

Neutral Citation No.

Ref: MOR7266

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

Delivered:

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)
IN THE MATTER OF AN APPLICATION BY THE CHIEF CONSTABLE
OF THE POLICE SERVICE FOR NORTHERN IRELAND FOR LEAVE TO
APPLY FOR JUDICIAL REVIEW**

**AND IN THE MATTER OF A DECISION BY HER MAJESTY'S SENIOR
CORONER FOR NORTHERN IRELAND IN RELATION TO THE
INQUEST INTO THE DEATH OF
PATRICK PEARCE JORDAN DECEASED**

MORGAN I

[1] Patrick Pearce Jordan was shot dead at Falls Road Belfast on 25 November 1992 as a result of a bullet apparently fired by a police officer. An inquest into his death was opened in 1997 but was adjourned after some evidence was heard. There have been numerous legal challenges in connection with the holding of the inquest and the Senior Coroner for Northern Ireland has now fixed the hearing for 12 January 2009.

[2] This is an application by the Chief Constable for leave to apply for judicial review in respect of a decision by the Senior Coroner made on 25 June 2008 in connection with the inquest whereby he determined that the Chief Constable should provide him with a copy of the police report into the death of Patrick Pearce Jordan before 4 July 2008.

The statutory background

[3] The disclosure of information by the police to coroner is the subject of section 8 of the Coroners Act (Northern Ireland) 1959.

"8. Whenever a dead body is found, or an unexpected or unexplained death, or a death attended by suspicious circumstances, occurs, the [superintendent] within whose district the body is found, or the death occurs, shall give or cause to be given immediate notice in writing thereof to the coroner within whose district the body is found or the death occurs, together with such information also in writing as he is able to obtain concerning the finding of the body or concerning the death."

This section was the subject of consideration by the House of Lords in *Jordan and McCaughey's case* [2007] UKHL 14. Although that case was primarily concerned with whether the obligation to disclose information was a continuing duty Lord Bingham addressed the purpose of the disclosure of information at paragraph 44.

"Plainly, section 8 requires the police to give immediate notice to the coroner in the circumstances specified, and to give the coroner such information as they are then able to obtain. But the coroner has to decide not only whether to hold an inquest (for which purpose he must make his own investigation: section 11), but also whether a jury is necessary or desirable, and what the inquest should investigate."

[4] Rules 15 and 16 of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 as amended set out the scope of the inquest and make it explicit that the coroner and the jury are not to express any opinion on questions of criminal or civil liability.

"15. The proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely:-

- (a) who the deceased was;
- (b) how, when and where the deceased came by his death;
- (c) [am. SR 1980/444] the particulars for the time being required by the Births and Deaths Registration (Northern Ireland) Order 1976 to be registered concerning the death.

16. Neither the coroner nor the jury shall express any opinion on questions of criminal or civil liability or on any matters other than those referred to in the last foregoing Rule."

The purpose and scope of the inquest in the context of these Rules and the Act was also considered by the House of Lords in *Jordan and McCaughey's case* by Lord Bingham.

"37. There was no issue between the parties concerning the purpose or scope of an inquest. Thus I take it to be common ground that the purpose of an inquest is to investigate fully and explore publicly the facts pertaining to a death occurring in suspicious, unnatural or violent circumstances, or where the deceased was in the custody of the state, with the help of a jury in some of the most serious classes of case. The coroner must decide how widely the inquiry should range to elicit the facts pertinent to the circumstances of the death and responsibility for it. This may be a very difficult decision, and the enquiry may (as pointed out above) range more widely than the verdict or findings....

39. I also agree with the Northern Irish courts, and with Mr Blake, that nothing in the 1959 Act or the 1963 Rules prevents a jury finding facts directly relevant to the cause of death which may point very strongly towards a conclusion that criminal liability exists or does not exist. That, as it seems to me with respect, was what the jury did in *Re Bradley's Application*. The findings which were attacked (quoted in para 26 above) expressed the jury's findings based on the evidence they heard, as did the findings which were not attacked. Their tendency, if accepted, was to exonerate the soldiers, but in my opinion the jury were not led into commenting on matters of criminal liability. They were making findings of fact and drawing inferences of fact, the traditional function of a jury....

40...There can be no objection to a very brief verdict, elaborated by more detailed factual findings. Where the jury's factual findings point towards the commission of a criminal offence, or it appears to the coroner that an offence may have

been committed, the coroner's duty under section 35(3) of the Justice (Northern Ireland) Act 2002 is to report promptly to the DPP, who should no doubt take such action as is appropriate."

