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Event:	The Decision - Re: Birmingham Bombings Inquests
Date:	1 June 2016
Before:	HM Senior Coroner for Birmingham and Solihull

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THE CORONER: Just a few preliminaries before we start. There were various members of the media who approached my office yesterday to ask if they could record these proceedings. Just want to make it absolutely clear that you cannot.

You also can't take any photographs and mobile phones should be switched off. However, live text-based communications are permitted for media representatives only, and that's in accordance with the practice guidance given by Lord Judge on 14 December 2011.

The other thing, just to save lots of wrists and writing, there will be copies of my Decision available when I've finished. Those in -- family members and lawyers just let my PA know and she will provide copies to you.

Those of the media, again, we can provide copies to you but you will just need to show your badge to confirm that you are a media representative. And then we'll be able to arrange copies for you too.

So this is a Decision following an application received by -- from KRW Law LLP Solicitors, who acted on behalf of three families. And their application was to resume the inquest touching the deaths of 21 people who died in the Birmingham Pub Bombings in November 1974.

I would like to say at the outset that this was a terrible atrocity resulting in multiple deaths of innocent people. My factual account of

these cases is brief in this Decision but this should not detract from the loss that all the families have suffered.

I have received written submissions and heard oral submissions from several interested persons at hearings on 10 February 2016, 6 April 2016 and 12 May 2016. I wrote to all the interested persons I was aware of and who I had addresses for, at the beginning of these proceedings, so that I could take into account the wishes of as many interested persons as possible.

A little bit of background. At 8.18 pm and 8.20 pm on Thursday, 21 November 1974, two explosions occurred in public houses in Birmingham, namely the Mulberry Bush and the Tavern in the town, near to New Street Station. 21 people were killed and approximately 222 were injured. And I think it is appropriate for me to list out now the names of all the deceased.

Maureen Anne Roberts;

Anne Hayes;

Marilyn Paula Nash;

Desmond William Reilly;

Charles Harper Gray;

John Clifford Jones;

John Rowlands;

Neil Robert Marsh;

Lynn Jane Bennett;

Pamela Joan Palmer;

James Craig;

Maxine Hambleton;

Jane Elizabeth Davis;

Eugene Thomas Reilly;

Stephen John Whalley;

James Frederick Caddick;

Trevor George Thrupp;

Paul Anthony Davies;

Stanley James Bodman;

Michael William Beasley; and

Thomas Frederick Chaytor.

Inquests were opened into the deaths by the then Coroner, George Bilington, on 28 November 1974, but in the case of James Craig, on 11 December 1974. The inquests were then adjourned under Section 20(1) of the Coroners Amendment Act 1926.

On 15 August 1975, 6 men were convicted of 21 counts of murder. At the conclusion of the criminal proceedings in August 1975 the Coroner did not resume the inquest in accordance with Sections 20(2) and (4) of the 1926 Act, which I will deal with in more detail shortly. And the then Coroner sent a certificate after inquest to the Register Office confirming that position. That was dated 19 August 1975.

Subsequently, those convictions were held to be unsafe and unsatisfactory by the Court of Appeal, in a judgement dated 27 March 1991 in the case of **The Crown v McIlkenny**.

I have attached to my Decision a chronology of the criminal process and other investigations provided to me by West Midlands Police.

The legislation at the relevant time:

At the time in question the relevant statutory powers were contained in the Coroners (Amendment) Act 1926. I will refer to that as the 1926 Act, from now. Of particular relevance to the present application is Section 20 of that Act. Sub-paragraph 1 states:

"If, on an inquest touching a death, the Coroner is informed before the jury have given their verdict, that some person has been charged, before examining justices with the murder, manslaughter or infanticide of the deceased, he shall, in the absence of reason to the contrary, adjourn the inquest until after the conclusion of the criminal proceedings and may if he thinks fit, discharge the jury."

Sub-paragraph 2 of Section 20 of that Act, states:

"After the conclusion of the criminal proceedings, the Coroner may, subject ... hereinafter provided, resume the adjourned inquest if he is of the opinion that there is sufficient cause to do so."

