THE BIRMINGHAM INQUESTS (1974)

Coroner: His Honour Sir Peter Thornton QC

FURTHER RULING ON SCOPE

Introduction

1. This ruling follows the Pre-Inquest Review (PIR) hearing held in Birmingham on 18 December 2018. It concerns primarily issues of scope and evidence to be adduced at the forthcoming inquests. It follows on from my ruling on scope dated 3 July 2017. I refer to that ruling for much of the background and law on this topic.

2. These inquests are investigating the deaths of the 21 persons who died following the explosions at two public houses in Birmingham on 21 November 1974. The inquests are being held because the Senior Coroner for the Birmingham and Solihull coroner area ruled in June 2016 that the inquests should be resumed. The original inquests were not completed as a result of the convictions (later quashed) of the Birmingham 6 in August 1975. I was appointed by the Lord Chief Justice as Coroner (the nominated judge) in October 2016.

3. The hearing of the inquests is now scheduled to commence on 25 February 2018. It is therefore important to identify further, as far as is possible, the scope of the inquests. I wish to underline, as I did at the PIR hearing and in my previous ruling, that whatever I decide, scope will remain a matter to be kept under review and may be revisited where appropriate later.

4. I am grateful for the extensive written and oral submissions from all counsel. I do not name all counsel and solicitors but I am aware that all will have made contributions. Those appearing and speaking at the PIR hearing were: Mr Peter Skelton QC, Counsel to the Inquests (CTI) instructed by Fieldfisher, solicitors to the inquests (STI); Ms Heather Williams QC, instructed by Jackson Canter, solicitors for two families; Mr Kevin Morgan, instructed by KRW Law solicitors in Belfast for 11 of the families; Mr Jeremy Johnson QC for the West Midlands Police (WMP); and Ms Samantha Leek QC for HM Government.

Scope: the four potential issues

5. For the purpose of deciding the scope of the inquests I considered in my ruling of 3 July 2017 the four potential issues upon which evidence might be called. It had been agreed between all Interested Persons and my legal team that these were the relevant potential issues for consideration and submissions. The issues were expressed in these terms:

(1) Forewarning - whether West Midlands Police (WMP) or other state agency had prior knowledge that a bomb attack would take place on or around 21 November 1974, and whether further steps could or should have been taken to prevent the bombings that did occur.

(2) Agent/Informant - whether WMP or any other state agency were engaged in concealing the actions of agents or informants who were responsible for the bombings, or whether there was other state involvement or collusion to enable the bombings on 21 November 1974 to take place.

(3) Emergency Response - the response of the emergency services to the bombings, its adequacy or otherwise, and whether any failings caused or contributed to the deaths that resulted from the bombings.

(4) The Perpetrator Issue - the identities of those who planned, planted, procured and authorized the bombs used on 21 November 1974.

6. I ruled on 3 July 2017 that -

(1) forewarning was a relevant issue;
(2) the agent/informant issue should be considered later as inquiries were continuing;
(3) there was insufficient evidence that an over-arching investigation into the totality of the emergency response was required to answer the statutory question of how the 21 victims of the bombings died, and insufficient evidence to allow for such an investigation to be conducted effectively; individual cases, however, would be considered in the light of any evidence that emerged in respect of them; and
(4) the perpetrator issue was a matter for police investigation, not the inquests.

7. My ruling on (4) the perpetrator issue was challenged by some families by way of judicial review. Ultimately, the Court of Appeal ruled on 26 September 2018 that my ruling on the perpetrator issue was correct in law: see *Coroner for the Birmingham Inquests (1974) v Hambleton and others* [2018] EWCA Civ 2081.

Forewarning issue

8. I return to the forewarning issue in order to identify the topics which I consider to be relevant and upon which evidence should be called. That evidence should be the subject of discussion and agreement where possible or, if not, further ruling. Submissions were made on this issue in writing before and orally at the PIR hearing.

