

APPROVED

**THE HIGH COURT  
JUDICIAL REVIEW**

[2022] IEHC 598

[2022 156 JR]

**BETWEEN**

**EAMONN BUTTERLY**

**APPLICANT**

**AND**

**MYRA CULLINANE, CORONER FOR THE DUBLIN DISTRICT, THE MINISTER  
FOR JUSTICE, IRELAND, AND THE ATTORNEY GENERAL**

**RESPONDENTS**

**AND**

**THE FAMILILES OF THE 47 DECEASED REPRESENTED BEFORE THE  
STARDUST INQUEST BY PHOENIX LAW, PATRICIA KENNEDY (MOTHER OF  
MARIE KENNEDY), THE COMMISSIONER OF AN GARDA SÍOCHÁNA AND  
DUBLIN CITY COUNCIL**

**NOTICE PARTIES**

**JUDGMENT of Mr. Justice Charles Meenan delivered on the 2<sup>nd</sup> day of November,**

**2022**

**Introduction**

1. On 13<sup>th</sup> February 1981 a “St. Valentines night disco” was advertised for the Stardust in Artane, Dublin. 846 people were admitted to the Stardust that evening. In the early hours of

the following day, St. Valentine's Day, a devastating fire took place leaving 48 people dead and 128 seriously injured. Most of the victims were aged between 18 and 25 and came from the neighbouring areas of Artane, Kilmore and Greater Coolock. I have appended to this judgment a list of the names and addresses of those who lost their lives that night.

2. The deaths and serious injury to so many young people resulted in grief and loss to all the families involved. Even though this tragic event took place some 41 years ago, this grief and loss has not diminished and has been compounded by a strong sense of injustice. This injustice focusses on the belief that there has been a failure to properly answer the most basic questions of where and how the devastating fire started.

3. The Applicant is a retired businessman. In 1979 the applicant became the managing director of Silver Swan Ltd and general manager of the premises consisting of the Silver Swan, the Lantern Room, and the Stardust. The first named respondent is the Coroner for the Dublin District (the Coroner).

4. The Notice Parties to this application are the families of 47 of the deceased and Patricia Kennedy, mother of Marie Kennedy, deceased ("the Families"). The Commissioner of An Garda Síochána and Dublin City Council have also been named as notice parties.

### **Legal Background**

5. Following the Stardust tragedy, it fell to the legal system to establish the circumstances and explain the deaths and injuries of those involved. It was also necessary to identify any deficiencies in the relevant building regulations and shortcomings in the fire service so as to prevent such a tragic event occurring again.

6. On 15<sup>th</sup> February 1981 the Government announced that a public inquiry would be held into the disaster and that this would take the form of a Tribunal to be established under the provisions of the Tribunals of Inquiry (Evidence) Acts, 1921 and 1979. The terms of reference of the Tribunal were broad and included:

- (i) The immediate and other causes of, and the circumstances leading to the fire at the Stardust Club, Artane, on 14<sup>th</sup> February, 1981.
- (ii) The circumstances of and leading to the loss of life and personal injury at the Stardust Club on 14<sup>th</sup> February, 1981.
- (iii) The adequacy of the legislation, statutory regulations, and byelaws relevant to fire prevention and safety --- and the conduct, running, supervision, and official inspection and control of, the Stardust Club and the adequacy of the application, observance and enforcement of such legislation, statutory regulations, and byelaws in relation to the Stardust Club.
- (iv) Make such recommendations in relation to fire, fire prevention and means and systems of emergency escape from fire their adequacy and enforcement.

7. Mr. Justice Ronan Keane (as he then was) was nominated as the Sole Member of the Tribunal (the Keane Tribunal).

8. The Keane Tribunal commenced hearing oral evidence on 6<sup>th</sup> April 1981 and sat for 122 days. On 30<sup>th</sup> June 1982, some fourteen months after its first sitting to hear evidence, Mr. Justice Keane presented his report to the Minister for the Environment.

9. The report of the Keane Tribunal is very detailed and extensive. There are ten chapters covering, *inter alia*, the scene of the fire, the evacuation of the building, the rescue operations, deaths and injuries, cause of the fire and why the fire spread. Chapter 9 sets out specific and detailed recommendations concerning fire safety, requirements to be included in building and management regulations and the enforcement of such regulations. There are also recommendations concerning the structure, organisation, and equipment of fire services. Many of these recommendations have been implemented. Though there have been tragedies over the past 41 years, most recently at Creeslough, County Donegal, these are rare events. The fact that

these tragic events are infrequent must be a legacy of the recommendations in the report of the Keane Tribunal.

