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

ICOS No:

Delivered: 12/02/2024

IN THE CORONER'S COURT IN NORTHERN IRELAND

IN THE MATTER OF AN INQUEST INTO THE DEATHS OF
JOHN DOUGAL, PATRICK BUTLER, NOEL FITZPATRICK,
DAVID McCAFFERTY AND MARGARET GARGAN
(‘THE SPRINGHILL INQUEST’)

RULING (NUMBER 7)
ON AN APPLICATION BY BRIAN PETTIGREW
FOR REMOTE EVIDENCE AND SPECIAL MEASURES

SCOFFIELD J (sitting as a coroner)

Introduction

[1] This is an inquest into five deaths which occurred on 9 July 1972 in the Springhill and Westrock areas of Belfast. A brief summary of the factual background is contained in my ruling of 27 February 2023 (‘Ruling No 1’): [2023] NICoroner 24. This ruling concerns an application on the part of Brian Pettigrew for the facility to provide his evidence to the inquest remotely; and for special measures to assist him in the giving of his evidence, particularly by way of assistance from a registered intermediary and the facility for breaks, as required. Mr Pettigrew has been granted properly interested person (PIP) status in the inquest for the reasons set out in Ruling No 2 in the inquest ([2023] NICoroner 25).

The application

[2] Mr Pettigrew has provided a signed witness statement to me dated 3 January 2023, following interview with the Coroner’s Investigator. I understand that he is keen to assist the inquest by the giving of evidence but has a number of concerns about the process of doing so. He is likely to be an important witness given his close involvement in one of the incidents being investigated in this inquest. He was shot and injured during the events in Springhill on 9 July 1972, at which time he was 17 years old. On his account, he saw Martin Dudley lying on his back and being tended to; and was in close proximity to John Dougal before he was killed. I have outlined in Ruling No 2 several lines of questioning which will likely be pursued with him when he gives his evidence.

[3] Mr Pettigrew has now applied, through his legal representatives, for special measures in the form of giving his evidence (a) via remote live-link; (b) with the assistance of a registered intermediary appointed by me; and (c) with the provision of regular breaks, when required. The application is supported by extracts from Mr Pettigrew's medical notes and records and, more importantly, by expert evidence provided by Dr Adrian East MBBCh MRCPsych, Consultant Forensic Psychiatrist, in a substantive report and a later addendum.

[4] The basis of the application is that Mr Pettigrew has been seriously adversely affected, physically and mentally, by the events which are the subject of this inquest. Dr East's report indicates that Mr Pettigrew meets the diagnostic criteria for Post-Traumatic Stress Disorder (PTSD). Although there is nothing in this condition which will prevent him from giving evidence in the inquest, that process will have the effect of triggering symptoms of reliving the events and increasing hypervigilance. This will, Dr East suggests, be extremely distressing for Mr Pettigrew and have a marked effect on his mental state and quality of life. His report notes that Mr Pettigrew's exaggerated startle response has been worse since the beginning of these inquest proceedings.

[5] The further addendum report considers that the measures applied for in this application would all be "eminently worthwhile" in reducing the impact of giving evidence upon Mr Pettigrew, with the most important of these being giving evidence remotely. Although the consequence of giving evidence will be to increase the frequency and intensity of reliving the traumatic event, which is inevitable, being able to do so outside the environment of the courtroom and without direct contact with the parties involved would be less triggering and intrusive. This would both reduce the distress associated with Mr Pettigrew's symptoms and, in turn, this would increase the quality of the evidence which he is able to give.

[6] Mr Pettigrew's counsel also indicated to me from the Bar that his legal team's own experience was consistent with what was outlined in Dr East's report, namely that Mr Pettigrew struggles to a significant degree when talking about the events of 9 July 1972 during which he was shot a number of times. His instructions are that this reaction would be exacerbated by being in a room with more than one person, particularly people with whom he is not familiar. Perhaps counter-intuitively however, the application was advanced on the basis that, if giving evidence remotely, he would prefer to be attended or supported by someone he does *not* know well rather than (for instance) a family member.

[7] The other PIPs were all essentially neutral on the application; although counsel for the Ministry of Defence took me through some of the supporting evidence in order to highlight potential frailties in the application.

