroners had to be at fault. The question therefore is: had Stephens J erred in concluding that the Coroners were not guilty of culpable delay?

Is the issue of delay academic?

[7] Mr Doran for the Coroners advanced the argument that the court should not in fact proceed to an examination of the judgment at first instance and the underlying facts because what was being sought by Mrs Jordan was merely academic and did not warrant the consideration of the court. He submitted that the only remedy available to Mrs Jordan on foot of this hearing was a declaration that at some point in the past prior to 2012 the Senior Coroner or Mr Sherrard, as he then was, had been responsible for some culpable delay.

[8] Not one but two inquests have in fact been held since then. The first was conducted by Mr Sherrard with a jury in 2012 but in 2014 Stephens J quashed those findings on the basis that the inquest proceedings were not compliant with Article 2 of the European Convention ("the Convention") and had failed to reach a sufficient verdict. Since then Horner J, sitting as a Coroner, conducted an inquest from February to May 2016 which is the subject of a separate appeal.

[9] Mr Doran relied on the fact that no award of damages can be made against the Coroner in these proceedings. This is as a result of s.9 (3) of the Human Rights Act 1998 which provides as follows:

> "9(3) In proceedings under this Act in respect of a judicial act done in good faith, damages may not be awarded otherwise than to compensate a person to the extent required by Article 5(5) of the Convention."

[10] There is no attack here on the good faith of the Coroners. Mr Doran cited Silber J at paragraph 36 of *R (Zoolife International Limited) v Secretary of State for the Environment* [2007] EWHC Admin 2995.

> "36. In my view, these statements show clearly that academic issues cannot and should not be determined by courts unless there are exceptional circumstances such as where two conditions are satisfied in the type of application now before the court. The first condition is in the words of Lord Slynn in Salem (supra) that "a large number of similar cases exist or anticipated" or at least other similar cases exist or are anticipated and the second condition is that the decision in the academic case will not be fact-sensitive. If the courts entertained academic disputes in the type of application now before the court but which did not satisfy each of these two conditions, the consequence would be a regrettable waste of valuable court time and the incurring by one or more parties of unnecessary costs."

[11] The passage from the speech of Lord Slynn, with whom the four other law lords agreed, deserves to be set out in full. It is to be found at *R v Secretary of State for the Home Department, ex parte Salem* [1999] 2 All ER 42, HL at 47; [1999] 1 AC 450.

> "My Lords, I accept, as both counsel agree, that in a cause where there is an issue involving a public authority as to a question of public law, your Lordships have a discretion to hear the appeal, even if by the time the appeal reaches the House there is no longer a *lis* to be decided which will directly affect the rights and obligations of the parties inter se. The decisions in the *Sun Life* case and *Ainsbury v Millington* (and the reference to the latter in rule 42 of the Practice Directions applicable to Civil Appeals (January 1996) of your Lordships' House) must be read accordingly as limited to disputes concerning private law rights between the parties to the case.
>
> The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example (but only by way of example) when a discrete point of

> statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future."

[12] It can be seen from that authoritative statement, which finds echoes in other decisions of the highest court, that the courts, and perhaps particularly appellate courts, should not be troubled by deciding issues of historical fact which do not involve a question of public law. It would not be a proper use of public resources for one arm of the judiciary to use court time merely for the purpose of criticising another member of the judiciary for delay that occurred at some date in the past. It differs from the situation in a criminal prosecution where an accused person convicted of a crime may, on the authorities, hope for a reduction in the sentence if there has been culpable delay on the part of the prosecution. As indicated above it differs from the situation where damages might be awarded for delay.