And Sub-paragraph 4 of Section 20 of the 1926 Act, states that:

"If having regard to the result of the criminal proceedings, the Coroner decides not to resume the inquest, he shall furnish the Registrar of Deaths with a certificate stating the result of the criminal proceedings and the particulars necessary for the registration of the death."

My Decision:

This Decision will be split into three parts.

Part 1, addresses the preliminary issue of whether I am functus officio and whether I have the power to resume the inquest.

Part 2, addresses the test for resumption and whether Article 2 of the European Convention of Human Rights is applicable to the test; and Part 3, addresses whether the test for resumption is met.

So Part 1: Whether or not I am functus officio and whether I have the power to resume the inquest.
When a Coroner has concluded an inquest he or she is said to be functus officio, the effect of which is that the matter cannot be heard again before the same court.

It is common ground between all interested persons that, following the decision of **Flower v HM Coroner for The County of Devon, Plymouth, Torbay and South Devon [2015] EWHC 3666 (Admin),** the Coroner was not functus officio in 1975 when he decided not to resume the inquest. No inquest was ever held. He had adjourned the inquest under the 1926 Act and did not resume it as he subsequently concluded by necessary implication that in light of the criminal convictions there was insufficient cause to do so under Section 20(2). He sent the necessary paperwork to the Register Officer indicating that decision.

It is submitted by West Midlands Police that I, as Mr Billington's successor, do not have the power to resume the inquest, as the inquest was adjourned under Section 20(1) of the 1926 Act, which was repealed in its entirety by Section 36(2) and Schedule 4 of the Coroners Act 1988, which was itself repealed almost entirely by the Coroners and Justice Act 2009.

They argue in essence that the power to resume the inquest has been lost during the transition between these statutes.

As I have stated the 1926 Act was repealed by the 1988 Act, which came into force on 10 July 1988, per Section 37(2). New powers to adjourn and resume inquests were prescribed by Section 16 of the 1988 Act.

However, Section 36(6) of the 1988 Act expressly preserved the operation of Sections 15 - 17 of the Interpretation Act 1978. Sections 17(2) of the Interpretation Act 1978 sates:

"Where an Act repeals and re-enacts whether without modification a previous enactment then, unless the contrary intention appears,
(a) Any inference in any of the re-enactment to the enactment so repealed shall be construed as a reference to the provision re-enacted; and
(b) Insofar as any subordinate legislation made or other thing(?) done under the enactment so repealed, or having effect as if so made or done, could have been made or done under the provisions re-enacted it shall have effect as if made or done under that provision."

It follows from this, in my view, that after the commencement of the 1988 Act it would have been possible to resume the inquest, which had been adjourned under the 1926 Act, by application of the relevant revised and re-enacted provisions of the 1988 Act.
Section 16 of the 1988 Act was subsequently repealed by Schedule 23(1) of the 2009 Act, which came into force on 25 July 2013, pursuant to Article 2(p) of the Coroners and Justice Act, Commencement No 15 Consequential and Transitional Provisions Order 2013 (SI 2013/1869).

Provision for the suspension and resumption of investigations is now contained in Schedule 1 of the Coroners and Justice Act 2009, which came into force as I've said on 25 July 2013, per statutory instrument 2013/1869 Article 2(h). And this includes specific provision relating to suspension where certain criminal charges may be brought, that's paragraph 1. And suspension where certain criminal charges are brought, paragraph 2. And resumption in other circumstances paragraphs 7 and 8 respectively.

Also, we need to take into account Rule 25 of the Coroners (Inquests) Rules 2013, which also came into force on 25 July 2013.

The transitional, transitory and saving provisions in respect of the 2009 Act are contained in Schedule 22 Section 177 Part 1. They are brief and do not expressly address the suspension and resumption powers prescribed by Schedule 1. However, there is nothing in these provisions, or in Schedule 1, which explicitly prevents the operation of Section 17(2)(b) of the Interpretation Act 1978, which I quoted above.

