THE BIRMINGHAM INQUESTS
(1974)

Coroner: His Honour Sir Peter Thornton QC

RULING ON DISCLOSURE

Introduction

1. This Ruling concerns two applications for disclosure. At the Pre-Inquest Review hearing on 17 January 2019, Mr Kevin Morgan, counsel, instructed by KRW Law, solicitors in Belfast who represent 11 of the families of the 21 persons who died following the Birmingham pub bombings on 21 November 1974, made two applications for further disclosure:

   (1) For an order that all relevant state agencies, namely West Midlands Police (WMP), the Police Service of Northern Ireland (PSNI), MI5, MI6 and the Ministry of Defence, should answer 10 questions about the process of disclosure. I shall set out the questions below.

   (2) For disclosure of relevant contemporary, national and local (to Birmingham) policies, protocols and guidelines about responses to bombing emergencies.

2. I shall consider each application separately.

Application (1): Order for agencies to provide answers to 10 questions

The 10 questions

3. Counsel submitted that an order should be made by the Coroner directing the agencies to answer 10 questions.

4. The 10 questions were set out in written submissions by counsel dated 15 January 2019, at para.33. They are -

   i. In the context what documentation would you expect to see
   ii. Have you located all documentation that you would have expected to see
   iii. Has any documentation in this context been lost
   iv. If the answer to iii. Is yes, identify the documents or classes of documentation that are lost

v. Has any documentation in this context been destroyed (properly or otherwise)
vi. If the answer to v. is yes, identify the documents or classes of documentation that have been destroyed
vii. In relation to any lost or destroyed documentation what steps have been taken to locate the missing documentation
viii. Please identify those persons who attempted to locate the relevant documentation with identification of their professional seniority
ix. Please identify those persons who were asked to locate documentation or missing documentation
x. Over what period of time were efforts taken to locate relevant documentation

In addition, the Coroner is requested to ask WMP and PSNI the following further question -

xi. Describe specifically the process taken to locate relevant documentation

The context of the application

5. The context for this application arises from a particular aspect of my investigation as Coroner. At my request, questions were asked of Government agencies, and, separately, of certain police forces, as to whether there was any information or evidence to support the issue known to all concerned with the inquests as the agent/informant issue, namely -

> 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.

6. This was one of four potential issues of the scope of the inquests which were agreed as potential issues for consideration and submissions: see my Further Ruling on Scope (31 December 2018). It was later agreed that the agent/informant issue would be a relevant issue for the inquests if there were any evidence to support it.

7. The nature and details of the requests to and searches by the agencies have been provided previously. They were extensive. They are set out in my Further Ruling on Scope at paras.18-44 and in previous Updates on Disclosure provided by my legal team (CLT). The agencies include the Foreign Office, the Ministry of Defence, the Home Office, the Ministry of Justice, the Cabinet Office and the security and intelligence agencies. They also include WMP, the Devon and Cornwall Police, the Metropolitan Police Service (MPS) and the Police Service of Northern Ireland. Inquiries of a wide range of other organisations and individuals were also made (see Further Ruling on Scope above at para.21). The material to be considered spanned a period of more than 40 years.

8. In summary, despite the widest of inquiries, no evidence has been found to support consideration of the agent/informant issue. As I stated in my previous Further Ruling on Scope (at paras.22-23), the inquiries had revealed nothing to suggest there is any credible evidence on the issue. All requests, reviews and

inspection of documents by my team and myself had produced no credible evidence.

9. It is the absence of any such information or evidence which causes Mr Morgan to make this application. He submitted that since there is a 'total blank' coming out of the agencies it is more important to look at the process which led to that outcome.

10. Mr Morgan explained the 'context' for the submissions (as mentioned in question i. above) by referring back to previous submissions which he had made at an earlier Pre-Inquest Review hearing on 18 December 2018. Those submissions concerned what he described as 'omissions in disclosure', 'a lack of clarity on disclosure' and 'a discovery process', as he put it, which may not have been 'effective'.