[13] However, in response before the court Ms Quinlivan drew attention to two relevant matters. Firstly, she relied on the decision of the first section of the European Court of Human Rights ("ECtHR") in *Hammerton v The United Kingdom*, 12/09/2016. Mr Hammerton, following a divorce and in the course of contact proceedings regarding 2 of his 5 children, gave an undertaking not to communicate with his former wife or her parents. On 27 July 2005 HHJ Collins heard an application for committal against him by the wife and committed him to prison for 3 months. He was unrepresented at that hearing. Furthermore, the judge heard the application for contact at the same time as the application to commit for contempt thus confusing the quite different concepts involved. The Court of Appeal, per Moses LJ, was critical of the judge's actions in this regard. Among the provisions considered by the ECtHR was section 9(3) as well as section 8 of the 1998 Act.

[14] The court considered matters regarding the alleged violation of Article 13 of the Convention, which requires "an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity". It found the complaint that there was a breach of Article 13 admissible in the light of the clear provision of section 9(3) and went on to find a violation of Article 13. Ms Quinlivan therefore says that if this court were to find for her and reverse the finding of Stephens J she could, and would, argue that section 9(3) of the 1998 Act was incompatible with the Convention and that her client was entitled to damages. I observe that Article 13 is not a Convention right under the Human Rights Act 1998.

[15] She secondly argued that, although the Chief Constable is not appealing the finding that the police were responsible for culpable delay interfering with the holding of the inquest into the death of Pearse Jordan, he was nevertheless arguing that he should not be held responsible for all the delay. If he succeeded in that before

the differently constituted Court of Appeal, it was conceivable that this would impact on Mrs Jordan's right to damages. It was therefore, she submitted, conceivable that Mrs Jordan would be assisted in practical terms by finding that the Coroner was also responsible for culpable delay.

[16] We have taken the submissions into account and have concluded that the safer course to adopt on the particular facts and questions before us is to assume that the issue of past delay is not academic and should be considered by this court against the background of these legal submissions and the unusual history of the matter, in particular the two differently constituted Courts of Appeal dealing with the one appeal.

Appellant's case

[17] The appellant argues that the Coroner, as well as the PSNI, failed to ensure the prompt holding of an Article 2 compliant investigation into the death of Pearse Jordan between 4 May 2001 and 24 September 2012. The former date is the date of delivery of judgment of the ECtHR in *Hugh Jordan v The UK* [2003] 37 EHRR 2, in which the appellant received an award of damages and a declaration that there had been a violation of his Article 2 rights by reason, *inter alia*, of the delay in holding the inquest between the date of death and that date. The latter date is the date on which the inquest before Mr Sherrard actually commenced. It is further argued that this delay was a breach of the Coroner's duties pursuant to Rule 3 of the Coroners (Practice and Procedure) (NI) Rules 1963 which require an inquest to "be held as soon as is practicable after the Coroner has been notified of the death".

[18] The appellant cited a number of cases in which delays of more than two years were criticised, and one case of 7 months delay: *Mongan* [2006] NIQB 82 where the judge declined to make a declaration. We heard submissions citing *Jordan v The UK* which we have taken into account. It is clear from these authorities that a realistic approach is taken. Short periods of delay of a few weeks or so from time to time are viewed as inevitable in the conduct of the judicial process and longer periods may well be justified. But here, submits the appellant, there is a delay of some 11 years before the inquest before Mr Sherrard was heard. While it is acknowledged that there were many reasons for such a long period of time elapsing it is contended that the conclusion of Stephens J at first instance that the Coroner was not responsible for any culpable delay was wrong.

[19] Stephens J dealt with the issue of delay at [341] to [359] of his judgment. His judgment relied on the judgment of Hart J delivered 17 July 2009 under the citation [2009] NIQB 76. I will return to that in a moment.

[20] One discrete issue might be dealt with at this time. He cited with approval the decision of the Court of Appeal in [2009] NICA 64 with regard to the unsatisfactory nature of the current state of coronial law. Part of the findings of

Hart J was that delay was attributed to deficiencies in the Coroners' Rules as well as to the actions of the PSNI but not to the Senior Coroner who was seized of the matter from 2001 to 2009.