In contrast, the 2013 Rules do contain transitional provisions.
Rule 3 states:

"Application to existing inquests:
These Rules apply to any inquest which has not been completed before 25 July 2013 and any direction, time limit, adjournment or other decision made by the Coroner in relation to an inquest made before 25 July 2013 shall stand."

West Midlands Police submit that because the Coroners and Justice Act 2009 is not a "consolidating Act", the power to resume the inquest was lost when the Act came into force.

I reject that submission. In my view, the requisite power to resume the inquest is conferred by Paragraph 8 of Schedule 1 of the 2009 Act. Reliance on that provision is admissible by operation of Section 17(2)(b) of the Interpretation Act 1978, quoted above. As the power to resume under Section 20(2) of the 1926 Act was carried through first, into Section 16 of the 1988 Act and thereafter into Schedule 1 of the 2009 Act.

Neither of those statutes contain any provisions which could be construed as demonstrating any contrary intention and in addition Rule 3 of the Coroner's (Inquest) Rules 2013 confirms the provisions of the 2009 Act apply to all inquests not completed before 25 July 2013.

I am not persuaded that because the 2009 Act is not a consolidating Act that the provisions of the Interpretation Act are not applicable. The 1978 Act contains no such exclusion and I have not been shown any case law to the effect that there is one. I cannot see what the underlying policy of such an exclusion would be.

On the contrary, it seems to me that public policy militates in favour of, not against the application of the 1978 Act, in circumstances where there would otherwise be an unwelcome lacuna in the law. It would make no sense and will be contrary to the interests of justice

for the statutory power to resume the inquest to transfer from the 1926 Act to the 1988 Act, but then not through the 2009 Act.

It is clear that the purpose and effect of the suspension provision in the 2009 Act are similar to those in the 1988 Act. To say that the inquests remain lawfully adjourned, yet there is no power to reopen them would be irrational and contrary to the provisions quoted above.

So, in plain English, I have concluded that when the 1926 Act was repealed by the 1988 Act the inquests remained suspended. As if they had been opened and suspended under the 1988 Act. And the same position resulted with the 2009 Act when it repealed the 1988 Act. I am therefore satisfied that the inquests are currently suspended and may be reopened under the 2009 Act.

In summary for this part:
Following the **Flower** decision and taking into account the relevant legislative changes in the intervening period and the effect of the Interpretation Act 1978. It is my view that as the inquests into the Birmingham Bombings have never been resumed and thus no inquest has ever been held, the Coroner is not functus officio and has the power to reopen the inquest.

Part 2: The test for resumption and whether Article 2 of the European Convention of Human Rights applies to that test.

The existing power or duty to suspend an investigation and adjourn an inquest where criminal proceedings are brought is found in

Schedule 1 paragraph 2, of the 2009 Act. Paragraph 8 of Schedule 1 states: "That following criminal proceedings the Coroner should only resume an inquest where there is sufficient reason to do so".

I note this wording is almost identical to that used in the 1926 Act, which was "sufficient cause". And I take these phrases to mean the same thing.

It is important for me to set out at this stage of my Decision what the purpose of an inquest is.

An inquest is a fact finding inquiry, charged with answering four questions set out in Section 5 of the 2009 Act. Who the deceased was, and where, when and how each came by their deaths? In any case where Article 2 of the European Convention of Human Rights is engaged, ie, where the state has a procedural duty to carry out a full and effective investigation, how, is interpreted in accordance with Section 5(2) of the 2009 Act, as including in what circumstances that death arose.

In consequence, in Article 2 cases, judgmental conclusions are permitted, see the Chief Coroner's Guidance No. 17 on ‘Conclusions: Short-form and Narrative’.

The inquest is not there to apportion blame and no conclusion can be framed in any way so as to appear to determine any questions of civil liability or criminal liability on the part of a named person. And that is Section 10(2) of the 2009 Act.