The application

[5] In his ruling given on 25 June 2008 the Senior Coroner gave the following direction.

"I now direct that the Chief Constable provide me with a copy of the police report into the death of Patrick Pearce Jordan before Friday 4 July. On receipt of this document I will consider it for the purpose of determining relevancy for inquest purposes and, in conjunction with the other documents I have, what the scope of the inquest should be. I see no reason in principle why I should not provide a copy of it to the legal representatives for the next of kin."

He then went on to suggest how certain PII matters might be dealt with.

[6] For the applicant Dr McGleenan says that the investigating police officer's report includes matters of opinion, comment, assessment, conclusions and recommendations which do not constitute information within the meaning of section 8. The coroner already has all of the source documents on the basis of which these opinions, comments, assessments conclusions and recommendations were made and it was contended in oral argument that an inevitable consequence of an examination of the investigating officer's report would be the consideration of matters of individual civil or criminal liability.

[7] Mr O'Donoghue QC who appeared with Mr Daly for the coroner relied upon the observations of Lord Bingham at paragraph 37 of Jordan and McCaughey's case to support his proposition that the coroner needed to see this material in order to determine the scope of the inquiry. Both he and Miss Quinlivan who appeared on behalf of the deceased's family relied upon the fact that in McCaughey's case the House of Lords had directed disclosure of the investigating officer's report and Miss Quinlivan pointed to the fact that the representatives of the applicant had already provided the coroner with witness assessments expressing opinions about the reliability of various proposed witnesses.

The leave test

[8] In this case I have had the benefit of full oral argument from the applicant, the proposed respondent and the proposed notice party. I also had available to me substantial skeleton arguments prepared by both the applicant and the notice party for the coroner on this issue as well as relevant correspondence. In those circumstances I consider that the appropriate test which I should apply in this case is that stated by the Court of Appeal in re Omagh District Council's Application [2004] NICA 10 namely whether the applicant has demonstrated an arguable case with a reasonable prospect of success.

Consideration

[9] The dispute in this case is relatively narrow. Dr McGleenan was disposed to accept that the "information concerning the death" which the applicant is under a duty to provide under section 8 must be informed by the scope of the obligation placed upon the coroner in his inquiry. Within the papers I have been provided with extracts from the investigating officer's report and what appears to be the entirety of a supplementary report. Although each document contains matters of opinion, comments, assessment, conclusions and recommendations it is clear that the detailed analysis of the relevant evidence is likely to be extremely helpful to the coroner in defining the issues which he can expect to emerge on the hearing of the inquest. There is no basis for limiting the information to which the coroner is entitled by reference to whether it is factual, opinion or assessment. The issue is whether it is relevant to the task which he has to perform and in this case there is every reason to believe that it is so relevant.

[10] Further, I do not consider that there is any basis for contending that the disclosure of the investigating officers report to the coroner would lead to any conflict with Rules 15 or 16 of the Coroners (Practice and Procedure) Northern Ireland) 1963. The coroner's reason for examining the investigating officer's report is not to reach a conclusion on civil or criminal liability but to properly explore all of the available material for the purpose of determining the scope of the inquest.

[11] It appears that the applicant has in fact no difficulty with the coroner having sight of the report. The real concern appears to be his subsequent dissemination of the report to the interested parties. The coroner has indicated in his ruling that in principle he sees no reason why he should not provide a copy of the report to the legal representatives for the next of kin. That statement has to be viewed, however, in the context of his letter of 20 February 2008 which states that that "the entitlement of the bereaved family is

restricted to such part of the documentation that the Coroner considered relevant for inquest purposes”.

[12] It does not appear from the papers that this issue specifically arises in this judicial review but it seems clear in any event that is the intention of the coroner to view the document when he receives it and in so far as it is relevant to provide it to the interested parties to obtain their assistance on the question of the scope of the inquest. That in my view appears to be a proper approach enabling the interested parties to participate effectively in the inquest proceedings.

[13] In the circumstances I do not consider that the applicant has demonstrated an arguable case with a reasonable prospect of success and accordingly dismiss the application. I have reached that conclusion without reliance on the form of Order drawn up by the House of Lords in the Jordan and McCaughey case but it is clear from the reasoning of the House that the Order inevitably followed.