[21] At [347] Stephens J expressly found the following:

> "The obstacles and difficulties that impact on the Senior Coroner and the Coroner is (sic) the state of coronial law. The Senior Coroner and the Coroner are not responsible for coronial law. I dismiss this judicial review challenge in respect of them."

So far as that is concerned we are fully in agreement with the trial judge. The Coroners are there to apply and implement the law as it stands and they cannot be blamed for its flaws and uncertainties.

[22] The appellant does point out that apart from that reference to the Coroner the trial judge here does not address the issue of alleged delay on the part of Mr Sherrard as Coroner between the time he took over in October 2009 and the time the inquest finally started before him in September 2012.

[23] However, it is right to note that at [9] the judge says the following:

> "I seek to deal with all the diverse issues raised by the applicant but if in the event I have not expressly dealt with any issue then I make it clear that I decide that issue against the applicant on the basis of the evidence or on the oral or written submissions of the respondent or notice party or in the exercise of discretion."

The judgment is of 129 pages and it is understandable if the judge did not go into detail on this aspect of matters. His reference to the Coroner as well as the Senior Coroner shows he was mindful of the role of Mr Sherrard in the matter from 2009.

[24] The judge implicitly treated the judgment of Hart J as binding on him as if it were *res judicata* without expressly committing himself to the application of that maxim. His judgment endorses the earlier findings.

Res judicata?

[25] Mr Doran for the Coroner did rely on the judgment of Hart J in 2009 and submitted that the doctrine of *res judicata* did apply and was properly followed by Stephens J at first instance in this case.

[26] Ms Quinlivan in her written submissions at paragraph [38] said the following:

> "Whilst Stephens J may have considered himself bound by the judgment of Hart J the Court of Appeal is not so bound."

We consider this a fallacious argument. If the doctrine of *res judicata* is applicable in this judicial review context and applicable also on the facts of this particular case then it was lawful for Stephens J to follow the judgment of Hart J. This court can only quash the decision of the judge at first instance if it is in error. If it was a lawful exercise of the doctrine by the judge at first instance it must stand and we are as bound as he in effect by the judgment of Hart J on this mixed issue of law and fact.

[27] The court which did hear the appeal from the decision of Hart J in 2009 was in a slightly unusual position. The application before Hart J in 2009 was to compel the Senior Coroner, Mr Lecky, to recuse himself from hearing the *Jordan* inquest. One of the grounds relied on by Mr Hugh Jordan at that time through his legal representatives was alleged culpable delay on the part of the Senior Coroner. Hart J dealt with the issue very comprehensively; see [43], [83] to [95], pages 375 to 382 of his judgment. I set out the conclusions of the learned judge commencing at [94]:

> "Throughout the entire period not only was the Senior Coroner making every effort to fix dates, but he had to deal with voluminous and detailed correspondence from the parties in relation to this matter. He rapidly responded to the matters raised therein and, where necessary, as I have already pointed out, fixed deadlines for the production of documents.
>
> [95] In the applicant's written submissions at [61] and [62] it is asserted that the Senior Coroner has failed to realise the importance of a prompt hearing of the inquest and that there is no evidence that he has accorded it any sense of priority. I am satisfied that the sequence of events that I have described in this part of the judgment establishes that these assertions are unfounded, and that the Senior Coroner has made every effort to ensure, so far as lies within his power, that the inquest is heard. I am satisfied that the applicant has failed to satisfy the Porter v Magill test under this heading."

[28] That judgment was appealed to this court by Hugh Jordan. The decision of this Court, per Girvan LJ, is reported at [2009] NICA 64. In the course of the first

day's hearing the court raised the question whether in all the circumstances the Senior Coroner might conclude that although he had "strongly refuted" the allegations of apparent bias it might nevertheless be in the best interests of the conduct of the inquest for a different Coroner to preside. The Coroner reflected on this overnight and on the following morning his counsel informed the court that he did wish to stand down. There was therefore no hearing of the original case before Hart J or the somewhat amended case before the Court of Appeal. Girvan LJ said the following at [7]:

> "This court has made no decision on the points which were raised by Mr McDonald yesterday on the issues of bias and we have not heard argument on the remaining issues that are alleged. The onus clearly lies on an appellant on the issues and the appellant is faced with a compelling judgment of first instance which is assumed to be correct until it is shown otherwise."