No one can be named in the record of inquest and where a conclusion of unlawful killing is given the perpetrator cannot be named and that's the case of **Anderson v HM Coroner for Inner North Greater London [2004] EWHC 2729 (Admin).** And that's also referred to in the Chief Coroner's Law Sheet No 1, on unlawful killing at paragraph 5.

But the person responsible must be capable of being identified in the mind of the decision maker. Schedule 1 Part 2, Paragraph 8(5) confirms that any determination of the inquest, that is, who, where, when and how, may not be inconsistent with the outcome of the proceedings in respect of the charge, by reason of which the investigation was suspended.

For me to decide whether or not I should resume these inquests in accordance with paragraph 2 of Schedule 1 of the 2009 Act, I need to ask is there sufficient reason for resumption. When making this determination relevant though not binding factors to bear in mind can be found in the Northern Ireland High Court case of *Re Downes' Application* [1988] 4 NIJB 91. And there's a quote from Jervis on Coroners, at paragraph 10.8(5) as I'm going to read out.

"The Coroner must direct his attention to the question whether it has been sufficiently established who the deceased was and how, when and where he came by his death. If the Coroner after looking at the facts of the case considers that these matters have already been sufficiently established in public proceedings, he is quite justified in taking the view that an inquest is not necessary.

"The fact that the next-of-kin of a deceased person may thus not obtain the opportunity to cross-examine witnesses, or tender more evidence does not itself make it necessary for him to hold an inquest. What is material is whether the relevant matters have been established in a manner in which the public interest has been adequately served."

There is additional guidance in the case of **R (Dallaglio) v Inner West London Coroner [1994] 4 All ER 139**. There the Court of Appeal allowed an appeal by the families of two of the victims of the Marchioness disaster against a decision of the Divisional Court upholding the ruling of the Coroner not to resume an inquest into their deaths. (Inaudible) gave the leading judgement in which he emphasised the importance of the purpose of an inquest.

Another quote:

"It is early days to be revisiting the grounds so fully covered in **Jamieson**, and I, for my part think it unnecessary for the present purposes to say more than this. That in any Section 8.3 case the Coroner should have particularly in mind what the court said in paragraph 14 of its inclusions -- its conclusions in the **Jamieson** case.

"It is the duty of the Coroner at the public -- as the public official responsible for the conduct of inquest, whether he is sitting with a jury or without, to hold that the relevant facts are fully, fairly and (Inaudible - reading from document) investigated. He is bound to recognise the acute public concern rightly aroused where deaths occur in custody. He must ensure that the relevant facts are exposed to public scrutiny, particularly if there is evidence of foul play, abuse or inhumanity. He fails in his duty if his investigation is superficial, slipshod or perfunctory. But the responsibility is his. He must set the bounds of the inquiry.

Lord Justice Brown went on to indentify critical questions at paragraph 155(d), that the Coroner should consider. He said:

"What would be the proper scope of any resumed inquest? But the better questions are surely these.
Would a full inquest now be a practicable proposition and would it satisfy any worthwhile purpose?"

At paragraph 155(f) he made it clear that the decision to be made under Section 16(3) is of a highly discretionary character and in no way circumscribed by a need to find exceptional circumstances, only sufficient cause.

Further guidance is set out in the judgement of Sir Thomas Bingham, which although not part of the ratio of the case provided a helpful indication of the factors which might mitigate against the resumption. These are, lapse of time, the existence of other reports, and the interest of those bereaved who have in, have in his words, "succeeded in putting this tragedy behind them."

Before I go on to consider the test and how it applies to this case I need to consider the implications of
Article 2 of the European Convention of Human Rights.

It is asserted by the families that if it is arguable that Article 2 of the European Convention of Human Rights applies to the circumstances of the deaths in this case. Then it is mandatory for in inquest to be resumed and may rely on the case of **R (Palmer) v HM Coroner for Worcestershire [2011] EWHC 1453 (Admin).**

It is therefore necessary for me to consider whether Article 2 applies in principle to the issue of whether to hold an inquest or not. In

respect of this issue there is conflict between English law and European law.