9. There are 11 possible topics under the heading of forewarning. I will give each a topic title. These titles are familiar to all Interested Persons and submissions were made upon them in the order below. -

(1) Prison conversation on 9 November 1974
(2) The conversation overheard by Witness B on 21 November 1974
(3) Cancelled visit to Steelhouse Lane police station on 21 November 1974
(4) Arthur Jolley taxi to Birmingham on 13 November 1974

(5) Overheard conversation on 20/21 November 1974 about the Talk of the Town
(6) Journalist at Birmingham Elmdon Airport on 21 November 1974
(7) Chief Superintendent Tonkinson and his daughter Johanna
(8) Disclosure to HMP Assistant Governor (May 2016)
(9) Letter to Chancellor (February 1990)
(10) DCI Cecil Lewis
(11) PC Keith Fleetwood

10. Of topics (1) – (5) above, it was agreed by all counsel that evidence should be called (or in the case of Mr Johnson for WMP that 'the Chief Constable would not oppose evidence being adduced'). I agree that evidence should be called on these topics. My legal team and those of the Interested Persons should consider whether any further underlying documents need to be disclosed on these topics, particularly (5), the Talk of the Town. If necessary, I will make a ruling on any outstanding points.

11. On topic (7), the evidence as it stands at present can be summarised as follows. Mr Tonkinson's daughter, Johanna, who was very young at the time of the bombings, recalls in statements given by her in 2016 that her father told her that he was on duty in a police car in Birmingham on 21 November 1974 and sometime after 8.03pm [the bombings occurred soon after 8.15pm] he heard over the police radio that bombers were being trailed but the trail was lost. He told her that he wanted to arrest them but was not allowed to do so. He added that the powers that be, the Home Office or whoever, 'allowed' the bombs to be planted.

12. Her father's account in 1992 did not go so far. There was surveillance; somebody was being followed but they were lost. And there is other evidence which may not support Ms Tonkinson's account.

13. Ms Williams and Mr Morgan, acting in total for thirteen of the families (not all families are represented), both submitted that this evidence should be heard. I agree. What this evidence amounts to precisely and how far it goes will be a matter for consideration at the inquests. But it seems to me that it should at least be heard.

14. CTI had submitted in writing that evidence should not be called because Mr Tonkinson was deceased, his daughter's account from her father was hearsay, there were concerns about the reliability of her evidence and even at its very highest it was an allegation or suggestion of advanced knowledge rather than evidence upon which the jury could make a finding of fact (see submissions of 5 December 2018, para.149). At the PIR hearing itself, CTI, having seen the written submissions of the Interested Persons, took a slightly different view and suggested to me that I might feel that this evidence should be aired. I agree that it should be aired.

15. What evidence needs to be adduced on the Tonkinson topic should be discussed and agreed where possible (including any evidence about Kenneth Littlejohn, if relevant to the Tonkinson accounts on the forewarning issue, see paragraph 33 below).

16. Continuing with the list of forewarning topics, nobody suggests for the moment that any of the topics listed at (6), (8) – (11) should be heard at the inquests. I agree. These topics have been thoroughly investigated and there is no credible

evidence on any of them. Mr Morgan (and KRW Law) wish to have further disclosure, where available, on numbers (8), (10) and (11). That will be provided.

17. In conclusion on the forewarning issue, I rule that evidence will be called at the inquests on items (1) – (5) and (7). The extent of that evidence will be discussed by counsel early in January 2019 and hopefully agreed.

Agent/informant issue

18. It has been agreed for some time that the agent/informant issue is a relevant issue if there is evidence. I and my legal team have therefore investigated many avenues of inquiry. We have made requests for searches, reviews of searches, requests for specific documentation and considered specific documents in order to seek out any credible and relevant evidence. The process of investigation has been extensive.

19. These requests have been made to the Foreign Office, the Ministry of Defence, the Home Office, the Ministry of Justice, the Cabinet Office and the security and intelligence agencies. They have also been made to the West Midlands Police, the Devon and Cornwall Police, the Metropolitan Police Service and the Police Service of Northern Ireland.