[29] The appellant here, therefore, is able to argue that, for good reason, the decision and judgment of Hart J on the issue of delay has not been the subject of a previous appeal hearing. Against that there is identity of parties between that judgment of Hart J and this contest and identity of issue so far as delay is concerned.

[30] The issue of *res judicata* and cause of action estoppel was considered by the Supreme Court in *Regina (Coke-Wallis) v Institute of Chartered Accountants in England and Wales* [2011] 2 AC 146; [2011] UKSC 1. Delivering the judgment of the court Lord Clarke of Stone-cum-Ebony cited with approval the judgment of Diplock LJ in *Thoday v Thoday* [1964] P 181 basing the doctrine on the Latin maxim "nemo debet bis vexari pro una et eadem causa." That might be translated as meaning that no one ought to be vexed twice for one and the same cause of action. His Lordship made it clear that the principle applied to cause of action estoppel and issue estoppel. Given that delay was only one issue in the case for recusal made by Hugh Jordan on behalf of his son before Hart J in 2009, if *res judicata* applies here it applies as issue estoppel.

[31] We were referred to Halsbury's Laws of England, Volume 11, relating to *res judicata*, paragraphs 1603 to 1628; also to Wade on Administrative Law and to Anthony 2nd Edition para 3.27. Undoubtedly there will be some limitations on the use of *res judicata* in public law proceedings. However, it is clear that the doctrine is, on authority, applicable in public law proceedings. Lord Clarke in *Coke-Wallis* cites with approval an earlier decision of the House of Lords at paragraph [27] of his judgment:

> "In *Thrasyvoulou v Secretary of State for the Environment* [1990] 2 AC 273, where an issue was held to arise out of it a determination of a planning application, the

principle was held to apply to public law proceedings. Lord Bridge (with whom the other members of the Appellate Committee agreed) stated the general principle and emphasised its fundamental importance in this way, at p. 289:

> 'The doctrine of res judicata rests on the twin principles which cannot be better expressed than in terms of the two Latin maxims "interest reipublicae ut sit finis litium" and "nemo debet bis vexari pro una et eadem causa". These principles are of such fundamental importance that they cannot be confined in their application to litigation in the private law field. They certainly have their place in criminal law. <u>In principle they must apply equally to adjudications in the field of public law.</u> In relation to adjudication subject to a comprehensive self-contained statutory code the presumption, in my opinion, must be that where the statute has created a specific jurisdiction for the determination of any issue which establishes the existence of a legal right, the principle of res judicata applies to give finality to that determination unless an intention to exclude that principle can properly be inferred as a matter of construction of the relevant statutory provisions'.

The House of Lords thus stressed the importance of the res judicata principle in terms which in my opinion apply equally to cause of action estoppel and to issue estoppel."

(Emphasis added)

[32] As more than one issue was being canvassed in the earlier proceedings issue estoppel is applicable here, as we have pointed out. We respectfully adopt the view expressed by Lord Clarke and Lord Bridge that the doctrine is generally applicable to public law, albeit subject to the need to yield to issues of illegality or public interest on appropriate occasions. The importance, highlighted by Lord Bridge, of

the principle that it is in the interests of the public that there should be an end to litigation is fully applicable here. We note that Halsbury's Laws echoes that at paragraph 1605 from the above section:

> "It is a fundamental doctrine of all courts that there must be an end of litigation."

Where a judge properly charged with an issue or cause of action has given judgment upon it, it is contrary to the public interest to have the matter reheard again unnecessarily. The Supreme Court has recently emphasised the importance of appellate courts not interfering too readily with decisions on an issue of fact by a judge at first instance: *DB v Chief Constable PSNI* [2017] UKSC 7. Consistent with that one judge should not lightly repeat the work done by another judge on a previous occasion.