The European Court of Human Rights has confirmed in two cases, **Silih v Slovenia (2009) 49 EHRR 996** and **Janowiec v Russia (2013) 58 EHRR 792**, that the Article 2 procedural duty to investigate is detachable and exists independently of the substantive Article 2 duty to protect life. These cases support the proposition that the state is not absolved of a duty to investigate deaths that's occurred before Article 2 came into force in the state.

However, the English Courts have taken a different approach. In the case of **In Re McKerr [2004] 1 WLR 807**, the House of Lords held that the Article 2 procedural obligation to investigate deaths does not apply in respect of deaths occurring prior to the commencement of the Human Rights Act on 2 October 2000. And this is current English Law.

In Re McCaughey (Northern Ireland Human Rights Commission intervening) [2012] 1 AC 725, the Supreme Court followed **McKerr**, but modified the position by adding that if (1) an investigation is instigated -- sorry, initiated for any reason into the death that precedes the commencement of the Human Rights Act, and (2) the issues to be to be investigated engage Article 2, then the results in investigation must be Article 2 compliant.

In my view, notwithstanding the decisions of the European Court of Human Rights in **Silih** and **Janowiec**, I am bound by the decisions in **McKerr** and **McCaughey**. I therefore reject the submission that in principle Article 2 renders it mandatory for an inquest to be held in these cases.

Part 3: Whether the test for resumption is met:
Firstly I am going to set out the arguments for resumption. The applicants' arguments in favour of resuming the inquest can be divided into three strands.

Firstly, there was evidence the state had advance notice of the bombings and failed to take all reasonable steps to avoid loss of life and injury.
Second, there has been a cover-up by West Midlands Police for the purposes of protecting an informant or informants who were in fact responsible for the bombings; and
Three, the emergency response to the bombings was seriously inadequate.

The initial written submissions by the families rely on the following material as supporting evidence.
Error of Judgement, a book by Chris Mullins.
Who Bombed Birmingham, a television documentary broadcast by Granada TV in 1990.
Southside Provisional, a book by Kieran Conway.
First newspaper articles and a draft book written by former Fireman, Alan Hill, who is now deceased.

Having examined this evidence I requested that West Midlands Police disclose to me and the interested persons any additional evidence that bore upon the families' application.

West Midlands Police subsequently provided a very substantial amount of material, some of which was adduced for the specific purpose of this application. And it can be -- the material can be summarised as follows:

Statements from over 250 witnesses who were involved at the time of the bombings.

Copies of exhibits.

Material from the Devon & Cornwall Investigation undertaken between 1991 and 1993.

Material from the West Midlands Police Review, between 1991 and 1994.

A copy of Alan Hill's draft book, entitled The Real Truth About The Birmingham Bombings.

Five submissions with accompanying documents and narratives prepared by West Midlands Police.

A spreadsheet cross-referencing all the statements.

Further witness statements in respect of additional enquiries and forensic examinations.

Review of further material provided by KRW Law, the applicants solicitors; and

Sensitive information disclosed to myself, and for the most part to the applicants, on a confidential basis.

It should be noted that the various police investigations that have been undertaken over the years have amassed a vast amount of material, namely, over 2,000 witness statements, 9,500 actions and 19,000 documents.

Prior to the hearing on 6 April 2016, the applicants served additional evidence in the form of a statement from various persons, including a male individual who I will refer to as Witness B. And from Patrick Hill, one of the Birmingham Six, whose conviction was overturned by the Court of Appeal.

In response to this, and at my request, West Midlands Police helpfully initiated further investigations into the applicants' allegations and produced further documentary and witness evidence.

Following that hearing I sent further requests for evidence about the advanced warning and informant issues to government departments, to The Home Office, The Foreign Office and The Ministry of Defence.