20. None of these agencies of the State has found any evidence to support the consideration in evidence of this issue. Nor has my legal team in their reviews, checks of documents and consideration of many thousands of pages found any such documents.

21. As part of the extensive investigations, my team has also inquired of a wide range of organisations and individuals. These include, although the list may not be exclusive, St John's Ambulance, the Samaritans, the British Red Cross, the Fire Service College, doctors and surgeons, ambulance drivers, T.O.A. Taxis, Operation Kenova (led by the Chief Constable of Bedfordshire Police), the Belfast Project (Ed Moloney), Shakespeare Martineau solicitors, Caters News Agency, Hull History Centre, the National Archive, the Imperial War Museum, Media Archive of Central England, the Criminal Injuries Compensation Authority, the Birmingham Mail, the Open University, the British Film Institute, Wild Pictures, ITV, Sinn Fein, a number of professed previous members of the Provisional IRA and other individuals.

22. The inquiries of these organisations and individuals have been widely drawn so as to obtain any relevant evidence in their possession. But nothing has been revealed by any of them to suggest that there is any credible evidence on the agent/informant issue.

23. All requests of Government agencies and police forces have produced nil returns. All requests, reviews and inspection of documents by my team and myself have produced no credible relevant evidence.

24. CTI had submitted in writing as follows (5 December 2018, para.12): 'We consider that any credible evidence of state involvement or collusion to enable the bombings on 21 November 1974 to take place should be adduced before the jury.' I agree. If there were any such evidence, whether documentary evidence or witness testimony (from the many witnesses that my legal team have contacted), the agent/informant issue would become a live issue. If any credible evidence had been found, it would have been disclosed and discussed. But there is none.

25. CTI stated in their written submissions: 'The CLT [Coroner's Legal Team] have undertaken an extensive investigation of this topic, the details of which are set out in the Agent/Informant Note [dated 30 October 2018]'. They concluded that they had found no evidence of the involvement in the Birmingham pub bombings of 21 November 1974 of an agent/informant who was acting on behalf of the British state (para.25). Nor has the CLT found any evidence that the activities of such an agent/informant were covered-up in the aftermath of the bombings. I accept that conclusion. From what I have seen for myself it is the correct conclusion.

26. The CLT's conclusions relied not just on assurances from Government and police sources. On my instruction and with my authority they undertook their own exhaustive, independent investigation of the information and potentially relevant information in the possession of these agencies, including 44 years' worth of material in the possession of the WMP. They found no evidence that would undermine or otherwise form a basis for challenging the assurances given by the agencies of the State.

27. In coming to the conclusion that the there is no credible relevant evidence on the agent/informant issue, I have, of course, taken into account the submissions of counsel for the families. Ms Williams submitted in general terms that in order to dispel longstanding suspicion and rumour on this particular issue and in a case with a very strong public interest, it is not enough to disclose the results of the investigation (paras.58, 62). It is necessary to place as much evidence as possible before the jury. In particular that includes, she submitted, evidence about Kenneth Littlejohn and James Kelly (see below). Mr Morgan adopted the submissions of Ms Williams. He added that in terms of 'practical justice' all possible lines of inquiry should be pursued by me, if only to suppress rumour and suspicion.

28. Mr Morgan further submitted that it was too early to make a decision on this issue. Any preliminary decisions should be avoided. I do not agree. The commencement date for the inquests (just two months away) is fast approaching. Decisions need to be made on scope in order that witnesses can be chosen for relevant topics and warned for the hearing. These decisions are not final in the sense that all decisions on scope may be revisited in the light of fresh material or evidence. But they are firm decisions, shaping the scope of the inquests and the nature of the evidence to be called, in order that the jury can answer the four statutory questions.

29. In the context of the agent/informant issue, I will now consider evidence and information about Kenneth Littlejohn and James Kelly.