11. The earlier submissions were considered and answered in my Further Ruling on Scope in December 2018, at paras.45-55. I explained the disclosure process in some detail. In particular I outlined why in excess of 22,000 pages of material had by then been disclosed to all Interested Persons including those represented by KRW Law. The number of pages disclosed has now reached almost 30,000.

12. Under Rule 13 of the Coroners (Inquests) Rules 2013 the coroner has a duty to disclose any document requested by an Interested Person which the coroner 'considers relevant'. I explained in my Ruling that I had not waited for any such request but had disclosed all documents which I considered to be relevant. By relevant I meant within the scope of the inquests. In addition to relevant material I had also disclosed on a voluntary basis material not considered to be strictly relevant but which Interested Persons might wish to see in the wider context of the inquests. That material also demonstrated the extent of the investigation and inquiries made by me and on my behalf as Coroner in order to find relevant evidence. Hence the 22,000 pages, now 30,000 pages, much of which I have not considered relevant to the inquests. At paragraph 54 of my Ruling I set out in detail the 11 stage process of disclosure. There is no need to repeat it here.

13. In addition there have been several Update Notes and letters from the CLT explaining both the process of disclosure and summaries of documents disclosed. In my Ruling I requested CLT to provide a further Note on Disclosure. This has now been provided (5 February 2019). It describes amongst other things and at some length the principles of disclosure, the role of the CLT, the requests, searches and disclosure relating to WMP and Government agencies, and those relating to other organisations and individuals. It also describes the public interest immunity process (there have been no applications), and anonymity and redactions.

14. It has been my responsibility as Coroner to direct and oversee all such inquiries and disclosure. I have myself viewed a number of documents classified as secret in order to assess potential relevance. I have considered relevance at all times. I must also keep open, as I do, all questions of scope and the relevance or otherwise of documents and other materials.

15. In my inquisitorial role as Coroner, it is my duty to decide on scope, evidence and procedure. I bear in mind the words of Sir Thomas Bingham MR in *R v HM Coroner for North Humberside and Scunthorpe, ex parte Jamieson* [1994] QB 1 at 26 that 'He [the coroner] must set the bounds of the inquiry. He must rule on the procedure to be followed.' And as the Court of Appeal stated more recently in

a decision affecting the scope of this case, *Coroner for the Birmingham Inquests (1974) v Hambleton* [2018] EWCA Civ 2081at [48]:

> 'A decision on scope represents a coroner's view about what is necessary, desirable and proportionate by way of investigation to enable the statutory functions to be discharged. These are not hard-edged questions. The decision on scope, just as a decision on which witnesses to call, and the breadth of evidence adduced, is for the coroner.'

16. I concluded in my Ruling that the disclosure process in these inquests had been comprehensive and sufficient. Every effort had been made to discover and disclose relevant evidence and to disclose on a voluntary basis other evidence which bears upon and demonstrates the investigations carried out by the Coroner (para.55).

The basis for the application

17. Counsel now submits that the 10 questions should be 'answered in statement of truth and each state agency should identify an appropriately qualified person to swear such statement [sic]'.

18. The basis for the application, as stated by counsel, was that 'formal clarification of the process' was required in order to demonstrate that when the agencies said they could not find any evidence on the agent/informant issue that the proper process had been followed.

19. It was, submitted counsel, an application for the purpose of seeing whether disclosure was complete. Counsel insisted that he did not 'impugn' the integrity or seek to 'besmirch the reputation' of the agencies or the individuals at the agencies who had carried out the searches. (It was, he conceded, 'the normal way it is done'.) But he made it clear that his clients did. They did not believe that there was no relevant material. They did not believe it to be credible. There were 'allegations of cover-up and perhaps bad faith'. They 'suspected' bad faith and did not trust 'certain agencies'; some agencies had suffered a 'reputational deficit'. The families felt that the dispelling of rumour and suspicion was not taking place. That was 'harmful', said counsel, and distracted from the real issues. Here were feelings of 'anger' and 'distrust'. There was a lack of confidence in the whole process. 'If we can't persuade them, this will be a very unsatisfying process'.