Subsequently, having concluded that I have sufficient evidence from disclosure by West Midlands Police, to make my Decision, and with the express agreement of the applicants and other interested persons, I indicated that I no longer required those requests to be answered. Whether that decision should be revisited is a matter which may need submissions in due course.

Dealing now with the advanced notice argument:

Having looked carefully at all of the submissions and evidence provided by the applicants and West Midlands Police, I have identified two occasions in respect of which there is evidence that supports the argument that the state did have advanced warning of the attacks and may not have taken all reasonable steps in response.

I must emphasise that the evidence I have seen is not conclusive on those matters, but it is my -- in my view of sufficient weight and concern to warrant further investigation.

The first incident occurred on 9 November 1974, when two individuals who had connections to the IRA, were reported as having said that, "Birmingham would be hit next week." This information was reported to West Midlands Police on 10 November 1974. But from the evidence that I have seen, there is no indication that the police took any active steps in response to it. Instead the report was filed away.

There may be good reason why no such action was taken; however, in the absence of a full explanation from those involved at the time as to why nothing was done. I am unable to exclude the possibility that this was a missed opportunity to prevent the attacks.

The second incident occurred on 21 November 1974, the day of the attacks themselves. Witness B, has produced a statement in which recounts being in a pub in the Stirchley area at around lunchtime, when he overheard some Irish men discussing what he believed to be a plan to carry out bombings. He attended Tally Ho Police Training College and reported this to the police. It took some time before a

police officer was available to speak to him. Witness B then returned to the public house with two police officers but the men had gone.

I am not aware of any further action being taken that day regarding this incident. This is in a background of there being heightened awareness of an impending IRA reprisal attack, following the death of the alleged IRA member, James McDade, a week earlier.

Again, although there may be good reasons why no further action was taken, it may be arguable that there was insufficient time for any such action to be -- prevented the bombings later that day.

But on the evidence available to me, I am unable to exclude the possibility that this was a second missed opportunity to prevent the attacks.

The informant argument:
West Midlands Police have provided a substantial amount of sensitive evidence to me in respect of the Birmingham Bombings. The evidence does not support the suggestion that the police took any improper steps to protect an informant or anyone else after the bombings took place.

Consequently, I reject this argument as a basis for reopening the inquests.

The emergency response argument:

This argument relies principally on the account of Fireman Alan Hill. The concern is that the emergency services were ill-prepared and inadequately managed on the day of the attack. The injured victims were taken to hospital by taxis, and that the bomb likely went off earlier than was recorded, and the timings of the bombs were subsequently fabricated.

In considering these allegations I bear in mind that, Fireman Hill, is now dead. So there can be no opportunity to test his evidence properly at an oral hearing. No signed statement was ever provided by him and his evidence takes the form of a draft book.

That book has been considered by West Midlands Police. They have taken further statements and have analysed the material already in their possession, to determine if there is anything that supports the assertion he makes.

I find nothing within the evidence that supports the suggestion of any improper or unacceptable delay by the emergency services. Reviewing the documents, I note that the fire station log records the emergency services being called out at 20.23 arriving at scene at 20.32. There does not appear to have been a delay in West Midlands -- sorry, there does appear to have been a delay in West Midlands Police invoking their emergency procedure. But there is no evidence that this has had any effect on the treatment of the casualties. And I also note the judgements of the Court of Appeal raised no concerns about the time the bomb went off.

In the cases of Maxine Hambleton and Trevor Thrupp, their injuries were described in the post-mortem reports of Professor Griffiths and Dr Davies respectively, following examinations undertaken at the time. I do not wish to upset the families unduly by recounting the details from those reports.

However, I note that Maxine was certified dead on arrival at Birmingham General Hospital, and the post mortem examination confirmed she died from multiple injuries from the blast. Trevor was certified dead on arrival at the public mortuary. And post-mortem examination confirmed he died from a penetrating wound of the thoracic aorta.

I am satisfied that the injuries were such that both Maxine and Trevor died directly as a result of the bomb blast. I have not been provided with any evidence to suggest that either was alive following the blast. Nor have I been provided with any evidence to suggest that earlier arrival of the emergency services would have avoided their deaths, or that any delay otherwise contributed to their deaths.