Kenneth Littlejohn

30. There is certainly evidence that Kenneth Littlejohn (Littlejohn) was a self-proclaimed informer of some sort to the British Government in or around 1971 and 1972. A Ministry of Defence press statement issued in August 1973 (but relating to previous events) indicated as much. It stated that Littlejohn had requested to meet a member of the Government whom he would recognise from the media. It was therefore arranged that he should meet and did meet with Mr Geoffrey Johnson-Smith MP, a Minister, who put him in touch with 'the relevant authorities'. Three days before the press statement, Littlejohn had been sentenced for a bank robbery he committed in Dublin in 1972.

31. The lawyers acting for the families also rely upon another strand about Littlejohn. He was in Birmingham on the night of 21 November 1974 and stayed that night, he claimed, at the house of Thomas Watt who became a prosecution witness in the case of the Birmingham 6.

32. It is true that Littlejohn came from Birmingham and was later arrested on 11 December 1974 in the house of Thomas Watt. He was on the run at the time. He had been extradited from England in April 1973 (having been arrested in England in 1972) and sentenced for the bank robbery in Dublin to 20 years' imprisonment. He escaped from Mountjoy Prison in Ireland and returned to England. There is also some possible evidence that he was under surveillance or being looked for by the police on 21 November 1974.

33. There is, however, simply no credible evidence that Littlejohn was acting as an agent or informant providing advance information at the time of or in the period leading up to the bombings on 21 November 1974. There is no evidence relating to either the forewarning issue or the agent/informant issue (subject, however, to his being tied in, somehow, to the Tonkinson evidence on forewarning, see paragraphs 15).

34. There is evidence of an anonymous call to Digbeth Police Station in Birmingham on 22 November 1974, the day after the bombings, claiming that Littlejohn 'knows and assisted in the bombs last night'. But there is nothing to support this specific assertion. The caller has not been traced. The note of the call was, however, marked to be passed to DS Bunn, and DS Bunn has very recently been traced. Further inquires will be made of him. In the meantime, there is in my opinion no good evidence to put before the jury. If there were, on this call alone, it would relate to the perpetrator issue, which as I have ruled, and the Court of Appeal has said ruled correctly, cannot be within the scope of the inquests. This call is for these reasons, therefore, not relevant evidence. Otherwise there is no direct evidence of Littlejohn's involvement in the bombings. There is no evidence that he was acting as an agent of the State or providing information about the IRA or the bombings to WMP or any other agency of the State in the lead up to the bombings. There is no evidence of any cover-up in relation to him.

35. There is some information about the involvement of Littlejohn, but it comes from an incredible source and nobody in these inquests seeks to rely upon it. Paul Cleeland, who describes himself as a career criminal and who was convicted of murder in 1973 (a conviction which he continues to dispute), came forward to the families to claim that he had witnessed a conversation between Littlejohn and a named IRA prisoner in HMP Gartree in the 1980s. In this conversation Littlejohn confessed that he had 'planted the bombs in Birmingham on the orders of the British Intelligence'. Unfortunately for Mr Cleeland's credibility, prison records show that the three men were never together at HMP Gartree at the relevant time. When confronted with this difficulty, Mr Cleeland who had until then been cooperative with STI, became uncooperative and claimed the records were forgeries. He remains uncooperative.

36. There are other inconsistencies and difficulties in Mr Cleeland's account. They are set out in writing in CTI's written submissions, at paras.47-54. I will not repeat them. In addition Mr Cleeland has made a number of highly improbable claims, not least that he had been recruited by MI5 to assist with George Blake's prison escape (which he now denies) and that the Falklands War was engineered in order to prevent the appeal in his murder case from being publicised.

37. In my judgment Mr Cleeland is not a credible witness on this or any issue.

38. It is hardly surprising that rumour and suspicion about the bombings and about Littlejohn in particular have flourished from time-to-time (and not always from reliable sources), no doubt in part in Littlejohn's case because of his colourful public reputation and his likely presence in Birmingham on the night of the bombings.

39. In the draft of a book, for example, Alan Hill, a Birmingham firefighter who attended the scene of the bombings on the night of 21 November 1974, pointed the finger in the direction of Kenneth Littlejohn. He wrote that Littlejohn was seen in Birmingham at the time of the bombings. He produced a photograph to prove it, maintaining that it 'inadvertently captured Littlejohn as he walked by'. After extensive inquiries STI have traced and interviewed a named retired ambulance attendant who identified himself in that photograph. It was not Littlejohn.