20. The focus, said counsel, was 'largely, but not exclusively on process', although he also said later that 'the application and the focus' was on the process (and not anything else). His clients did not 'understand the process'; they needed 'a little bit more'. If something had been revealed, it might be different. Steps should be taken to confirm that the process had been properly done and, conceding that the identity of agency people could not be provided, that it should be confirmed to the satisfaction of the Coroner's legal team's that someone senior in each agency had taken responsibility for this process.

The legal basis for the application

21. The precise legal mechanism for the making of the order requested was not advocated by Mr Morgan. He submitted that the Coroner's duty to make the order arose from the state's obligation under Article 2 to conduct an effective investigation and because disclosure lay at the heart of the process. The

investigation would be effective only if each of the agencies (listed above) were to provide a sworn answer to the questions. The sworn statement of the solicitor to HM Government (HMG) did not discharge that Article 2 obligation. No authority was provided in support of these submissions. Mr Morgan simply suggested that the order was 'within the gift of the inquest'.

22. I have power under paragraph 1 of Schedule 5 to the Coroners and Justice Act 2009 to require evidence to be given or produced. Whether a fuller explanation of process amounts to 'evidence' for these purposes and whether, if it does, it would be 'reasonable in all the circumstances' including 'the public interest' to require any agency to answer any of the 10 questions has not been argued fully before me: see para.1(4) and (5), Schedule 5. I note that HM Government's opposition to the application includes reference to these provisions (written submissions, 31 January 2019).

23. Were a Schedule 5 notice not to be appropriate (or lawful), does a coroner have an inherent power to require the questions to be answered? Are the answers to the 10 questions, if given, relevant to the four statutory questions which every inquest must answer: who died, when, where and how did they come by their death?

24. Be that as it all may, it is nevertheless my duty as Coroner, in my inquisitorial role, to carry out sufficient inquiry into questions of evidence and the choice of witnesses, so that the jury will be able to provide answers to the four statutory questions.

25. I have therefore decided that I will consider in the first place the application on its merits. I have some doubt about the legal foundation for the application and whether I have power to grant it. But setting these reservations aside, I will now consider the merits. If the arguments on the merits are persuasive, I will consider the law afresh.

The merits of application (1)

26. In the first place I must emphasise, as I have done before, that the process of investigation and search has been extensive and thorough. The process and extent of the disclosure process has been fully explained and documented in CLT's Further Note on Disclosure dated 5 February 2019.

27. It is a process which has been far from passive. I, and the CLT, have considered material provided to us and then made further requests of departments, agencies and police forces, based on lines of inquiry arising from it. The departments, agencies and police forces have provided further disclosure as a result. All of this has been explained to the Interested Persons as the process has unfolded. They have had an opportunity to suggest further avenues to be explored, and suggestions have been made and adopted.

28. In my December Ruling I described the breadth of the inquiries. As Coroner I was then and I am now satisfied, as well as I can be, that all relevant searches have been undertaken by the Government agencies and departments. The fact that no evidence has been found to support the agent/informant issue is no more than a fact.

29. As I said in that Ruling -

> 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. [18]

30. I have, for example, as requested by all of the families represented, looked closely at documentation about Kenneth Littlejohn and James Kelly to see whether there is information or evidence relating to either which falls within the agent/informant issue. There is none, although as always I will return to the issue if anything further emerges.

31. In a complex inquest, involving large volumes of historical documents from multiple sources, no process of inquiry by any coroner is bound to be perfect. I accept that. It is always possible that documents have been overlooked, have gone missing, have been lost, or have been deliberately removed or destroyed and therefore not disclosed. All of these things are possible. It would be unrealistic to state that such things cannot happen. But as Coroner, carrying out my investigative function to the best of my ability, with my legal team and the resources available, I take the view that the disclosure process has been thorough, transparent and effective. In my view, further inquiry, particularly with a view to explaining the process, which seems to be central to this application, would not be likely to achieve anything positive, certainly not the objectives suggested by those making the application. I can understand that some family members of the deceased will not be satisfied by it. But, realistically, I can do no more. Nor am I required by law to do so.

