

Neutral Citation No: [2023] NICoroner 2

Ref: [2023]NICoroner2

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

ICOS No:

Delivered: 23/01/2023

IN THE CORONER'S COURT IN NORTHERN IRELAND

IN THE MATTER OF AN INQUEST INTO THE DEATH OF
SAMUEL MARSHALL ON 7 MARCH 1990

RULING ON AN APPLICATION BY COLIN DUFFY AND
HUGH ANTHONY McCAUGHEY FOR
PROPERLY INTERESTED PERSON STATUS

BEFORE HIS HONOUR JUDGE GILPIN
SITTING AS A CORONER

Introduction

[1] Samuel Marshall ("the deceased") died following a shooting in the Kilmaine Street/North Street area of Lurgan, County Armagh on 7 March 1990. I am conducting an inquest into his death.

[2] Colin Duffy and Hugh Anthony McCaughey ("the applicants") have made an application asking for Properly Interested Person ("PIP") status, pursuant to Rule 7(1) of the Coroners (Practice and Procedure) Rules NI 1963 (the "1963 Rules"). Their statements say they were with the deceased when the shooting commenced.

[3] Rule 7 is set out below:

"7.-(1) Without prejudice to any enactment with regard to the examination of witnesses at an inquest, any person who in the opinion of the coroner is a **properly interested person** shall be entitled to examine any witness at an inquest either in person or by counsel or solicitor, provided that the coroner shall disallow any question which in his opinion is not relevant or is otherwise not a proper question.

(2) If the death of the deceased may have been caused by an injury received in the course of his employment or

by an industrial disease, any person appointed by a trade union to which the deceased at the time of his death belonged shall be deemed to be a properly interested person for the purpose of this Rule.”
[Emphasis added]

Evidential Background

[4] I have received a significant volume of materials during the process of gathering potentially relevant disclosure for this inquest. It is commented upon below, although I have not opened the evidence in the inquest yet and I have not made any factual determinations.

[5] There are statements from security services who were conducting surveillance on the deceased and the two applicants in and around that time which said they were suspected to be actively involved with Republican terrorists.

[6] The deceased and the two applicants presented themselves to police at Lurgan RUC station on 7 March 1990 at approximately 7.30pm in accordance with bail conditions. They attended the police station together. They were co-accused on bail for offences connected with a discovery of ammunition.

[7] I have received material which suggests two masked men armed with assault rifles emerged from a parked car and attacked the applicants and the deceased shortly after they left the Lurgan police station. The deceased was killed. Both applicants survived the attack.

[8] A paramilitary grouping, the Ulster Volunteer Force, later claimed responsibility for the attack.

[9] I have also received material which suggests that the arrangements, including the time, for presenting to Lurgan RUC Station in connection with their bail would only have been known to the three men, those they informed, and the security forces.

The Application

[10] The inquest is due to commence on a modular basis on 20 March 2023. It will receive evidence from, *inter alia*, civilian witnesses, military witnesses and police witnesses. The applicants will be included on the witness list.

[11] Their application seeks to secure status beyond that of witnesses. As set out in Rule 7(1), a PIP is entitled to ask relevant questions of witnesses; such questioning being marshalled by the Court. A PIP will also receive disclosure to assist in preparing for an inquest. In contrast, a person whose status is restricted to that of being a witness is not entitled to ask questions and does not receive disclosure, save that which is provided to them for the purpose of giving evidence.

[12] I have received the current PIP's written submissions in connection with this application. Although they are not all referred to specifically within this ruling, they have all been considered.

[13] The applicants referred the Court to a number of authorities and state that they have a proper interest, which is neither trivial nor contrived. They refer me to their close relationship with the deceased; they were targeted in the same attack and that they wish to explore whether the security forces let the deceased down and/or colluded in connection with his death. The applicants wish to challenge any evidence given against them. They consider their evidence will be central to the inquest and that their credibility will be in issue. Whilst not stated as such, it is clear that one of the reasons they want representation at the inquest is because they fear they will be criticised in the evidence and wish to defend themselves. They also refer me to article 2 of the ECHR.

[14] The Ministry of Defence (MOD) and Police Service of Northern Ireland (PSNI) oppose the applicants' joint application. They submit that the applicants do not have a sufficient or proper interest to warrant securing PIP status. They direct the Court to a number of authorities and draw attention to instances where survivors of attacks have been refused PIP status in other inquests. They question what assistance the applicants will provide the inquest and state that the Next of Kin ("NOK") and Coroner's team will cover any ground relevant to the inquest that the applicants wish to be covered.

[15] The NOK submissions set out a position of neutrality, while at the same time referring the court to what they state is the relevant test and providing critical commentary on the MOD and PSNI's written submission.

[16] I have not yet issued a provisional scope document in this inquest. However, the applicants will feature in the evidence, and not just in the evidence they give. It is also likely evidence will be adduced about them which is very unfavourable to them.