40. Mr Morgan also referred in his submissions to an assertion made by Mr Hill in the draft of his book to two secret files: 'The truth lies within the two top secret files, DEFE (MOD) 13/759 'The Littlejohns 1973-1976 and DEFE 13/612. The KB Littlejohn Affair, 1972-1973' which are held by the MOD. Both are closed …' The names and numbers of these files are available publicly in the National Archive held at Kew. The files are indeed closed. The contents of the files have therefore not been seen by Mr Hill (now deceased). On the other hand my team have seen them. No relevant materials fall to be disclosed from them.

41. It is entirely understandable that the lawyers for the families should wish to have these matters considered. For that reason my legal team has made extensive inquiries on my behalf of possible witnesses and documentary evidence (some open and some closed). These matters have been considered. I am satisfied as a result that there is no credible evidence relating to Littlejohn of either the forewarning issue or the agent/informer issue. These aspects of the investigation have been fully pursued and as much disclosure made as is possible in order to show as far as we are able that rumour and suspicion are no more than that.

James Kelly

42. The same can be said in relation to James Kelly. He was convicted in the Birmingham 6 trial, not of the 21 murders, but of separate offences relating to the possession of explosives. He said in evidence in his defence that he had intended to tell the police about the explosive materials but had not done so by the time of his arrest. His Ministry of Justice file, which has been disclosed, indicates that he did provide information to the police on his arrest. He was arrested in Birmingham soon after the bombings on 29 November 1974.

43. It is not surprising in those circumstances that rumour and suspicion about him has also burgeoned over the years. I am grateful to CTI for setting out very fully in writing the matters relating to James Kelly. Having made extensive inquiries either through my team or myself, I am satisfied that there is no evidence that he was an informer on or before 21 November 1974 or an agent involved in the bombings in any way. There is no evidence of any cover-up of any role by him in relation to the bombings. Nor is there, I should add, in relation to any other individual, whether named in submissions by Interested Persons or otherwise.

44. For these reasons I agree with the submissions made by CTI. I am therefore satisfied that there is no evidence to support the agent/informant issue. Were any to arise at any time before the conclusion of the inquests, I would be prepared to consider it.

Disclosure

45. Before leaving the PIR hearing, I must refer to a further matter raised by Ms Williams on behalf of her clients. It relates to the disclosure process to date. I am not asked to make a ruling on disclosure but I will take on board the points made. KRW Law had not made similar submissions in advance of the hearing, but Mr Morgan made oral submissions in support.

46. Ms Williams submitted in writing that 'there is a significant lack of transparency and clarity' in the disclosure which had been provided to them (written submissions, 12 December 2018, para.3). She submitted that it appeared that I as Coroner and my legal team acting on my behalf had held Public Interest Immunity (PII) hearings informally and without notice (para.58) or had 'skipped over' the process (para.49) or had avoided PII hearings by taking 'short-cuts or half-measures' (para.56). She also complained that relevant material had not been disclosed (eg para.47), that underlying material had been withheld, that redactions had been made of relevant material without explanation (para.48), and that these difficulties hindered her ability to make submissions on scope (para.52).

47. On first reading these submissions, they seemed to be something of an attack upon the integrity of the disclosure process. At the PIR hearing Ms Williams was, however, able to assure me that there was neither a suggestion of lack of trust, nor any doubt in 'the good faith of those involved'. It was more a question of transparency in the process.