32. The evidence from Government agencies was provided by Ms Oakley, solicitor for HM Government. In her witness statement of 30 October 2018 she describes a thorough process. Admittedly, I would have preferred the Government to have provided a separate statement from each agency. That is what I asked for. That process might have been more transparent or at least looked more transparent. It might, perhaps, have avoided or at least reduced some of the suspicion that lingers today on this sensitive issue. It might not.

33. Be that as it may, I am satisfied with the process overall. More information on process, and there is already a considerable amount, much more than Interested Persons would normally expect to receive, is not going to assist the jury in answering the four statutory questions. More information on process will not assist in proof of any of the relevant central issues: see *Hambleton* case (2018) at [56].

The missing folders

34. By way of illustration of the process, I refer to the missing Cabinet Office minutes. These were identified by HM Government in the course of their searches. In fact they had been identified as missing by a Cabinet Office team in 2008, some years before the application to resume these inquests. Two folders of records are missing. They relate to meetings of the Joint Intelligence Committee (JIC) and the Northern Ireland Central Intelligence Group (CIG) for the period 20 October to 20 December 1974.

35. My legal team and I have both seen minutes and other documents at dates before and after the missing minutes. We did so in in order to consider anything of potential relevance to the agent/informant issue (as described above). Nothing

of relevance was found. In submissions at the December 2018 PIR hearing, counsel for HM Government, Ms Samantha Leek QC, indicated:

> It would be surprising if there were materials in the [missing folders] that was not contained or reflected in the JIC minutes. Sir, your team have seen the minutes as requested … [It] would also be surprising if there were anything in those [missing] folders that were not to found elsewhere within the disclosure that has been provided from other departments and agencies.

36. The process of inquiry in relation to these missing folders is described more fully in the Note on Disclosure (above) at paras.29-39. In summary, the missing folders have been discussed, they have been explained, and their possible contents have been considered in the light of other documents. This is, in my view, an example of sufficiently clear process. It requires no further examination.

Conclusion

37. I am therefore satisfied that asking the 10 questions of the agencies would not be likely to be productive. I have reviewed each one of the questions. I believe, from the information so far provided by the agencies, that in essence nothing new would be revealed. The procedure, as requested, would not therefore be likely to achieve its stated aim.

38. For these reasons, I refuse application (1).

Application (2): Disclosure of policies, protocols etc

39. Counsel also submitted at the PIR hearing on 17 January 2019 that there should be disclosure of all policies, protocols, guidance or standing orders contemporary to the time of the pub bombings. Relying upon experience in Northern Ireland, Mr Morgan claims that such policies must have existed and should therefore be disclosed. He therefore requested disclosure of all the documents listed at a) to g) in KRW Law's undated letter of 16 January 2019. If there were no policies, protocols etc, he submitted, the agencies should say so.

40. His list is widely drawn. It includes national and local policies, protocols and guidelines on issues, amongst others, such as counter-terrorism and cross-border information sharing, intra-constabulary co-operation on terrorism and the Irish terrorist threat, the response of the security services to an advance bomb warning, the recommended approach to the evacuation and searching of buildings following a bomb warning, and the emergency services' response to an advance warning of a bomb.

41. He submitted that primarily the police (WMP, including Special Branch) but also the security services must have had such documents. It was not credible that there were none. If there were policies, protocols etc, were they fit for purpose? Were they complied with? And if not, why not? If there were no policies, why were there none?

42. There must, it was submitted, or should have been policies etc in place on how to deal with and respond to the following situations:

    - a bomb warning
    - a bomb which detonated

- a bomb which did not detonate (eg in Hagley Road, Birmingham)
- evacuation of premises
- search techniques
- response by emergency services (ambulance, fire brigade, hospitals)
- response by the security services
- resource issues

43. I have always agreed, as has my legal team on my behalf, and as I repeated at the PIR hearing in January, that if any policy, protocol etc could be found it would be disclosed and could be produced in evidence. It would be relevant, and might be something for the jury to consider.