**10.** Much commentary and subsequent legal steps have concentrated on one aspect of the report namely, the cause of the fire. Page 243 of the Keane Tribunal report states:

“6.204 In these circumstances, the Tribunal has come to the conclusion that the more probable explanation of the fire is that it was caused deliberately. It is also satisfied that it was probably started in the West Alcove and not in the roof space. ---”

**11.** Inquests into the deaths were held over five days from 1 – 5 March, 1982. In respect of every one of the 48 deaths an inquest verdict was recorded in accordance with the medical evidence.

**12.** In June 1983 a claim was brought by the owners of the Stardust for compensation for malicious damage. The Circuit Court determined after a two day hearing that the fire had been started maliciously.

**13.** In 2008 Mr. Paul Coffey S.C. was commissioned by the Government, following submissions by the families, the Stardust Victims Committee, challenging the findings of the Keane Tribunal to consider the Report and to examine the case for a renewed inquiry into the fire. Mr. Coffey S.C. concluded that the finding by the Keane Tribunal that the fire had been caused deliberately was not objectively justifiable on the evidence. However, he also came to the view that it would not be possible to establish the cause of the fire based on any new evidence that was available to him.

**14.** In 2017, following the submission of further information and evidence put forward by the families, the Government appointed retired Circuit Court Judge Pat McCartan to review the matter. Judge McCartan concluded that the information and evidence supplied did not amount to new or updated evidence such as would warrant a further inquiry.

15. On 31 March 2019 an application was made to the Attorney General by Antionette Keegan and relatives of 42 of the 48 persons who lost their lives in the fire requesting that the Attorney General direct fresh inquests pursuant to s. 24 of the Coroners Act, 1962 – 2020 (the Coroners Acts). The application was supported by an extensive written submission from Phoenix Law. This submission referred to the finding of the Keane Tribunal as to the cause and locus of the fire and to the subsequent report from Mr. Paul Coffey S.C. The submission referred to a motion passed by Dáil Éireann on 3 February 2009 which “acknowledges the cause of the fire is unknown, the original finding of arson is a mere hypothetical explanation and is not demonstrated by any evidence and that none of the persons present on the night of the fire can be held responsible for it...”. The submission also detailed fresh evidence concerning the fire.

16. The Attorney General, having considered the submission pursuant to s. 24 of the Coroners Act directed that a new inquest be held into the deaths of the 48 people. In a letter to the Coroner, 19 December 2019, the Attorney General stated:

“The findings at the original inquest were confined to a statement of the proximate medical cause of death in respect of each of the deceased. There was no reference to the surrounding circumstances, in particular the cause or causes of the fire, and it does not appear that questions as to the cause or causes of the fire were canvassed to a sufficient degree, if indeed at all, at the original inquests. I therefore consider that in the original inquests there was an insufficiency of inquiry as to how the deaths occurred ..”

### **The Inquest**

17. Holding inquests into the deaths of those involved some 41 years after the fatal fire presents enormous difficulties. Sadly, many of the parents and relatives of those who lost their lives are now deceased. Given the complexities involved it was entirely appropriate for the Coroner to hold a number of preliminary hearings to indicate how matters would proceed and

set out the scope of the inquests. A number of hearings were held between October 2020 and February 2022. These hearings involved interested parties including the applicant and the families.

**18.** Following a number of preliminary hearings the Coroner circulated to the applicant, families, and other interested parties a document entitled:

**“The Stardust Fire Inquest**

**Provisional ruling on scope of the inquests and certain procedural matters”**

This document clearly identified the central role that the applicant would play in the inquest hearings. I will return to this document later in the judgment though it should be noted, at this stage, that there was no reference to possible verdicts that could be reached by the jury at the inquests. Following the circulation of the document there was further correspondence and submissions from the interested parties.

**19.** On 10 December 2021 in response to another document circulated by the Coroner entitled “Draft uncontroversial facts” Phoenix Law, on behalf of 47 of the families stated that:

“The question of unlawful killing, in connection with ... all the circumstances of the fire, including the conduct of the Stardust management, staff and agents, should be determined from primary evidence where possible”

and:

“It is at least arguable that in all the circumstances, including the conduct of the Stardust management, staff and agents, the deaths of the deceased amounted to unlawful killing, by gross/criminal negligence manslaughter ..”

