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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 9)
ON AN APPLICATION BY SM16 FOR 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.

[2] This ruling concerns an application on the part of a former military witness (FMW) and properly interested person (PIP) in the inquest, known as SM16, for certain orders in the form of special measures to facilitate him in the giving of his evidence. I am told that SM16 remains committed to attending the inquest and assisting it by giving evidence. However, the following orders or directions are sought, namely that:

> "a) His evidence be timetabled to have a maximum duration of 2 hours.
>
> b) The evidence should have an identified and clear start time. Any applications or other legal discussions should happen after his evidence has been completed.
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> c) The cross questioning of SM16 be conducted by short questions and in a non-confrontational manner.

d) The NOK [next of kin] who wish to question SM16 coordinate the exercise so that only one counsel asks questions. Alternatively, the issues for questioning are allocated between the NOK legal teams and all repeated questioning is avoided."

Basis for the application

[3] The application is said to arise "in the context of legal consultations and interactions [by his legal representatives] with SM16 in preparation for giving evidence." It is not supported by evidence from any medical expert, although SM16's representatives submit that this is unnecessary. The relevant factors they have identified in support of the application are as follows. First, that SM16 is very elderly. He is aged in his early 90s. Second, that he has difficulties associated with age, including fatigue and confusion. Third, he has suffered recent personal bereavements which have had a significantly negative impact upon him. Fourth, SM16 lives on his own and has very little support network. Fifth, it is exceptional for a person of SM16's age to give evidence in any proceedings. Mr Skelt KC submitted on his behalf that he is properly to be viewed as a vulnerable witness and that that must be reflected in the way in which his evidence is handled in these proceedings.

[4] The submissions on SM16's behalf in relation to the application also made the following points. SM16 is both a witness and participant in the inquest and has rights in each of these capacities. The inquest is not a jury trial but is being heard by a coroner sitting alone. In light of this, two hours (it was submitted) is ample time to efficiently question the witness on the material issues to which he can speak; and it would be disproportionate for his evidence to take an entire day.

[5] Reliance was also placed on the Equal Treatment Bench Book (ETBB) in relation to the facilitating of vulnerable witnesses, which includes a duty (it was submitted) to provide arrangements to protect the witness both before and after giving evidence. The placing of a time limit on the questioning of witnesses is well within the case management powers of the court.

The next of kin's position

[6] The NOK of the deceased in this inquest partially opposed the application, in particular the proposal that an 'artificial' time limit be placed upon the witness's evidence in advance. Mr Heraghty KC, who made submissions on behalf of the NOK generally in relation to the application, accepted that several aspects of the request were reasonable (for instance, those at sub-paras (b) and (c) at para [2] above); but further submitted that no specific order was required in advance in these respects, since they merely reflected the usual practice and/or were capable of being policed 'organically' in the course of the witness's evidence.

Time-limiting the witness's evidence

[7] I will deal firstly with the suggestion that SM16's evidence be time limited. I have been troubled by the lack of any supporting medical evidence to ground this application. In advancing the application, it was emphasised that there is no application for medical excusal. However, in the absence of any medical evidence suggesting that there is any conceivable basis upon which an application for excusal might properly be advanced, I fail to see the relevance of this submission. Age alone, without more, is not necessarily any indication of a propensity to confusion or the need for special measures. That said, I recognise that SM16 is of advancing years and that there is a risk of vulnerability on his part. For the moment, however, there is limited (if any) objective support for the suggestion that his particular vulnerabilities require to be catered for by the exceptional step of a time limit being imposed upon his evidence. This is in circumstances where SM16 has had the benefit of his own legal representation in the inquest for some time.

[8] A number of other factors relied upon in support of the application are such as to give rise to sympathy for SM16 but do not directly sound on his vulnerability in the context of the evidence-gathering process. I have also taken the opportunity to reconsider his application for anonymity and the materials provided in support of that. He did not seek screening. His application to provide evidence remotely was granted. Certain medical issues were identified in that application but not such as to sound upon his cognitive ability or mental health.