So I do not consider there is an arguable case that any delay in the emergency services response, caused or contributed to their deaths.

The case of James Craig is different, as he was taken to the Birmingham Accident Hospital after the blast, and later died in hospital on 9 December 1974. His post mortem examination was undertaken by Dr Sevitt, who confirmed the cause of death as

septicaemia and bronchopneumonia, following pulmonary blast contusion, ruptured liver and multiple wounds.

However, again, I have not been provided with any evidence by way of a medical report, to assert that earlier treatment in the few minutes after the blast occurred would have made any difference to the outcome for him.

I am not permitted to speculate. Any decision I must -- I make, must be based on evidence. And in the absence of any evidence I cannot accept the argument that any potential delay in the treatment of James Craig, caused or contributed to his death.

I also need to consider the weight attached to Fireman Hill's evidence in light of all the other evidence that has been provided. This is particularly so, given that the applicants have not provided any persuasive corroborative evidence, and the contemporaneous evidence provided by West Midlands Police, does not support Mr Hill's criticisms.

Overall, I am not persuaded that there is sufficient evidence to show an arguable case that there was a delay in the emergency services response, or that such a delay contributed in any way to the deaths.

I now need to deal with other arguments relied on by the applicants. In addition to the arguments addressed above, the applicants submitted that the government has failed to release relevant documents about the bombings, on the basis that they were subject

to a 30-year embargo, ordered by the then Director of Public Prosecutions, Dame Barbara Mills.

My enquiries have resulted in a letter from the current Director of Public Prosecutions, confirming that the CPS are unaware of any order restricting the release of documents. In any event, I am pleased to note that substantial disclosure has been made to the families and other interested persons, by West Midlands Police through this application process.

The applications also rely on an assertion in Alan Hill's book, that the timings of the bombs were different to that stated by West Midlands Police. West Midlands Police have provided extensive contemporaneous material on the timings of the bombings, including numerous statements and exhibits.

Having considered all of the evidence available, I am satisfied that the bomb timings are as previously stated at 8.18 for the Mulberry Bush and 8.20 for the Tavern in the Town.

This conclusion is supported by numerous witness accounts and in particular, the original telephone call made to West Midlands Police to report the warning, by Mr Cropper, the telephonist at the Birmingham Post and Mail, at 20.11 on 21 November 1974.

I am therefore satisfied that there is no sufficient reason to resume the inquests, based on timing.

The applicants additionally argue that the police evidence at the original trial was false. I note that the Court of Appeal has extensively reviewed this in the **McIlkenny** case.

I note they were unable to resolve many of the inconsistencies and given the passage of time and the fact that key witnesses relating to this issue have now passed away. I consider nothing further can be done to resolve this issue, and it does not amount to sufficient reason to resume the inquests.

Turning back to the engagement of Article 2:
The applicants submit that if Article 2 was engaged, an inquest must be held and I have no discretion about whether to resume. For the reasons already given I reject this argument in principle.

Nevertheless, I will now consider whether if I am wrong about that, Article 2 is arguably engaged on the facts. It is not controversial that subject to the issue of the (Inaudible) of the Human Rights Act 1988, where it is arguable that someone has lost their life at the hands of the state. Then Article 2 mandates that the state must initiate a full and effective investigation into the death. That investigation must be prompt, independent, effective, public and include participation of the families.

There are two ways in which Article 2 may be engaged.
Firstly, an arguable breach of the general duty to provide proper systems for the protection of life.

And secondly, an arguable breach of the operational duty to take reasonable steps, to mitigate against a real and immediate risk to life, often referred to as the Osman Test.

The applicants in this case submit that Article 2 is arguably engaged on the basis that (a) the state had forewarnings of the bombings, but failed to take reasonable steps to protect lives of the public; and/or there was a period of delay by the state, the police, fire service or ambulance service, which contributed to some of the deaths. And official reports were then falsified to cover up these delays.