48. I was a little surprised at her approach. In disclosing in excess of 22,000 pages of documentary material, most of it on a voluntary basis, I and my legal team have been at pains to explain the nature of the material disclosed. The solicitor to the inquests (STI) had more than once explained at length in writing, most recently in a four page letter on 20 November 2018, the method of disclosure adopted in this case, describing how 'the Coroner has taken a wide approach to disclosure … and in his review of material he has erred on the side of disclosing material if it might conceivably assist with the matters that are being investigated'. The STI further explained in that letter that 'To assist Interested Persons to follow the disclosure process, on behalf of the Coroner I have issued regular update notes on key steps in the coronial investigation, including enquiries made with a large number of different organisations and individuals and the process for reviewing potentially relevant materials.' In that letter he also explained the redaction method, concluding in these terms: 'The process involves reviewing materials for provisional redactions to ensure, for example, that information that is sensitive and irrelevant is removed before the material is disclosed.' There has also been a very recent email exchange with the solicitors representing the families at the end of November indicating that PII hearings have not taken place. CTI have also produced lengthy Notes on 'research and disclosure' in respect of the forewarning topic (27 November 2018) and the agent/informant topic (30 October 2018). In my view there could hardly have been more plain explanation about the disclosure process.

49. Despite these clear explanations, notes and updates and also my legal team's policy of making clear that their 'door is always open', Ms Williams has chosen, as of course she is entitled to do, to make her points in this public PIR hearing.

50. I therefore believe that a misunderstanding may have arisen, although it is not clear from where it arose. But if there may be any misunderstanding or any adverse perception, it is my duty to remedy it. I have therefore asked my team, as Ms Williams has also requested in writing (para.55), to set out briefly in writing the nature of the past, present and ongoing disclosure process, if and when PII hearings will be heard, the question of redacted material and dealing with particular areas of concern as expressed by Ms Williams (including, for example, as much information as possible on the two missing Government files). I will also myself explain how disclosure is made in all complex inquests and has been made in these inquests.

51. In the first place I wish to emphasise that all relevant evidence has been disclosed, no PII hearings have taken place, no short-cuts have been taken to avoid PII hearings and no redactions have been made of relevant material. In addition, large quantities of irrelevant material have been disclosed in order to demonstrate the nature and full extent of the Coroner's process of investigation, including areas of inquiry where in the past suspicion and rumour (if not conspiracy theories) have arisen. By irrelevant material I mean material which is not within the scope of the inquests.

52. Ms Williams submitted, for example, that the statement of Ms Ellie Oakley of the Government Legal Department demonstrated that relevant evidence from the Government had been concealed. She submitted that the phrase 'potentially relevant evidence' (in para.16.e. of Ms Oakley's witness statement), to which CTI had been given access, meant that CTI had seen relevant evidence but not disclosed it. That is evidently not correct (as the letter from STI above recently explained). Ms Oakley had shown CTI and myself material which she believed we should see in order that I could assess relevance, but which, after consideration and applying the legal test in rules 13 and 15 of the Coroners (Inquests) Rules 2013, I decided was not relevant. All such evidence held by the Government was therefore not disclosed.

53. KRW Law had not felt the need to make submissions in writing on this point before the PIR hearing. Mr Morgan (instructed by KRW Law) did, however, submit at the hearing that there was uncertainty and lack of clarity about the disclosure process in relation to PII, the use of gisting, and on relevance, redactions and the inconsistent use of cyphers. He invited full clarification from me in order to achieve confidence in the process. He also submitted that his clients should see all material seen by the Coroner and the Coroner's team, including secret documentation such as from Special Branch files and Cabinet minutes. It was his submission that documents had over the years been deliberately 'filtered out' so as to be no longer available for public scrutiny. The families, he said, wanted every stone to be turned over.

54. For the avoidance of doubt, therefore, in the light of these submissions, I will set out the process of disclosure which all coroners undertake in their inquisitorial role, relating it to the process which as Coroner to these inquests I have supervised and approved, where necessary making decisions about relevance in accordance with the Rules.

(1) The process of investigation and inquiry by the Coroner in the first place is to seek out relevant evidence, some of which may then be selected to place before the jury. Not all relevant evidence will be placed before the jury. The Coroner decides which relevant evidence may assist the jury on relevant issues. In this context a list of provisional topics was first provided to Interested Persons in July 2017.