[33] The issue here is one of delay. If courts duplicate the work done by previous courts they are not available for that period of time to deal with other cases. There is therefore an inherent contribution to delay if the principle of *res judicata* is not followed.

[34] However, in this case we do note that the appellant did not have a hearing of its challenge on appeal to the conclusions of Hart J on the issue of delay. We also note that he was approaching this matter from the point of view of the appearance of bias as he makes clear from his concluding reference to *Porter v Magill*. In those circumstances we have concluded, *ex abundante cautela*, that we should not base our decision on his judgment but should consider the issue of delay on the part of the Coroner ourselves. His findings, made when the first period of alleged delay was proximate in time, remain nevertheless a relevant consideration to be taken into account.

Was there culpable delay on the part of the Coroners?

[35] This court has considered the affidavit evidence exchanged between the parties; that is, the 4 affidavits of Fearghal Shiels of Madden and Finucane, solicitors for the appellant, and the affidavits of Rosalind Johnston, solicitor for the Coroner. She in turn exhibits affidavits sworn by Mr John Lecky and Mr Brian Sherrard, the Coroners.

[36] We have also considered the written and oral submissions of counsel for the appellant and the respondent. The former submissions included an appendix identifying the periods of delay alleged by the appellant.

[37] We have considered these papers and these submissions. Addressing the first period of alleged delay from 4 May 2001 to 28 March 2007 we are satisfied there was no culpable delay on the part of the Senior Coroner. We feel this matter is fully dealt

with in the judgment of Hart J and adopt his conclusions. In particular, we cannot see how the Coroner can be criticised now for an adjournment that was expressly approved by this court. Nor are we willing to criticise him for opting to follow one decision of this court insofar as it conflicted with an earlier decision of the court, albeit directly related to these proceedings. He was entitled to follow the more recent decision in *PSNI v McCaughey* [2005] NICA 1 at [38] to [45] per Kerr LCJ.

[38] The prolonged nature of this case is partly due to the fact that the law in this area has in part evolved from the decisions relating to this particular inquest. There has been little short of a revolution in legal terms in the approach to inquests since the death of Pearse Jordan. From a simple inquiry conducted by a doctor or lawyer we have reached the stage where the Lord Chief Justice has now found it necessary to ask High Court judges to conduct inquests, so complex has the procedure and law relating to the same become, certainly so far as deaths involving the State are concerned. It would be wrong to condemn the Coroner acting in good faith struggling to cope with that difficult gestation process.

[39] On 20 March 2007 the House of Lords delivered judgment in *Jordan v The Lord Chancellor* [2007] 2 AC 226; [2007] UKHL 14. That clarified, at least for a time, two major issues relating to disclosure and the nature of the verdict and the process of arriving at a verdict.

[40] We were surprised that the Senior Coroner did not then convene a preliminary hearing with a view to re-arranging the inquest in the light of that judgment until 5 September 2007. Ms Quinlivan drew to our attention that her solicitor had written on 4 May 2007 seeking such a hearing. Hart J does not expressly deal with this point at [89] of his learned judgment.

[41] In the light of the concern expressed from the Bench the Coroner's senior legal adviser, Rosalind Johnston, lodged, with the leave of the court, a short affidavit on 9 May 2018, exhibiting all correspondence between the Senior Coroner and the interested persons for the period from 28 March 2007 to September 2007. What had not, until then, been drawn to our attention by counsel for the appellant was that the Senior Coroner, Mr Lecky, had replied on 15 May 2007 in the following terms to Madden and Finucane.

> "I have received (by fax) your letter of 4 May.
>
> The matter of progressing the inquests into the death of Pearse Jordan and the other inquests held back pending the decision of the House of Lords, is being considered by the Presiding Judge, Mr Justice Weir."

