

Neutral Citation No: [2024] NICoroner 2

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

ICOS No:

Delivered: 09/01/2024

IN THE CORONER'S COURT IN NORTHERN IRELAND

BEFORE THE CORONER
MR JUSTICE HUDDLESTON

IN THE MATTER OF AN INQUEST INTO THE DEATHS OF
DANIEL DOHERTY AND WILLIAM FLEMING

RULING ON AN APPLICATION FOR MEDICAL EXCUSAL, ANONYMITY
AND SCREENING FOR PW 35

Context

[1] This Ruling deals solely with the application made by PW35 for excusal from giving evidence on medical grounds or, alternatively, for special measures in terms of anonymity and screening in relation to his provision of evidence to the Inquest into the deaths of Messrs Doherty & Fleming.

[2] I have received a generic assessment of the risk that is perceived to be faced by those retired members of the security forces that have been invited to and will give evidence. I have taken that into account in coming to my conclusions.

[3] I have already given a detailed Ruling in respect of A&S (see [2023] NI Coroner 5) and, where relevant, rely on the legal basis which I set out there for my approach to such applications. Broadly, consistent with my approach there, I consider that:

- (a) the security risk that prevails generally in Northern Ireland remains 'severe' – as determined by the NIO in March 2023;
- (b) the risk to *former* members of the security forces (including former police officers) remains both subjectively and objectively something that is real and not fanciful – adopting the terminology of Girvan LJ in *Re Officer C & Ors* [2012] NICA 47;

- (c) even taking into account the Threat Assessment now provided one could not discount the possibility that giving evidence without the benefit of special measures could increase the security risk to those who attend and give evidence. In many cases – including this one – the applications disclose that individuals often have spent their working life, and since it ended, their retirement, in making personal and family adjustments to protect both their identity and security.

Submissions by the Next of Kin

[4] The NoK have provided detailed objections to the excusal of PW35 on medical grounds. I do not rehearse those here but agree with them for the reasons that I have set out below. They have also indicated that they have no objection to the redaction of personal information but object to his application for anonymity on the basis that his signed police statement (dated 1984) has been part of the disclosed information for some considerable time and that his name is already known. In addition, PW35 gave evidence in person at the inquest held into these deaths in 1986. He did so without anonymity or screening. I accept some force in that argument. They also object to the provision of screening.

Ruling

Medical Excusal

[5] I have considered the application for medical excusal. It is supported by a medical and addendum report provided by Dr East. Based on that, it is asserted that ‘the provision of evidence’ on the part of PW35 will lead to a marked increase in symptoms and deterioration in underlying mental health problems and the argument is then made that they are such to trigger consideration of Articles 2, 3 & 8 ECHR and common law fairness such that the balancing exercise which I must conduct should be determined on the basis that he be excused from giving evidence. I do not agree with that assertion.

[6] In the first place, the medical evidence with which I have been provided is, I find, far from conclusive. It is based, in large part, upon self-reporting on the part of PW35 and is notably absent any corroboration in terms of the claims made that he is or should be excused on mental health grounds by reference to either contemporaneous or historical medical notes and records. That I find is strange given that PW35 was retired on medical grounds in 2000 and there is a suggestion that his mental health has deteriorated since then. Secondly, while Dr East opines that there is symptomology for PTSD and that it is longstanding in nature, he does not provide any clarity as to its cause or longevity. Thirdly, the doctor concludes that he does not believe that there are any ‘realistic measures which [could] mitigate against’ the problems of giving evidence. Although he addresses this in his addendum report he did not, for whatever reason, explain why he initially adopted this view without such considerations. As against this I consider that PW35’s evidence might be of

considerable evidential value. He was not involved in the incident itself but may assist in terms of continuity. In short, I do not think that the medical evidence is – either in terms of its detail or cogency – such that would justify PW35’s excusal in light of those considerations and the investigative role of this Inquest.

Anonymity & Screening

[7] In my previous Rulings on Anonymity & Screening I have said that I intended to adopt a cautionary approach. That applies to this Ruling. I am also bound to take a proportionate approach to the issues that are raised and have been the subject of submissions made on behalf of the applicant and the NoK.

[8] Even in that context, however, I see little force in the application for anonymity where the name of PW35 is already known. That application is refused.

[9] His application is based primarily on the grounds that he remains concerned for his own safety and that of his family. I accept that he has suffered at least two threats upon his life and that he and his family had to move house as a result. I also have considered the fact that, based on the information before me, he also has occasion to travel in the general area where these events took place – ie the North West of the Province and that he may do so frequently due to his current occupation. That does not, however, mean that his name can now be protected when it is already well known in connection with these proceedings – either in terms of his Convention Rights or under the principles of Common Law fairness.

[10] Although his name is known, however, his identity (ie his appearance) is not and that can be protected through screening. Taking all factors into account, including the precautionary approach that I have adopted to date it is proportionate in all the circumstances that PW35 is granted screening to protect his identity from all but me, as coroner, and the legal representatives who appear in this Inquest.

[11] In summary, I have concluded that PW35 is to attend in person to give his evidence but that he is to be screened in such a way that he is to be visible only to me and to the professional representatives of the Coroner and the PiPs. He is to be otherwise screened from the court. He will not benefit from anonymity for the reasons given.