A further pre-inquest hearing took place on 15 December 2021. There were further submissions from An Garda Síochána and Dublin City Council. The applicant submitted that it would not be appropriate for the Coroner to commence the hearing of the inquests without first making a

decision as to whether one of the possible verdicts, unlawful killing, could be left to the jury. The applicant sought a determination from the Coroner to rule out a verdict of unlawful killing.

20. Following further submissions, the Coroner gave her ruling on 16 February 2022 as follows:

“I therefore refuse the relief sought, namely a ruling that a verdict of unlawful killing should be ruled out at this juncture, on the grounds that:

- (a) This would invert the normal inquest process, which requires an investigation into the matters set out in s.18A of the Acts prior to reaching findings or a verdict;
- (b) It is not within the power of the Coroner or the jury (as the case may be) to contravene ss. 30 or 31 of the Act;
- (c) Appropriate directions will be given by the Coroner to the jury at the opening address, in the closing address, and – where necessary – at other stages during the hearing; and
- (d) It will be open to the legal teams for the interested persons to make any necessary submissions to the coroner concerning directions given to the jury.”

(Hereinafter referred to as the “Ruling”).

### **Judicial review proceedings**

21. On 28 February 2022 this Court granted the applicant leave to seek certain reliefs by way of judicial review. These reliefs included, *inter alia*:

1. An order of prohibition restraining the Coroner from conducting the Stardust fire inquests in a manner which involves any investigation or consideration of a possible verdict of unlawful killing.
2. An order of certiorari quashing the decision of the Coroner, dated 16 February 2022, refusing to rule out a verdict of unlawful killing in the Stardust fire

inquests or to exclude the prospect of the inquests conducting an investigation into an unlawful killing by a specified person or persons and,

3. A declaration that a verdict of unlawful killing, in the circumstances of this case or at all, is not a verdict which may lawfully be returned at an inquest under the Coroners Acts and is ultra vires the said Acts.
4. An order directing the Coroner to instruct the jury at the beginning of the Stardust fire inquests that the investigation or consideration of a verdict of unlawful killing does not form part of their relevant inquiry.

The applicant also sought and was granted leave to seek certain reliefs concerning his legal costs. For the sake of clarity in this judgment I will deal solely with the issue as to the lawfulness or otherwise of a verdict of unlawful killing at an inquest. I will deal with the issue of legal costs in a separate judgment.

### **Issues**

**22.** The first matter that I wish to address is the submission that the application is out of time, time having commenced to run from the date of the “Provisional Ruling” of the Coroner on 13<sup>th</sup> August 2021. This submission may be dealt with quickly.

**23.** The challenge which the applicant brings concerns the lawfulness or otherwise of a verdict of “unlawful killing”. The applicant and the other parties made submissions to the Coroner on this issue, which was ruled on, on 16<sup>th</sup> February 2022. The ruling of the Coroner of 13 August 2021 does not address the issue of possible verdicts and, indeed, the applicant expressly told this court that he does not challenge that ruling. It follows from this that the relevant ruling is that of 16<sup>th</sup> February 2022 and so, clearly, the application is not out of time.

### **Verdict of unlawful killing**

**24.** The applicant’s principal submission is that the provisions of the Coroners Acts preclude a verdict of unlawful killing. It was submitted that were a verdict of unlawful killing



to be available it would require the Coroner to consider questions of civil or criminal liability prohibited by the Coroners Acts. Further, the applicant submitted that a verdict of unlawful killing amounted to a “censure” prohibited by s.31 of the said Acts.

**25.** The Coroner, notice parties and the families submitted that the provisions of the Coroners Acts do permit a verdict of unlawful killing provided that in bringing in such a verdict no person or persons are identified or identifiable. The Coroner submitted a verdict of unlawful killing has often been returned and referred, in particular, to the inquests into those who died in the Dublin and Monaghan bombings of May 1974.

**26.** The Coroner, notice parties and the families also submitted that the application was premature in that, at this stage, no evidence had been heard and that the Coroner could give the appropriate directions to the jury following the hearing of evidence and submissions of the parties.

**27.** In answer to the submission that the application is premature the applicant submits that a verdict of unlawful killing is not permissible under the Coroners Acts and this is the case irrespective of what evidence is given in the course of the inquest. In other words, an inquest is precluded from returning a verdict of unlawful killing whatever the evidence. The applicant further states that because verdicts of unlawful killing have been brought in in the past does not make such verdicts lawful and there was no party represented at such inquests to object.