44. I and my legal team have conducted thorough investigations to find any such policy in force in or around 1974. Inquiries have been made of West Midlands Police (WMP), the Metropolitan Police Service (MPS), the National Police Chief's Council (NPCC, the successor to the Association of Chief Police Officers, ACPO), the College of Policing, the Home Office, the Ministry of Justice and public archives.

45. But despite extensive searches and requests, only a limited amount of material has been found. This appears to reflect the lack of national policy directives from either the Home Office or central police organisations at the relevant time, although there could be other reasons. All documents listed below have been disclosed. Any suggested avenues for reasonable further inquiry will be considered. The following material has been disclosed.

Home Office guidance to business owners

46. The Home Office and MPS provided guidance to business owners and managers of property, dated 22 October 1975. The Home Office had been preparing this guidance from 5 February 1975. The document advises on the means that business owners 'can take to minimise the risk of bomb attacks and to cope with a situation if a bomb explodes on their property'.

47. This file (from late 1975) contains a WMP document entitled *The protection against bomb or incendiary attack of buildings to which the public have access*. It is signed by Chief Superintendent Boddy, but undated. It includes guidance on bomb threats.

The Rotunda: Brian Brown

48. The witness Brian Brown, Chartered Surveyor and manager of the Rotunda (and other properties) owned by MEPC plc in 1974, provides details of his security arrangements as a business property manager in his statement to the Coroner dated 27 April 2017 (INQ000827). He refers to the security procedures for the Rotunda and his close liaison with Police Superintendents at Digbeth Police Station.

49. At exhibit BB/18 he produces a booklet entitled *Details for Efficient Use of Building*, with *Security Procedures* at page 3 and *Evacuation Procedures* at page 4. The booklet is dated 2 March 2002 but Mr Brown states that it was first issued in 1974.

College of Policing

50. The College of Policing issued a document in 1973 headed *The Police College* and entitled *Contingency planning for major incidents* such as 'air or train crashes, fires or explosions'. It is to be found on Relativity at INQ000974. It comes from the National Police College Library.

51. Searches of the National Police College Library produced -

    - the 1973 College of Policing document above
    - two Police College documents entitled *Planning for Disaster,* 1966, for the 3rd and 4th Intermediate Command Course at the College (INQ000989 and INQ000990)
    - an MPS A.8 Branch Memo 4/69 entitled *Major Incidents: General Arrangements* (INQ000986)
    - a symposium in October 1974 recorded as *Disaster Planning: Proceedings of a Symposium Held at the Royal Naval Hospital, Haslar, Gosport, Hants, on 10 and 11 October, 1974* (INQ001119) (see para.61 below)
    - a Birmingham Constabulary pamphlet entitled *Birmingham City Police*, 1961, about joining the police (INQ000984)
    - a Birmingham City Police booklet entitled *Birmingham Special Constabulary Official Instruction Book*, 1947 (INQ000982)

Ministry of Justice: Prison Circular 1972

52. Prison *Circular Instruction No. 60/1972,* headed *Incident Reporting Procedures*, and directed 'To all Prison Department establishments', contains guidance on reporting procedures in prisons for matters such as escapes and suicides (INQ003843).

Interview with WMP police officer

53. A WMP document, AJT/5, headed *Birmingham bombs file* and entitled *Meeting held on Monday, 19th May, 1975* contains a conversation in question and answer form with MB (who may be Maurice Buck, a former Assistant Chief Constable (Crime)). The interview is at INQ004503; it is an extract from D2729.

54. There are references in the answers to a (local) major disaster plan, emergency arrangements and a card issued to police officers with guidance on it. CLT have asked WMP about these three topics.

55. WMP also notified the Coroner at the last Pre-Inquest Review hearing that they would make further searches for relevant policies, protocols, guidance etc. To date they have found nothing specific, but are continuing to look.

Superintendent John Tonkinson

56. Former Superintendent John Tonkinson refers on page 2 of his witness statement of 28 February 1992 to 'a set procedure' which he describes. It involved deployment of the following personnel: uniformed officers, officers from the Firearms and Explosives Department, the Royal Army Ordnance Corps, divisional CID, and eventually the setting up of the Bomb Squad.