That letter may have been prompted by or crossed with a further letter from Madden & Finucane of 15 May 2007.

[42] We observe that it was an entirely proper step for the Coroner to consult the Presiding Judge for coronial services, Weir J, at that time. The correspondence does not disclose when he replied. Certainly, it explains the first part of the lapse of time in that period.

[43] The reference to other inquests is also a useful reminder of the dangers of a court, including an appellate court, examining matters through the wrong end of a telescope. An issue which was just one of many being considered by a decision maker or a judge is focussed on at a hearing in a way that can lead to a distorted view of its importance at the time because it is now being looked at in isolation.

[44] It is clear from the affidavit evidence that there was a heavy burden of inquests to be discharged by the Coroners throughout this period and that this inquest was just one of many, albeit more prominent than most.

[45] In any event the Senior Coroner then wrote further to Mr Shiels on 22 June saying that he intended to make arrangements to hold "the inquest as soon as possible in the new term". Before doing so it was necessary, he said, to convene a preliminary hearing to fix a date for the hearing. That cannot be quarrelled with. One of the issues was the presence and role of Sergeant A.

[46] Those living in this jurisdiction will appreciate that the long vacation runs from July to August and therefore convening any hearing during those months is likely to be fraught with difficulty in getting the necessary persons to attend. We note that Mr Shiels replied in a letter of more than two pages on relevant issues on 5 July and that the Senior Coroner replied the same day. We note there was correspondence with the solicitors for the police as well and that further correspondence passed between the Senior Coroner and Madden & Finucane leading up to the preliminary hearing on 5 September and, indeed, recording what happened at that time.

[47] We gave leave to the appellant to put in a note in response to this further affidavit. We must correct one matter stated in that response i.e. we did not permit further submissions on behalf of the Coroner after the hearing but merely the production of correspondence. The appellant is not entitled to complain of this because her counsel failed to draw to the court's attention the reply of the Senior Coroner to her solicitor's letter of 4 May 2007. There was a short response by Ms Johnston to these additional submissions on behalf of the appellant.

[48] The court is satisfied that there was no culpable delay on the part of the Senior Coroner between the decision of the House of Lords on 28 March 2007 and his holding of the preliminary hearing on 5 September 2007.

[49] We have considered the period from September 2007 until the decision of the Court of Appeal in Northern Ireland in October 2009, when the Senior Coroner opted to stand down from conducting the inquest himself. Like Hart J we are satisfied that there was no culpable delay on his part between those dates and we adopt his conclusions.

[50] The third period to be considered is the period after Mr Sherrard, as he then was, took over responsibility for the inquest. It is accepted by the appellant that he was entitled to a period of time in which to read himself into the case.

[51] He is criticised for a further period of a few months while a PII protocol was drafted and prepared. We consider this an unfair criticism. Once wider disclosure by the police of intelligence documents was required following the decision of the House of Lords in 2007 it was almost inevitable that PII issues would arise. It seems to us entirely proper for Mr Sherrard to have thought it wise to have a protocol or Procedure, as it is in fact entitled, so that these issues could be dealt with on a consistent and efficient basis. We reject this criticism of him. The Procedure itself gave rise to further debate and challenge, again, not surprisingly in all the circumstances.

[52] The next period with regard to which the appellant is critical is from April 2010 until October 2011. This resulted from the Coroner's ruling that it was necessary to adjourn the inquest to have searches of the Stevens' database carried out because the material in it might impact on his conduct of the Jordan inquest. The appellant says counsel objected to this course because the Jordan case was not a case of collusion or alleged collusion unlike that dealt with by the Stevens' team. Ms Quinlivan acknowledged in her submissions that the Coroner, perhaps particularly later on, was in a difficult position when the PSNI could not state that it had searched that database to ascertain if there was anything relevant to Jordan.