**28.** To address the issue as to the lawfulness or otherwise of a verdict of unlawful killing it is necessary to look at the nature of an inquest, the provisions of the underlying statute and consider the authorities referred to in the course of the hearing.

**29.** Inquests have long been part of our legal system. Unlike civil or criminal proceedings an inquest is inquisitorial not adversarial. As was stated by Lord Lane LCJ in *R. v. South London Coroner, ex parte Thompson* [1982] 126 SJ 625:

*“..It should not be forgotten that an inquest is a fact finding exercise and not a method of apportioning guilt. The procedure and rules of evidence which are suitable for one are unsuitable for the other. In an inquest it should never be forgotten that there are no parties, there is no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish the facts. It is an inquisitorial process, a process of investigation quite unlike a criminal trial where the prosecutor accuses and the accused defends, the judge holding the balance or the reins, whichever metaphor one chooses to use.”*

**30.** An inquest is a fact finding exercise and there are specific statutory restrictions on making any judgment on liability of a civil or criminal nature on those facts. Persons, such as the applicant and the notice parties who take part in an inquest are entitled to fair procedures. However, these rights are exercised within the statutory confines of an inquest.

**31.** For the purposes of this application the relevant provisions of the Coroners Acts are:

Section 18A (1):-

“The purpose of an inquest shall be to establish—

(a) the identity of the person in relation to whose death the inquest is being held,

(b) how, when and where the death occurred, and

(c) to the extent that the coroner holding the inquest considers it necessary, the circumstances in which the death occurred,

and to make findings in respect of those matters (in this Act referred to as ‘findings’) and return a verdict.”

Section 30:-

“Questions of civil or criminal liability shall not be considered or investigated at an inquest.”

Section 31:-

“Prohibition of censure and exoneration.

(1) Neither the verdict nor any rider to the verdict at an inquest, nor any findings made at an inquest, shall contain a censure or exoneration of any person.

Section 40:- Obligation on coroner to sit with jury in certain cases.”

“(1) An inquest shall be held with a jury if, either before or during the inquest, the coroner becomes of opinion—

(a) that the deceased came by his death by murder, infanticide, or manslaughter.”

**32.** I now want to consider a number of authorities the court was referred to. It should be noted that these authorities were decided prior to the insertion of s. 18A of the Coroners Acts which provided that the Coroner, if considered necessary, could establish the circumstances in which a death occurred.

**33.** In *Eastern Health Board v. Farrell* [2001] 4 I.R. 627 the applicant sought a declaration that the hearing of an inquest was *ultra vires* the provisions of the Coroners Acts, in particular s. 30, that the respondent was restricted from holding a general inquiry into the three in one per pertussis vaccine in relation to the death of the deceased and that the breadth of the inquiry took him into the area of civil liability contrary to s. 30. In giving the judgment of the Supreme Court Keane C.J. at page 637 considered the unamended version of s. 30 which provided that questions of civil and criminal liability shall not be considered or investigated and that every inquest shall be confined to ascertaining the identity of the person and the how and when and where the death occurred, stating:

*“While this provision undoubtedly lays stress on the limited nature of the inquiry to be conducted at an inquest, the prohibition on any adjudication as to criminal or civil liability should not be construed in a manner which would unduly inhibit the inquiry. That would not be in accord with the public policy considerations relevant to the holding of an inquest to which I have referred. It is clear that the inquest may*

*properly investigate and consider the surrounding circumstances of the death, whether or not the facts explored may, in another forum, ultimately be relevant to issues of civil or criminal liability. The intention of the Oireachtas that the inquest should not simply take the form of a formal endorsement by the coroner or a jury of the pathologist's report on the post-mortem is also made clear by s.31 which, although prohibiting the inclusion in the verdict or any rider to it of any censure or exoneration of any person, goes on to provide in subs. 2 that:-*

*‘notwithstanding anything contained in s.s. (1) of this section, recommendations of a general character designed to prevent further fatalities may be appended to the verdict at any inquest.’”*

**34.** Having considered an earlier decision of the Supreme Court in *Greene v. McLoughlin*, Keane C.J. stated at p. 638:

*“The decision of the court in that case was entirely reconcilable with the view that it would have been possible in law for the jury to find that the deceased had died from a self-inflicted wound, without any determination as to whether it had been inflicted deliberately or accidentally. To the extent that the dictum cited suggests that the verdict of a coroner or a jury must be confined to the medical cause of death, I am satisfied that it rests on an unduly narrow construction of the Act of 1962, and, in particular, s.30 thereof. It cannot have been the intention of the Oireachtas that, in the case of a road accident, for example, the verdict should be simply confined to a finding in accordance with the pathologist's report and that the coroner or jury would be precluded from finding that the deceased had met his death while travelling in a motor car which collided with another vehicle.*

*The law in England was stated by Sir Thomas Bingham MR in R -v- H. M. Coroner for North Humberside and Scunthorpe, Ex Parte Jamieson (1995) Q.B. 1 as follows at p. 24:-*

*'... it may be accepted that in case of conflict the statutory duty to ascertain how the deceased came by his death must prevail over the prohibition in Rule 42 [against a determination of civil or criminal liability]. But the scope for conflict is small. Rule 42 applies, and applies only, to the verdict. Plainly the coroner and the jury may explore facts bearing on criminal and civil liability. But the verdict may not appear to determine any question of criminal liability on the part of a named person nor any question of civil liability....'*

*'There can be no objection to a verdict which incorporates a brief, neutral, factual statement: 'the deceased was drowned when his sailing dinghy capsized in heavy seas', 'the deceased was killed when his car was run down by an express train on a level crossing', 'the deceased died from crush injuries sustained when gates were opened at Hillsborough Stadium.' But such a verdict must be factual, expressing no judgment or opinion, and it is not the jury's function to prepare detailed factual statements.'*

*I am satisfied that those principles are also applicable to the construction of s.30 of the Act of 1962."*

**35.** In *Ramseyer v. Mahon* [2006] 1 I.R. 216 the Supreme Court again considered the provisions of s.30. In this case the applicant, the deceased's sister and next of kin, claimed that the respondent, an acting coroner, had unlawfully denied her access to certain documents which she proposed to refer to in the course of the inquest. In giving judgment, Fennelly J. stated at p. 222:

*“The inquest is concerned with ‘how, when and where the death occurred.’. The ‘when and where’ pose no problems of interpretation. The answer may or may not be easy in any particular case, but the concepts of time and place are objective ones. If the inquest jury can reach a conclusion, their verdict will name a place and record a time. ‘How’ is a less neat notion. It leaves more room for argument about the scope or extent of the coroner’s inquiry. Where, for example, the evidence shows that the deceased died from head wounds inflicted by an axe swung at him by a named person, the jury can scarcely be constrained to state merely that he suffered head wounds caused by an axe without mention of the human agent. They must not, of course, say that he was murdered, or, by the same token, that the death was accidental. Section 31(1) provides that: ‘Neither the verdict nor any rider to the verdict at an inquest shall contain a censure or exoneration of any person.’”*

**36.** Later in the judgment, in considering the inquisitorial nature of an inquest, Fennelly J. stated at p. 225:

*“It follows that persons represented at an inquest are entitled to an appropriate level of fair procedures. They are entitled to be present, to call witnesses and to cross-examine. But all of this is subject to the overriding consideration that they are assisting in an inquiry into the facts and are not either responding to or making a charge. They are subject to the directions of the Coroner, who is entitled to conduct the hearing in his discretion, while respecting the legitimate interest of interested persons to pursue lines of inquiry.”*

**37.** In *Lawlor v. Geraghty* [2011] 4 I.R. 486 the respondent coroner refused the applicant’s request for an adjournment in order to obtain the medical records of their son who had died whilst undergoing elective cosmetic surgery. At the inquest the State Pathologist had given

evidence that she was unable to give a definite opinion as to the circumstances surrounding his death without sight of the medical records. In his judgment Kearns P. stated at p. 495:

*“(32) ---The judgment in Ramseyer v. Mahon also re-affirmed that the coroner has a relatively wide jurisdiction in terms of inquiring into the circumstances surrounding a person's death - in other words, the prohibition on contemplating issues of civil or criminal liability does not operate in any other way to constrict or hamper the margins of the investigation which a coroner can carry out other than to restrict him or her from pronouncing or touching upon such liability. While a person or persons may not be found by a coroner to be ‘guilty’ in any way in respect of a death or ‘liable’ for such death, he or she may nonetheless carry out a very full, wide investigation.”*