[9] I have considered the potential significance and length of SM16's evidence. Each of these is difficult to gauge with complete precision in advance. He has provided a written statement through his own solicitors rather than in an interview with the coroner's investigator, meaning that he and his representatives have chosen which areas to address or focus upon, rather than addressing lines of enquiry which the coroner's investigator had identified. There are undoubtedly additional issues which counsel (including my own counsel) will wish to explore with him. These will include which other soldiers he remembers as serving in C Company of 1 King's Regiment at the time and their positions and roles. The nature of the issues in this inquest is such that it is inevitable that evidence given by FMWs will be exploratory in this regard to some extent.

[10] It is clear, however, that SM16 is a potentially very important witness. Mr Skelt properly accepted in the course of his submissions on SM16's behalf that he is likely to be an important witness. He has been afforded PIP status for the reasons set out in Ruling No 2 ([2023] NICoroner 25). In support of that application, his representatives said that it was "alleged that SM16 was a platoon commander and deployed in that capacity when at least some of the events to be examined in these inquests occurred". Further evidence, including his own statement, suggests that SM16 was the platoon commander of 7 Platoon, C Company, 1 Kings. Other evidence in the inquest suggests that this platoon was on standby (or Quick Reaction Force, 'QRF') duties at the time and reinforced soldiers from 9 Platoon in Corry's

Wood Yard at or about the key time for the purposes of this coronial investigation. Although SM16 does not remember being there, other evidence (including notes of an interview he gave to the Historical Enquiries Team in 2014) has suggested that he may have been present in Corry's Wood Yard at the relevant time and/or may have played some role in the events which are directly relevant to the issues under consideration in this inquest. SM16 accepts that, if he was or had been there, his rank and role would have meant that he played a significant role in directing the operation.

[11] I therefore approach SM16's evidence on the basis that he is an important witness and it is unclear whether his evidence could properly and thoroughly be dealt with in two hours – and could be dealt with fairly, both as a matter of fairness to him and others – within that time.

[12] I am also not presently satisfied that SM16 has established that he is vulnerable – or sufficiently vulnerable – to require the grant of this exceptional facility. When addressing the need for special measures, the first question is generally whether (in the case of an adult witness or one who does not fall within special categories identified by statute) they are vulnerable. Usually this will be established by way of evidence of a mental disorder, learning disability, or physical disorder or disability. Sometimes it will be established by reason of their likely fear or distress in giving evidence. None of these are relied upon in SM16's case. Where vulnerability is presumed by reason of age, this is generally because the witness has not yet attained the age of majority. Old age may give rise to vulnerability but ought not in my view to be presumed, without more, to do so. Indeed, such an assumption may itself be an unwarranted stereotype in relation to the elderly.

[13] I accept that there is a case management power to time limit a witness's oral evidence. Mr Skelt relied upon paras 158 and 159 of the ETBB, under the heading 'Limiting the length of cross-examination', which are in the following terms:

> "158. Judges are fully entitled to impose reasonable time limits on cross-examination. They are expected to challenge unrealistic estimates in the Plea and Trial Preparation Hearing questionnaire (Crown Court) or Preparation for Effective Trial form (magistrates' courts), and to keep duration under review at trial. The judge may direct that some matters be dealt with briefly in just a few questions.
>
> 159. Duration of cross-examination must not exceed what the vulnerable witness can reasonably cope with, taking account of his or her age / intellectual development, with a total of two hours as the norm and half a court day at the outside. The witness's needs may

> require questioning to take place over more than one day."

[14] A footnote to the first sentence of para 158 refers to an express power in the Criminal Procedure Rules in England and Wales. I see no reason why, in an appropriate case, the same requirement could not be imposed as a matter of a coroner's case-management discretion (much like the appointment of a registered intermediary dealt with in the course of Ruling No 7 ([2024] NICoroner 11)). Generally speaking, such an order is likely to be more appropriate in adversarial proceedings where the process of giving evidence is likely to be more confrontational and where the witness is dealing with matters of personal sensitivity. I was not myself aware of any instance of this having occurred in an inquest in this jurisdiction. My own representatives are aware of it having occurred once; but in circumstances where the application was supported by significant and strong medical evidence.