[53] Mr Sherrard dealt with this issue in his affidavit lodged on 21 August 2013 and exhibited to the affidavit of Ms Johnston in the appeal before us. It is best to quote his paragraph 6 in its entirety:

> "In paragraphs 54-59, Mr Shiels addresses the postponement of the commencement of the inquest due to the searches of the Stevens' database. I can confirm that I was not prepared to proceed with the inquest in circumstances where:
>
> (a) there was a real possibility that the Stevens' database contained material that was potentially relevant to the Jordan inquest; and

> (b) the PSNI was not in a position to confirm that its Section 8 duty of disclosure had been discharged without a search of the database having been conducted.
>
> I took the view that the search was necessary in the interests of protecting the integrity of the inquest and the right of the next of kin to disclosure of relevant matter. Ultimately, the search produced a large volume of material of which a very small number of documents was potentially relevant to the issues in the inquest."

[54] We consider that this was an understandable decision which the Coroner made and well within the exercise of his own discretion. It may be that the PSNI was guilty of delay in bringing this matter to a conclusion but that is not for this court.

[55] The final period, again not dealt with at first instance or by Hart J, runs from October 2011 until the hearing of the inquest by Mr Sherrard in September 2012. The appellant complains that on 23 September 2011 the Coroner adjourned the inquest because of the late disclosure of the fact that two policemen involved in the death of Pearse Jordan, Officers M and V, had been investigated as part of the Stalker/Sampson Inquiry and had made false statements to CID investigators in the course of those investigations. The appellant complains that the Coroner adjourned the matter despite both Mr Jordan and the Chief Constable opposing this course. The inquest was adjourned initially until June 2012.

[56] Mr Sherrard dealt with these points in an affidavit of 17 September 2012 sworn in other judicial review proceedings to which I will refer in a moment. We find his explanation entirely reasonable. He had not read the Stalker/Sampson report himself and nor had senior counsel for Mr Jordan at that time. The serious issues regarding Officers M and V were important not only for credibility but might possibly have "similar fact nuances", he averred. We consider his decision to adjourn the matter legitimate in the circumstances.

[57] Any further delay leading up to the period when the inquest was finally heard in September 2012 rather than June 2012 is alleged by the appellant to be the fault of the Security Services. We would also observe that in that period there was not one but two further judicial review applications with which the Coroner had to deal.

[58] In *Officers C, D, H and R's Application* [2012] NIQB 62 I dealt with the applications of a number of police officers against the Coroner's ruling refusing them anonymity. I note that as the hearing was listed for commencement on

12 September I sat in the vacation in August as did, of course, counsel for the four parties represented. The Coroner swore an affidavit for the case and was presumably involved in instructing his counsel.

[59] The judgment is 47 pages long which gives some indication of the complexity of the decisions the Coroner had to make in regard to a considerable number of witnesses in the lead up to this inquest.

[60] Furthermore, although not mentioned in counsel's submissions, Mr Jordan himself brought judicial review proceedings regarding the handling of the Stalker/Sampson narrative and reports which were the subject of my judgment: *Hugh Jordan's Application* [2012] NIQB 64. This further illustrates the burden on the Coroner in dealing with these matters.

Conclusion

[61] It is important for the courts not to engage in hearings with no practical purpose. Nevertheless, as recorded at [7] to [16] above, we conclude that the application by the appellant here regarding the issue of delay on the part of the Coroner between 2001 and 2012 is not entirely academic.

[62] We also considered whether the earlier judgment of Hart J in *Re Jordan's Application* [2009] NIQB 76 constituted *res judicat*a binding not only on Stephens J but on ourselves. For the reasons set out at paragraphs [25] to [34] we conclude, on balance, that that was not the case but acknowledge the role of the doctrine of *res judicata* in judicial review and the relevance of the judgment to the issue here.

[63] Having considered the actual allegations of delay as set out in paragraphs [35] to [60] above we have concluded that there was no culpable delay on the part of the Senior Coroner or the Coroner who succeeded him in the conduct of the Jordan Inquest. We find in their favour in this matter. The issue of delay by the police has been decided previously.