**38.** In summarising the general principles relevant to a coroner’s duties Kearns P. at page 502 stated:

*“(5) The next of kin of a deceased have an entitlement to participate at an Inquest and pursue any legitimate lines of inquiry they may wish to raise, that is to say any line of inquiry that is relevant to the medical cause of death and the circumstances surrounding the cause of death, provided such line of inquiry does not cross the line by seeking to blame or exonerate any individual in terms of either civil or criminal liability.”*

**39.** The Coroner and notice parties also relied on the following passage from “Coroners: Practice and Procedure” Brian Farrell (Roundhall Sweet & Maxwell 2000) at p. 355:

*“It is submitted that where the evidence at inquest proves that the deceased died as a result of unlawful or felonious homicide (murder, manslaughter or infanticide), a verdict of unlawful killing is permissible, provided that no person is identified expressly or implicitly in the verdict. Thus, if the evidence points to a named person who may be responsible, the coroner must adjourn the inquest and refer the matter to the Director*

*of Public Prosecutions. Only in circumstances where no person can be found or identified can the coroner put a verdict of unlawful killing to the jury. It is submitted that “person” in this context includes a legal person or entity such as a board, corporation or authority.”*

**40.** Having considered these authorities, I believe a number of conclusions can be drawn. Firstly, emphasis is placed on the fact that an inquest is a fact finding hearing inquisitorial in nature distinct from proceedings in the civil or criminal courts. Secondly, the provisions of ss. 30 and 31 should not be interpreted in such a way as to restrict the fact finding function of an inquest. Thirdly, the restrictions in ss. 30 and 31 are specific not general. They are specific in the sense that what is prohibited is findings or investigations of civil or criminal liability in respect of persons. In *Ramseyer v. Mahon Fennelly J.* referred to:

*“Where, for example, the evidence shows that the deceased died from head wounds inflicted by an axe swung at him by a named person”.* (emphasis added).

In *Lawlor v. Geraghty* Kearns P. referred to:

*“provided such line of inquiry does not cross the line by seeking to blame or exonerate any individual in terms of either civil or criminal liability.”* (emphasis added).

**41.** I now wish to consider the relevant sections of the Coroners Acts. At the outset it should be noted that there are no provisions in the Coroners Acts as to what verdicts may be brought in. Thus, there is a wide jurisdiction subject to the restriction in s. 31.

**42.** Section 18A gives a broad jurisdiction to a coroner to establish the circumstances in which the death occurred. From the facts so found it may be that a person died in circumstances that could not be considered as anything other than unlawful, a clear example being those who lost their lives in the Dublin and Monaghan bombings who died as a result of bombs exploding in a public place. To find that these people were unlawfully killed is a statement of fact not involving questions of civil or criminal liability concerning the person(s) who planned,



organised, or planted the bombs. That is what is prohibited by s. 30. Consideration or investigation of civil or criminal liability must require the identification of a person or persons concerned.

**43.** Section 31 prohibits a verdict that contains “a censure or exoneration of any person”. The addition of the words “of any person” to my mind indicates that any censure or exoneration must be referable to a “person”. I cannot see how a person can be censured or exonerated without that person being identified or identifiable.

**44.** The applicant submitted that one cannot reach a verdict of unlawful killing unless it is premised on a finding of criminal or civil liability of a person(s). For the reasons stated above I do not accept this. In support of this submission the applicant relied on *R. v. West London Coroner*, Eng. Gray [1988] QB 467. This case concerned an inquest to a person who died in hospital following being taken into custody by the police. The applicant referred to the following passage from the judgment of Watkins L.J. p. 477:

“Further, the jury should have been directed that they could return a verdict of unlawful killing only if they could attribute those ingredients to a single police officer, whom they should on no account name or otherwise identify. In this context, the jury should consider the position of each officer in turn, following Mikkelsen’s arrest as to his duty, if any, to care for Mikkelsen’s health and welfare and the opportunity given to him... to discharge it.”

Looking at the previous paragraph in the judgment of Watkins L.J. the following is stated:

“... what the jury should have been told was that when considering manslaughter by neglect, they would have to be satisfied upon the evidence that these four ingredients of the offence: (1) a police officer had the duty of regarding the health and welfare of Mikkelsen. (2) he failed to do what in the circumstances he ought to have done for the health and welfare of

Mikkelsen. (3) his failure was a substantial cause of Mikkelsen's death. (4) in failing to act for the benefit of Mikkelsen's health and welfare he acted recklessly..."

In my view no such direction could be given to a jury under the provisions of the Coroners Acts. Further, it is clear on reading the judgment of Watkins L.J. that there are considerable differences between the relevant legislation and rules in England and the provisions of the Coroners Acts.