I accept that if either of these scenarios is arguable on the basis of the available evidence, then Article 2 would be engaged. And it follows that as I have accepted that the first, but not the second scenario is arguable. That (Inaudible) inquest does now take place, Article 2 must be complied with.

So would the resumed inquests now be a practical proposition:
It is asserted that the substantial truth of how the 21 deceased persons came by their deaths cannot now be said to have been determined by the criminal process, given that the convictions were overturned.

The convictions were overturned based on fresh scientific evidence and unreliability of evidence submitted by officers of
West Midlands Police.

It is submitted by the families' legal team that the inquests should now investigate what is a true and accurate account of what happened on that fateful day.

That would require the opportunity to ask questions of key witnesses, which must include police officers, Fireman Hill, the accused bombers, and many others. In respect of some witnesses the passage of time makes that impossible, as several key witnesses are dead.

Superintendent Reid.

Chief Constable Hadfield.

Terence Woodwiss

Andrew Crawford.

George Cole.

Fireman Hill.

Richard McllKenny.

And I note Colin Morris is currently being treated for cancer.

In addition many witnesses will now be elderly. And the passage of time will make the questioning of witnesses very difficult. I note from the spreadsheet of witnesses provided by West Midlands Police, that many are now deceased.

As I have already noted the Court of Appeal in their judgement in 1991, had difficulty in resolving the factual inconsistencies, including which interviews took place and where people were.

I note that after the convictions were overturned in 1991, Devon & Cornwall Police carried out an inquiry which lasted two years. In addition West Midlands Police carried out a further review of the case from 1991 to 1994. A further internal review was undertaken by West Midlands Police from 2012 to 2014. And no subsequent charges were brought following these further investigations.

However, the fact that these investigations have not led to further criminal proceedings, does not detract from the fact that further investigations are still possible several days after the -- several decades after the index events, as has been clear from the extensive enquiries undertaken in response to this application, including statement taking and forensic examination.

On this basis, although I recognise that evidential problems will inevitably arise. I reject the suggestion that an inquest is now impracticable simply through the passage of time.

So my conclusion:
We are now 41 years after the bombings, there is no doubt that ascertaining the truth about what happened on 21 November 1974 will be difficult. But as the last three months have shown, there is a wealth of evidence still available which has not in the main, been seen by the families and other interested persons, or the public, before.

It is still possible for an inquest to ascertain how these 21 came by their deaths, something which has not yet been undertaken, given the Court of Appeal's decision overturning the original convictions.

I am of the view that the evidence does now need to be heard publicly, so that a decision can be made based on evidence as to how these 21 people came by their deaths.

I do though set out a note of caution. The outcome of the inquests may be inconclusive in some respects and it may affirm previously understood information about how each of the victims of the bombings came by their deaths.

As I have said, I have serious concerns that advanced notice of the bombs may have been available to the police and that they failed to take the necessary steps to protect life.

As I've referred to paragraphs 48 and 49 above. This is specifically in respect of the two matters that I have identified. It is only in respect of those issues that I consider there is sufficient reason to resume the inquests to investigate the circumstances of these deaths.

So for the reasons that I have explained in detail, I have concluded that firstly, I do have power to resume the inquest. And secondly, that the inquest should now be resumed.

So what is the next step:

The next step will be, for there to be a pre-inquest review hearing where a number of issues will need to be addressed, both about the scope of the inquest and the future management of the inquest.

I am sure everyone here will appreciate there is an awful lot of work that will be needed to get the inquest up and running. That is going to take time.

There also needs to be consideration of the degree of sensitive material available, and how and when it might be most appropriate for this inquest to take place.

So I am not going to fix a date today. But what I do plan to do is to notify you of a date, likely to be in three months time when there will be a start to discuss how the inquest will be managed. And there will be submissions from all at that point.

Unless there's anything anyone wanted to raise that is all I was going to say.

All right. Thank you all very much.

COURT OFFICER: All rise.