[17] There is no list of prescribed categories of person (by which I mean a legal person, to include companies and other organisations) who may or shall be given PIP status in an inquest in this jurisdiction, although some categories of person are often given such status. They are mentioned in Leckey & Greer, *Coroners' Law and Practice in Northern Ireland*, para 7-33 and commented upon by Carswell LCJ in *Re Northern Ireland Human Rights Commission* [2000] NIQB 61.

[18] I am also alert to the legislation governing who can participate in inquests in England and Wales, although I approach it with some caution because of the differences between the statutory regimes operating in Northern Ireland compared to England and Wales.

[19] I have found the decision in *R v Coroner for the Southern District of Greater London, ex p. Driscoll* [1993] 159 JP 45, to be of particular assistance. In respect of PIPs, Pill LJ stated in his concurring judgment:

“I agree. I add a few words only on the question of the meaning of the expression ‘properly interested person’ in r 20(2)(h) on which subject the submissions before this Court have been fuller than those in earlier cases. The word ‘interested’ should not be given a narrow or technical meaning. It is not confined to a proprietary right or a financial interest in the estate of the deceased. It can cover a variety of concerns about or resulting from the circumstances in which the death occurred. The word ‘interested’ is not used in the rule to describe or identify the persons in the categories in r 2 (a) to (g) but it may be said that they can each have an interest in the sense contemplated. It arises in the case of a parent, child and spouse, out of the nature and closeness of the personal relationship to the deceased in each category. The personal representative has a legal duty in relation to the estate of the deceased. Beneficiaries under insurance policies and insurers may have a financial interest in the circumstances of the death. Someone who may have caused or contributed to the death has an obvious concern. Though of differing natures, the concerns of the deceased's trade union, the chief officer of police and the Government are readily understood, though the breadth of the wording in paragraph (f) is perhaps surprising. Of course, there will be cases in which persons in some of those categories do not in fact have an interest in matters relevant under r 36 in the particular case. However, all those persons are capable of having an interest in the sense in which, in my judgment, the word is then used in the additional category, category (h), included at the end of the rule. Categories (a) to (g) do provide a guide to the types of interest envisaged in paragraph (h).

It remains to consider the significance to be attached to the word ‘properly’ in paragraph (h). In the context it imports not only the notion that the interest must be reasonable and substantial, and not trivial or contrived, but in my judgment also the notion that the Coroner may need to be satisfied that the concern of the person seeking to intervene is one genuinely directed to the scope of an inquest as defined in r 36.”

[20] I have discretion on whether to grant a person PIP status. However, before considering whether to exercise that discretion in their favour, I must first be satisfied they have a sufficient interest in the proceedings. That interest should be *proper* in that it must be *reasonable and substantial*, rather than *trivial or contrived*.

[21] I have considered the relevant provisions of The Presiding Coroner for Northern Ireland's Legacy Inquests Case Management Protocol. Para 14 states:

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

[22] The MOD and PSNI submissions refer to a number of previous applications in which Coroners in this jurisdiction and in England and Wales have made decisions on whether or not to grant similar applications. However, it is clear that every application for PIP status is fact specific and must be decided entirely on its own merits.

[23] I am not satisfied that the fact the applicants are survivors of the attack is a sufficient basis on its own to give them a proper interest in the proceedings sufficient to for me to exercise my discretion and give them PIP status in the circumstances of this inquest. I am not satisfied that their desire to explore whether the deceased was let down by the security forces or whether there was collusion is sufficient either - that is not the role of a witness. I am not satisfied the suggested centrality of their evidence creates a proper interest, nor that their credibility will be in issue. The importance of their evidence is not a basis upon which to provide PIP status, nor is any challenge to their credibility as a witness. Witnesses, including those whose evidence is contentious, frequently give evidence of importance to inquests without PIP status.

[24] However, looking at the events leading up to Samuel Marshall's death will inevitably involve some degree of scrutiny of the association between the applicants and the deceased, as well as why one or more of them was targeted by the gunmen; and it is likely one or more of them will be alleged to have had terrorist associations within the ambit of the circumstances of the death. In light of the potential for critical comment about them in respect of criminality, I am prepared to exercise my discretion and grant PIP status in this instance. This should not be read as meaning that I

consider every individual who potentially faces an allegation of criminality during the course of evidence at an inquest should be given PIP status. This is a fact specific decision.

[25] The applicants have presented a joint application to me using the same legal representatives. There does not appear to me to be any conflict between them and I therefore presume the same lawyers will continue to act for them at inquest.

[26] I note Lord Woolfe's comments in *Re Northern Ireland Human Rights Commission* at para [32]:

“... The court has always to balance the benefits which are to be derived from the intervention as against the inconvenience, delay and expense which an intervention by a third person can cause to the existing parties.”

[27] I will endeavour to ensure in case managing this inquest that by the granting of this application delay does not become a feature of it.

[28] In their joint submission dated 17 January 2023 the PSNI and the MOD submit that I should invite the applicants to provide statements, following interview. The applicants have already made statements which I have had sight of. I do not consider it to be a necessary step to obtain updated statements for the purpose of determining my ruling on their application for PIP status. However, witnesses will be asked to provide updated witness statements for the inquest.

Ruling

[29] The applicants are granted Properly Interested Person status.