(2) Relevant evidence is evidence which relates to the issue in question and which will assist the jury in answering the four statutory questions: who died, when and where did they die, and how did they come by their deaths (sections 5 and 10, Coroners and Justice Act 2009). Relevant evidence is not decisive or determinative of an issue. It merely relates to it. It may be accepted or rejected.

(3) In seeking relevant evidence the Coroner will look at 'potentially relevant evidence' (as mentioned in the statement of Ms Oakley) with a view to deciding whether it is relevant or not. Relevance is for the Coroner. The Coroner considers what relevant evidence should be put before the jury, not what 'potentially relevant evidence' should be put before them.

(4) Where the Coroner finds in the course of investigation relevant evidence, that evidence will be disclosed to Interested Persons in accordance with rule 13(2)(d) of the Coroners (Inquests) Rules 2013, subject to any relevant evidence which the State claims should not be disclosed for Public Interest Immunity (PII) reasons.

(5) Where the Coroner finds relevant evidence and the State claims PII, there will be a hearing in public in which Ms Williams and other counsel will have the opportunity to make submissions before the Coroner considers the competing interests between disclosure and non-disclosure. There has been no such hearing in this case because there has been no such PII claim.

(6) In this case after extensive inquiries on the agent/informant issue the Coroner has looked at material, either himself or through his legal team who are security vetted for this purpose and entirely independent, to see if there is relevant evidence. There is none. No relevant material has been found and therefore no claim of PII has been made and therefore there has been no PII hearing. There has been no failure to disclose relevant evidence by 'short-cut' or otherwise.

(7) On the contrary, in order to demonstrate the extent of the investigation and inquiries made by or on behalf of the Coroner, much disclosure has been made, in excess of 22,000 pages. A significant proportion of this material is strictly speaking irrelevant and therefore without any requirement for disclosure (see rule 15(e)), but it is disclosed on a voluntary basis in order to assist Interested Persons to understand the nature and extent of the process of the investigation.

(8) Some of the disclosed material has been provisionally redacted. This is not because relevant evidence has been hidden. On the contrary this is irrelevant material disclosed by the Coroner on a voluntary basis. There have been redactions to protect personal data and other private information or information where the identity of the person may put that person at risk. That redacted information has sometimes been described as 'irrelevant/sensitive'. That is a perfectly clear expression. It does not mean, as Ms Williams submitted, irrelevant or sensitive (so that some sensitive relevant material has not been disclosed). It means irrelevant material that is sensitive.

(9) If the redacted material had been relevant it would either have been disclosed or there would have been a PII hearing (if PII had been claimed).

(10) The reference to NCND (neither confirm nor deny) in relation to Kenneth Littlejohn does not relate to anything relevant. It is disclosed in order to show the direction of the Coroner's inquiries.
(11) The Coroner has therefore not failed to disclose relevant material, nor avoided PII hearings by taking short-cuts and not therefore acted improperly or unlawfully in the disclosure process. Put in the affirmative, the Coroner has disclosed all relevant material and much irrelevant material. No PII claim has been made in relation to relevant material. There has therefore been no PII hearing or PII process. The Coroner has acted throughout the disclosure process in accordance with the Coroners Rules and standard practice.

55. This has been in my view a comprehensive disclosure process for the purpose of these inquests. Every effort has been made to discover and disclose relevant evidence and disclose irrelevant evidence which bears upon the investigations by the Coroner. As far as I am concerned every relevant stone has been turned over. That does not mean, I am afraid, that the families may see every document that I or my team have seen. That can never happen. But I can assure the families, as best as I am able, that I have not failed to disclose anything which I consider to be relevant to these inquests.

56. There are one or two additional topics that were raised on behalf of the families at the PIR hearing which I shall now consider.

Professor McGovern

57. Both Ms Williams and Mr Morgan submitted that a report by Professor Mark McGovern dated October 2018 should form the basis of evidence by Professor McGovern on state infiltration of the IRA and use of agents and informers prior to the Birmingham pub bombings on 21 November 1974.