57. Mr Tonkinson also describes on page 3 ‘a repetitive procedure when anonymous bomb calls were made to the Police’.

Explosive devices

58. PC Sydney Thomas of the Firearms and Explosives Department (formerly of the Royal Engineers) states in his witness statement of 16 March 1992 (INQ000478):

> My brief at these incidents was to identify a suspect device as genuine and then call out RAOC [Royal Army Ordinance Corp]. However, there were that many devices being reported at this time, that if possible as a firearms officer we did disarm the device.

59. In an Officer’s Report of 26 November 1991 (INQ000142), DC Terence George also refers to the large number of devices the RAOC had to deal with, by attendance at the scene, assessment, if necessary disarming the device, and leaving the remains of the device with the police officer at the scene, generally a SOCO officer or a Firearms and Explosives officer. DC George relates that inquiries were made of the Army through Lt. Colonel Bean for RAOC incident attendance records for that period but none could be found.

Inquiries of NPCC; Hull History Centre

60. The CLT on behalf of the Coroner inquired of the NPCC for relevant policies, protocols etc. No relevant documents were retrieved on searches by the NPCC (see NPCC letters of 26 April and 19 May 2017).

61. CLT and NPCC also searched the public archive facility at the Hull History Centre which contains many documents from ACPO (and its predecessors), dating from 1856. No relevant documents were found. The earliest relevant documents were much later, for example the Emergency Procedures Manual 2002 and Managing Fire and Bomb Safety Policy 2007.

The National Archive

62. The National Archive was also searched. The results of those searches are presently being reviewed and any relevant documents will be disclosed.

Written papers

63. The CLT have disclosed a number of written papers on *Disaster Planning*, which form part of the materials prepared for the October 1974 symposium (referred to at para.51 above). They include, under the headings *Site Organization* and *Designated Hospital Organization,* the following (amongst others) -

- *Control at Scene of Disaster*, by Superintendent W.L. Payne of the Hampshire Constabulary (INQ001117, p.44)
- *Rescue and Release*, by Divisional Officer G.B. Scotford of the Hampshire Fire Brigade (INQ001117, p.48)
- *Medical Care at the Site of Disaster*, Surgeon Commander P.C. Fulford of Royal Naval Hospital, Haslar (INQ001118, p.83)
- *Categorization of Casualties*, by Surgeon Commander J. Bertram of the Royal Naval Hospital, Plymouth (INQ001117, p.52)
- *Reception and Triage of Casualties*, by W. Sillar of Southern General Hospital, Glasgow (INQ001118, p.80)

- *Documentation*, by P.E.A. Savage of Queen Mary's Hospital, Sidcup, Kent (INQ001118, p.93)

CLT Updates

64. In CLT's Update Note to Interested Persons of 6 March 2018 reference was made to the Coroner's searching with the assistance of an Open University archivist for relevant material. The following documents and films were identified from these searches -

    - autobiography of a former Birmingham City police officer
    - a collection of MPS Police Orders from the early 1970s
    - an interview with a senior Birmingham City police officer (see paragraph 53 above)
    - video footage from the 1970s about public safety and terrorism
    - an MPS film on prevention of terrorism
    - a file on police recruitment in the 1970s
    - a file on working practices of police officers and policing in Britain in the late 1960s

65. I refer also to CLT's Update Note of 14 September 2017 at paragraph 5(b).

Conclusion

66. These searches have been extensive. They are ongoing. As a result of KRW Law's requests under the heading of this application, we have, for example, made further specific inquiries recently of the Home Office and the MPS.

67. In the circumstances I have disclosed all there is to disclose. If application (2) is still pursued, I refuse it. There is no need for any order. Everything is being done that can be done on this topic.

68. In the event, questions can be asked at the inquest hearing of witnesses, such as police officers, about their knowledge of any policy, protocol, guidance or standing orders in force at the time and which may or may not have affected what was done on the night itself.

69. Both applications are therefore refused.

SIR PETER THORNTON QC

Coroner to the Birmingham Inquests (1974)

15 February 2019