Legal framework

[8] I recently discussed the powers on the part of a coroner to receive evidence via live-link in Ruling No 6 in this inquest ([2024] NICoroner 9). Those powers exist both at common law and under statute (in the form of the Coronavirus Act 2020). The overarching test for the grant of such a facility is whether it is in the interests of justice, which can include use of live-link to address concerns as to efficiency and convenience, as well as security-related fears on the part of the witness. Patently, such a facility can also be properly deployed where it is appropriate to reduce harm or distress which would otherwise be caused to a witness (over and above that level of stress or discomfort which is simply a necessary corollary of giving evidence and having one's account scrutinised and tested by questioning). A highly relevant consideration in all cases will be the extent to which the use of such a facility will facilitate or undermine the coroner's ability to receive the best quality evidence from the witness.

[9] Other special measures designed to assist a witness in providing their evidence, or doing so in the way which best facilitates them giving a full and proper account, are within the discretion of a coroner in the exercise of their general case-management powers. The then Presiding Coroner, Humphreys J, dealt with this in a ruling on an application for special measures in the Coagh Inquest (touching the deaths of Lawrence Joseph McNally, Anthony Patrick Doris and Michael James Ryan): see [2023] NICoroner 9. At para [3] of that ruling, Humphreys J commented that, "At common law, a coroner has power to put in place special measures, where appropriate, to mitigate against the risk of harm to any witness." At paras [25]-[26], he went on:

"As the Court of Appeal in England & Wales recognised in *R (Maguire) v The Assistant Coroner for West Yorkshire* [2018] EWCA Civ 6, procedural safeguards are available in coroners' courts, just as they are in other courts, to mitigate against the trauma and harm potentially caused by giving evidence.

Practitioners across all fields now need to be aware of the provisions of the Equal Treatment Bench Book and the Advocates' Gateway in relation to the treatment of vulnerable witnesses. Not only does the sensitive treatment of such witnesses reduce the risk of harm, it serves to improve the chances of the decision maker receiving the best evidence."

[10] I am not aware of a previous instance of a witness in an inquest hearing in Northern Ireland being assisted by the appointment of a registered intermediary. However, there is no reason, in my view, why a coroner ought not to grant such a facility in the exercise of their case-management powers where that is appropriate.

In the ruling in the Coagh Inquest referred to above, Humphreys J proceeded on the basis, with which I agree, that the various facilities and measures set out in the Equal Treatment Bench Book for the assistance of vulnerable witnesses could be deployed in coronial proceedings. In that case, Humphreys J assumed that this would include the use of a court-appointed registered intermediary (see para [28] of the ruling); although, in the event, it was not necessary in that case.

[11] Where this is an appropriate facility to ensure that a witness is questioned in a proper manner and is able to overcome any communication difficulties in understanding, processing or responding to questions, I see no reason why a coroner would not have power to arrange the use of a registered intermediary to facilitate the provision of best evidence. No submissions received from any PIP in this inquest took issue with that.

Evidence by way of live-link

[12] It is right that Mr Pettigrew has had limited attendance or interaction with mental health services since the time of the shooting, leading Dr East to comment that there is little supporting evidence for the PTSD diagnosis in the medical record (with the first mention being in 2023). However, he has had difficulties with alcohol which have been attributed, at least in part, to his experience in 1972 and resultant symptoms; and he has also been availing of counselling services (which Dr East considers will have a small but significant effect on the impact of his PTSD symptoms). There is some material in his GP notes to indicate that he has been very stressed since the inquest proceedings have been ongoing. Most importantly though, I have a report from a consultant psychiatrist indicating that Mr Pettigrew has PTSD, with hypervigilance, persistent reliving of the shooting, and intrusive and distressing memories and dreams, with these symptoms being disabling. It is also clear that he is emotionally labile and finds it difficult talking about the experience. Dr East considered that giving evidence would trigger his symptoms and become extremely distressing for him “both at the time and in the subsequent weeks” [underlined emphasis added]. Mr Pettigrew has “little in the way of internal resources to cope with such an increase in symptoms”.

[13] Dr East indicated that he did not believe “that there is any mechanism that would realistically reduce the impact of giving evidence on Mister Pettigrew’s mental state”. In its context, I read this as meaning that, in the weeks and months after giving evidence, Mr Pettigrew’s mental health will inevitably suffer from the experience. However, that is no reason not to seek to mitigate the effects at the time of his giving evidence, both as a matter of fairness to him and as a means of seeking to secure best evidence and promoting the efficiency of the hearing. The key conclusion on the part of Dr East for this purpose is that all of the proposed measures are eminently worthwhile in reducing the impact of giving evidence upon the witness’s PTSD; and that “of the measures proposed the most important will be giving evidence remotely”. Being able to give evidence outside the courtroom will

reduce his distress and “this reduction in distress will increase the quality of the evidence Mister Pettigrew is able to give”.