**45.** In my view there is a distinction between considering questions of civil or criminal liability, which is prohibited, and the opinion of a coroner that a person died in unlawful circumstances. This is reflected in s. 40 which states:

"40.—(1) An inquest shall be held with a jury if, either before or during the inquest, the coroner becomes of opinion—

(a) that the deceased came by his death by murder, infanticide, or manslaughter, or

---"

**46.** In conclusion I am satisfied that a jury at an inquest may bring in a verdict of unlawful killing but that such verdict is only available in circumstances where no person(s) is identified or identifiable.

**47.** In their written submissions the applicant states:

"While the applicant unambiguously submits the first instance that a verdict of unlawful killing is not available under the Coroners Act at all, it is submitted, in the alternative, that if unlawful killing is available as a verdict, it is only available in circumstances where no person is identified, expressly or by implication, by the verdict."

As I have found that a verdict of unlawful killing is available in circumstances where no person(s) is identified or identifiable I would like to make a number of observations concerning the Coroner's provisional ruling on the scope of the inquests. Although the ruling is provisional it seems, for the most part, that this ruling has been accepted by the applicant.

**48.** The report of the Keane Tribunal found:

“8.32 There were serious errors and omissions in the design, supervision, and execution of the conversion of the buildings, some of which constituted breaches of the relevant regulations and guidelines. The owners' representatives, Mr Eamon Butterly, and Mr Patrick Butterly, were primarily responsible for these errors and omissions...”

“8.34 There were serious errors and omissions in the management of the building, for which Mr Eamon Butterly and Mr Patrick Butterly were responsible. In particular, exits were not maintained in an unlocked and unobstructed condition, properly trained staff were not employed, and appropriate fire drills and evacuation procedures were not in use. These errors and omissions also constituted breaches of the relevant regulations and guidelines.

8.35 These errors and omissions also contributed significantly to the deaths and injuries which resulted from the fire.”

**49.** In her ruling on the scope of the inquest the Coroner stated:

“I must further note that some of the determinations made by Mr. Justice Keane in his report amount to criticism of a variety of persons and go beyond any findings that will be available to a coroner exercising his or her powers under the Coroners Acts, 1962-2000”.

However, it is clear that evidence will be given at the forthcoming inquests concerning the design and condition of the Stardust building, prior inspections and maintenance and the management of the Stardust. Should such evidence actually be given, a verdict of “unlawful killing” could be problematic given the limited circumstances in which such a verdict can be brought in. It may be that the more detailed the evidence is on the circumstances of the fire the less permissible will be a verdict of unlawful killing.

**50.** The matters which I have referred to in the previous paragraphs are only observations. At this stage no evidence has been given. It will be for the Coroner having considered the evidence that is given, who gave it and the submissions of the parties to direct the jury as to what verdicts are available.

**51.** By reason of the foregoing, I am satisfied that the ruling of the Coroner of 16<sup>th</sup> February 2022 is correct in law. I therefore refuse the reliefs sought herein.

**52.** As this judgment is being delivered electronically, I will direct that any submissions on costs be filed no later than the 18<sup>th</sup> day of November 2022. (Submissions to be limited to 2,000 words). I will list this matter the 25<sup>th</sup> day of November to consider how the matter of costs will be dealt with.

### **Summary**

- (1) An Inquest is an inquisitorial fact finding hearing to establish the facts concerning the who, how, when, where and circumstances of a person's death. It is not an exercise of considering or apportioning blame or exoneration.
- (2) Sections 30 and 31 of the Coroners Acts prohibit questions of civil or criminal liability being considered or investigated and verdicts censuring or exonerating a person. These restrictions do not prevent an inquest establishing the facts concerning the circumstances of a person's death even though those facts "may, in another forum, ultimately be relevant to issues of civil or criminal liability." (Per Keane C.J. in *Eastern Health Board v. Farrell*).
- (3) Parties before an inquest are entitled to fair procedures. However, this entitlement is limited given the statutory confines within which an inquest takes place.
- (4) The provisions of ss. 30 and 31 do not prohibit verdicts of unlawful killing. Questions of civil or criminal liability or verdicts containing censure or exoneration arise where the person(s) concerned are identified or identifiable. In appropriate

circumstances there may be a verdict of unlawful killing but only where no person(s) is identified or identifiable.