[15] In view of the above, I have not been persuaded, on the basis of the information and material presently before me, that it is appropriate to impose a time limit on SM16's evidence in advance. I have some things to say about the manner of his questioning, addressed below; including that I will expect his evidence to be dealt with as efficiently as possible in light of his age. I will also obviously keep this issue under review with the benefit of seeing and hearing SM16 give evidence, at which point I will be in a position to make a much better assessment of SM16's ability to cope with the process of giving oral evidence and any needs or vulnerabilities which require to be addressed.

The manner of questioning, etc

[16] Mr Heraghty did not oppose SM16 benefitting from (what is sometimes referred to as) a 'clean' start time, to minimise waiting and possible consequent increase in nervousness. Nor did he oppose the suggestion that applications and legal argument should not interrupt the evidence. It was accepted that questioning of SM16 should be conducted by short questions and in a non-confrontational manner. Mr Heraghty submitted – and I accept – that the need for short questions is simply a facet of the general obligation that questioning should be conducted in a way which is comprehensible and fair to the witness.

[17] As to the tone and content of questioning, I have already recently reminded counsel for all PIPs in the inquest of the inquisitorial, rather than adversarial, nature of coronial proceedings. The role of those instructed on behalf of a PIP is, obviously, to protect the direct interests of their own client; but, beyond that, it is to assist the coroner in his or her fact-finding inquiry in relation to the deaths. Mr Skelt is obviously correct to submit that these proceedings are not a trial. Therefore, whilst questioning, whether of military or civilian witnesses whose evidence is contentious, can (of course) be robust in terms of its content, it should not be confrontational or aggressive in tone. It is also generally inappropriate for

counsel to incorporate their own commentary or submissions into their examinations of witnesses, whether disguised as questions or not.

[18] I also made the point that there are considerably more NOK and non-state PIPs in this inquest than there are state-party PIPs (particularly when the PSNI's limited role in the substance of the proceedings is taken into account). Broadly speaking, this reflects the division in the competing narratives described in Ruling No 1. As a result, I have encouraged counsel for the non-state PIPs to liaise with each other to try to ensure that military witnesses are not questioned by so many counsel as to give rise to the risk of oppression or unfairness. This is most likely to arise where the counsel repeat the same questions or cover the same topics as others. I accept that there are occasions where there are proper reasons for doing so, or where an important point has been missed; but these occasions are generally rare, particularly with the experience of the counsel engaged in this inquest.

[19] I do not consider that these issues need to be addressed by formal orders in advance of SM16's evidence but, rather, that they can be catered for by the reiteration (above) of general encouragement and advice I have already provided in relation to the questioning process, together with an assurance that I will not hesitate to disallow questions where I consider them irrelevant, unfair or inappropriate in some way.

Conclusion

[20] In conclusion:

(a) I decline to give any direction that SM16's evidence will be time limited in advance. I do expect his evidence to be dealt with as efficiently as possible by all concerned. I will keep this issue under review, as necessary. It should also go without saying that I am entirely content to provide breaks, as necessary, for the witness whenever he requires them. If, at any point, he does become too fatigued to proceed, so that his ability to provide best evidence is undermined or the process risks becoming unfair to him, his evidence can be stopped, and arrangements made for it to be resumed at an appropriate time. At the commencement of his evidence, I will speak to the witness to make these facilities plain to him and try to put him at ease as to his ability to request them (and the ability of others to do so on his behalf).

(b) I have no difficulty with SM16's evidence having a clear and identified start time. This will be 10:30 am. The court will convene at 10:15 am to ensure that everyone is present, and all necessary arrangements are in place to facilitate the prompt commencement of SM16's evidence.

(c) Applications and legal argument during SM16's questioning are to be kept to the minimum required to ensure fairness to him (for instance, if an issue arises as to the propriety of a rule 9 warning).

(d) I urge all counsel to reflect upon the observations at paras [16]-[17] above and keep this in mind during any questioning of SM16 they consider necessary.

(e) I again encourage liaison between counsel for all PIPs with a view to ensuring the questioning process is as efficient as possible and avoids repetition or the witness being examined by more counsel than necessary. Mr Heraghty submitted that there could and would be engagement between counsel for the NOK to this end and I take that commitment at face value.