[14] In light of the above, I have little hesitation in acceding to Mr Pettigrew’s application that he be permitted to provide his evidence remotely from a location which will reduce the impact of his PTSD on the process. It seems to me to be in the interests of justice to do so.

Registered intermediary

[15] I do not propose to appoint a registered intermediary in order to assist Mr Pettigrew with giving his evidence. I am sympathetic to the request that he be permitted to have someone present with him to assist him in the event that he becomes distressed in the course of giving his evidence and/or in order to minimise the risk of trauma or harm arising from the evidential process. However, I do not consider that this requires to be a person with the qualifications and function of a registered intermediary.

[16] The role of a registered intermediary is to help witnesses with communication needs to give their best evidence in court proceedings by ensuring that they can understand questions put to them and can communicate their answers effectively. Frequently, such intermediaries will have a speech and language therapy background. Usually they will carry out an assessment of the witness’s communication needs; advise the court and parties to the litigation as to how to achieve best evidence, often through a ground rules hearing where ground rules are set for the manner of questioning of the witness; and assist the witness, where required, whilst they are giving evidence, in terms of helping them to understand questions or communicate their responses. The role is distinct from that of someone who acts as a witness supporter.

[17] Dr East concluded that there was nothing in Mr Pettigrew’s PTSD which would prevent him from giving evidence at the inquest. He further commented that:

“His ability to recall information is not affected. He can understand questions put to him, apply his mind to answering them and give answers he wishes.”

[18] What Dr East was more concerned about was the impact of Mr Pettigrew giving evidence upon his mental state. In light of this, Mr O’Hare, in presenting the application, accepted that a registered intermediary may not, in fact, be the best solution. However, he explained that the application had been made on the basis that the appointment of an intermediary may be one way to secure the support of an independent professional who could assist Mr Pettigrew in providing his evidence. In the course of exchanges during the short hearing dealing with these applications, and in correspondence from Mr Pettigrew’s solicitor since, two further options have been explored, namely (i) the coroner’s investigator attending with Mr Pettigrew to

assist and reassure him; and/or (ii) a member of staff from WAVE Trauma Centre, an organisation with expertise in supporting those who have suffered trauma through the Troubles and which has already been assisting Mr Pettigrew, doing so.

[19] I understand that Mr Pettigrew has responded positively to both of these suggested options. In light of this, I am fortified in my view that the appointment of a registered intermediary is unnecessary and inappropriate in this case; but am more than content to grant a facility for Mr Pettigrew to be accompanied by either or both of my investigator or a WAVE trauma counsellor (or some other appropriate, independent person able to provide the requisite support) whilst he is giving evidence.

Breaks

[20] I similarly have no difficulty in granting Mr Pettigrew the facility of taking breaks during his evidence as and when required to compose or settle himself. Indeed, this facility is available generally, as a matter of fairness to any witness. It is rare indeed for a request for a break to be refused unless the presiding judicial officer forms the view that it is being requested in bad faith or as a means of undermining the integrity of the questioning process. Nonetheless, I also appreciate that, for particularly distressed or anxious witnesses, it can provide reassurance to them and additional confidence in their ability to request a break if it has been indicated in advance that they may do so and if the potential enhanced need for such breaks has been recognised. I am entirely content to do so.

Conclusion

[21] As a result of this ruling, Mr Pettigrew will be entitled to give his evidence under the following conditions:

- (a) His application to give evidence remotely is granted and he can provide his evidence from his own home (or from another location approved by me in advance);
- (b) He may be attended, whilst giving evidence, by an appropriate person or persons to assist him in light of the impact that is likely to have on his PTSD symptoms. Such a person should also be approved by me in advance; but I can indicate now that there is no difficulty with either my investigator performing this function and/or a representative of WAVE Trauma Centre.
- (c) Regular breaks will be provided to Mr Pettigrew in the course of giving his evidence, as and when required.
- (d) The court and/or camera angle will also be configured in such a way as to limit the number of persons visible to Mr Pettigrew when giving his evidence.