58. Professor McGovern had been instructed jointly by KRW Law and Jackson Lees (Jackson Canter) solicitors on 30 October 2017 to comment in particular on the following questions:

(1) The extent to which the UK Government, its agencies or its agents, had infiltrated or may have infiltrated the IRA and/or PIRA (insofar as relevant to the Birmingham Pub Bombings), to include the extent to which evidence suggests such infiltration was a real possibility.
(2) The likelihood that the UK Government, its agencies or agents, may have had advance notice of IRA and/or PIRA bombings through its informers, including in 1974.
(3) The likelihood that the UK Government, its agencies or its agents, may have influenced, encouraged and/or permitted IRA and/or PIRA bombings or other activities (insofar as relevant to the Birmingham Pub Bombings).

59. Had Professor McGovern answered any of these questions, particularly (1) and (3), in the affirmative, there might have been a reason to consider his evidence, although I note that CTI submitted that this would have been a question of fact not expert evidence. Had Professor McGovern said, for example, that there was an irresistible inference (even an inference) that the UK Government would have had advance notice of the bombings or would have at least permitted the bombings with foreknowledge, his evidence might have had to be considered for relevance.

60. But he did not. In the first place he emphasises in his interesting and eminently readable report that his focus is upon the wider context rather than 'events in England', let alone 'the circumstances of the Birmingham Pub Bombings' themselves' (p5). In his pre-introduction he goes further and explains that he cannot give 'definitive answers' to the 'likelihood that the UK Government, its agencies or its agents, may have had advance notice of the … bombings' in Birmingham in 1974 without 'access to police and intelligence records' (p3). He admits that he has not seen any such documents. I and my legal team have seen such documents; they do not answer any of the above questions in the affirmative.

61. Similarly, Professor McGovern cannot provide 'fuller answers' to the question whether the 'UK Government, its agents or its agencies, may have influenced, encouraged and/or permitted IRA and/or PIRA bombings or other activities (insofar as relevant to the Birmingham Pub Bombings)' (p4). He provides neither 'definitive answers' nor 'fuller answers', nor any answers at all to these questions.

62. In the face of these difficulties, it is submitted that he provides useful contextual background. I do not agree. Ms Williams states in her written submissions that he was instructed 'with a view to ensuring that there was expert evidence adduced during the investigation on the possibility that agents and/or informers might be operating during the West Midlands campaign' (at 81.a.). Professor McGovern, however, does not support that suggestion, and certainly not in relation to Birmingham. The fact that informers and/or agents may have played a role elsewhere from time to time is no evidence, expert or otherwise, to support the implication that they must (or even might) have played a role in relation to the Birmingham bombings. For his part Professor McGovern falls short of making any such suggestion. It would therefore be speculative at best to consider such a proposition.

63. For these reasons I do not consider that Professor McGovern can provide relevant expert evidence. I am, however, grateful for his report, as part of the wider investigation process.

64. I would add in passing that Professor McGovern writes at length in his report about Kenneth Littlejohn but does not suggest that Littlejohn was or indeed ever claimed to have been an agent or informant in Birmingham (generally) or in relation to the Birmingham bombings (specifically). A similar conclusion was reached by Chris Mullin in his book *Error of Judgement*. Mr Mullin has also told my inquest team that: 'For what it is worth, I know of no evidence to suggest that the West Midlands Police had advance notice of the pub bombings.'

Additional points

65. Mr Morgan further submitted that I should pursue inquiries into what he and KRW Law describe as the 'Liverpool connection'. I have seen nothing to suggest that there is evidence of any such special connection in relation to the Birmingham bombings or that there is anything further to investigate. Insofar as any such connection may relate to Arthur Jolley, I have already indicated (at paragraph 10 above) that his evidence will be adduced.

66. Finally, as we move forward to the inquests in February 2019 and an additional PIR hearing on 17 January 2019, I would like to express my thanks for the cooperation which has undoubtedly taken place between all the lawyers and

which has helped the process of investigation. I am sure that cooperation will continue through the final stages of selecting and bringing forward relevant evidence before the jury.

HH SIR PETER THORNTON QC
Coroner to the Inquests

31 December 2018