- (5) Section 18(A) gives a Coroner discretion to consider the circumstances of a person's death. It may be that the more detailed the evidence is on the circumstances of the death the less permissible will be a verdict of unlawful killing. It is for the Coroner, having heard all the evidence, who gave the evidence and considered the submissions of the parties, to direct the jury as to the permissible verdicts.
- (6) The ruling of the Coroner of 16<sup>th</sup> February 2022 is correct in law.

### **Alphabetical List of Victims**

Michael Barrett, 28 Streamville Road, Raheny, Dublin 5.

Richard Bennett, 5 Cromcastle Court, Coolock, Dublin 5.

Carol Bissett, 38 O'Rahilly House, Ringsend, Dublin 4.

James Buckley, 44 Clanree Road, Donnycarney, Dublin 5.

Paula Byrne, 26 St. Brendan's Park, Coolock, Dublin 5.

Caroline Carey, 18 Kilbarron Road, Coolock, Dublin 5.

John Colgan, 54 Pine Grove Park, Swords, Co. Dublin.

Jacqueline Croker, 50 Dundaniel Road, Kilmore West, Dublin 5.

Liam Dunne, 5 Bunratty Avenue, Coolock, Dublin 5.

Michael Farrell, 1 Castletimon Park, Coolock, Dublin 5.

David Flood, 58 Coolgreena Road, Beaumont, Dublin 9.

Thelma Frazer, 64 O'Connell Gardens, Bath Avenue, Sandymount, Dublin 4.

Michael French, 2 Bunratty Drive, Coolock, Dublin 5.

Josephine Glen, 24 Clonshaugh Avenue, Dublin 5.

Michael Griffiths, 6 Kilbarron Road, Kilmore Road, Dublin 5.

Robert Hillick, 54G Brian Park, Twinbrook Estate, Belfast.

Brian Hobbs, 22 Yellow Road, Whitehall, Dublin 9.

Eugene Hogan, 4 Kilmore Drive, Artane, Dublin 5.

Murtagh Kavanagh, 13 Millbrook Drive, Coolock, Dublin 5.

Martina Keegan, 37 Greencastle Crescent, Coolock, Dublin 5.

Mary Keegan, 37 Greencastle Crescent, Coolock, Dublin 5.

Robert Kelly, 18 Edenmore Crescent, Raheny, Dublin 5.

Mary Kennedy, 182 Millbrook Avenue, Kilbarrack, Dublin 5.

Mary Kenny, 24 Macroom Road, Coolock, Dublin 5.

Margaret Kiernan, 11 Coolock Avenue, Coolock, Dublin 5.

Sandra Lawless, 95 Ferrycarrig Road, Coolock, Dublin 5.

Francis Lawlor, 52 Cappagh Drive, Finglas, Dublin 11.

Maureen Lawlor, 52 Cappagh Drive, Finglas, Dublin 11.

Paula Lewis, 27 Macroom Avenue, Coolock, Dublin 5.

Eamon Loughman, 12 Ardmore Drive, Beaumont, Dublin 9.

George McDermott, 42 Edenmore Crescent, Raheny, Dublin 5.

Marcella McDermott, 42 Edenmore Crescent, Raheny, Dublin 5.

William McDermott, 42 Edenmore Crescent, Raheny, Dublin 5.

Julie McDonnell, 36 Dundaniel Road, Coolock, Dublin 5.

Teresa McDonnell, 40 Collin's Avenue East, Donnycarney, Dublin 5.

Gerard McGrath, 31 Chanel Grove, Coolock, Dublin 5.

Caroline McHugh, 172 Ardlea Road, Artane, Dublin 5.

Donna Mahon, 19 Edenmore Drive, Raheny, Dublin 5.

Helena Mangan, 19 Macroom Road, Coolock, Dublin 5.

James Millar, 13 Juniper Park, Twinbrook Estate, Belfast.

Susan Morgan, Nazareth House, Malahide Road, Dublin 5 and Derry.

David Morton, 27 Montrose Drive, Artane, Dublin 5.

Kathleen Muldoon, Ballyhist, Carnaross, Kells, Co. Meath.

George O'Connor, 24 Clonshaugh Close, Coolock, Dublin 5.

Brendan O'Meara, 3 Coolock Village, Dublin 5.

John Stout, 61 Ferrycarrig Drive, Coolock, Dublin 5.

Margaret Thornton, 47 Dunne Street Flats, Dublin 8.

Paul Wade, 101 Ardcollum Avenue, Artane, Dublin 5.