

THE BIRMINGHAM INQUEST (1974)

BEFORE THE CORONER FOR THE BIRMINGHAM INQUEST (1974)

HIS HONOUR SIR PETER THORNTON QC

SUBMISSIONS OF COUNSEL TO THE INQUEST

AHEAD OF THE PRE-INQUEST REVIEW ON 18 DECEMBER 2018

Introduction

1. These submissions concerns the evidence to be adduced before the jury on the ‘Agent/Informant’ and ‘Forewarning’ topics. Counsel to the Inquest (‘CTI’) refer to the following matters:

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2. These submissions refer to the ‘Note by the Coroner’s Legal Team on Research and Disclosure in respect of the Agent/Informant Topic’, dated 30 October 2014 (‘the Agent/Informant Note’) and the Note by the Coroner’s Legal Team on Research and Disclosure in respect of the Forewarning Topic’, dated 27 November 2018 (‘the Forewarning Note’).
3. The topics relevant to this note were defined in the following terms by the Coroner in his Ruling on Scope dated 3 July 2017 (‘the Ruling on Scope’) [§25].

Forewarning – whether West Midlands Police (WMP) or any 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.

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.

4. There is, inevitably, a degree of overlap between the two topics, and indeed a further degree of overlap with the ‘perpetrator issue’ (namely who planned, planted, procured and authorised the bombs). We do not consider that this causes any problems in analysis. The definitions above were formulated to assist in assessing materials for disclosure and planning the hearings. They are intended as a guide only and are not intended to be either proscriptive or prescriptive. Ultimately the jury will be asked to assess the evidence that they hear in the round and to make their determinations based on the totality of that evidence (subject to submissions on matters that should properly be left to them). It therefore does not matter whether a witness is considered to give evidence that goes to ‘forewarning’ or ‘agent/informant’. For present purposes, all that matters is whether the witness gives evidence that is sufficiently relevant to warrant being adduced before the jury.

Relevant Legal Principles

5. These submissions concern which evidence should be adduced in the public hearings of this Inquest. They touch upon the inter-related authorities on the scope of an inquest, the law regarding the decision to call witnesses and otherwise adduce evidence, and the breadth of a coroner's discretion or judgement when making decisions on these points.
6. We previously made submissions on the legal principles concerning the scope of an inquest: see submissions dated 23 May 2017, made ahead of the Third Pre-Inquest Review, §§ 9-17. We maintain those submissions.
7. In his Ruling on Scope, the Coroner summarised the relevant principles at §§18-24. The Court of Appeal in *Coroner for the Birmingham Inquests (1974) v Hambleton and others*, confirmed that the Coroner's approach was correct [§57].¹ The Court also gave the following summary:²

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. A court exercising supervisory jurisdiction can interfere with such a decision only if it is infected with a public law failing. It has long been the case that a court exercising supervisory jurisdiction will be slow to disturb a decision of this sort (see Simon Brown LJ in [*R v Inner London Coroner, ex parte Dallaglio*] [1994] 4 All ER 139, 155) and will do so only on what is described in omnibus terms as Wednesbury grounds. That envisages the supervisory jurisdiction of the High Court being exercised when the decision of the coroner can be demonstrated to disable him from performing his statutory function, when the decision is one which no reasonable coroner could have come to on the basis of the information available, involves a material error of law or on a number of other well-established public law failings.
8. In the recent decision in *R (Maguire) v Assistant Coroner for West Yorkshire (Eastern Area)*,³ Burnett LCJ (with whom Treacy LJ and Hickinbottom LJ agreed) applied the principles concerning the scope of an inquest in the context of a decision on whether or not to call a particular witness:⁴

¹ [2018] EWCA Civ 2081, §57 ('*Hambleton*').

² *Hambleton*, §48.

³ [2018] EWCA Civ 6.

⁴ *Maguire*, [§3].

Under the Coroners Act 1988 and its predecessors, a coroner was required to examine such witnesses as appeared 'expedient', see section 11(2). The formulation is different in Schedule 5 to the 2009 Act which simply empowers a coroner by notice to require a person to attend to give evidence or to produce evidence. But the change has not affected the basis upon which a coroner's decision to decline to call or seek evidence may be challenged. The decision about which witnesses to call to give evidence at an inquest may be challenged in judicial review proceedings on traditional public law grounds. The context of any challenge will be that the coroner has a duty to conduct a thorough inquiry within the scope he has determined to enable the statutory purposes to be satisfied. There may be cases in which it can be shown that, absent an identified line of inquiry or examination of a particular available witness, the procedural obligation under article 2 cannot be satisfied. But in the generality of cases the issue will be whether the failure to investigate something or obtain evidence, including by calling a witness, was *Wednesbury* unreasonable. In *McDonnell v HM Assistant Coroner for West London* [2016] EWHC 3078 at [28] Beatson LJ summarised the position:

“It is clear that, as Lord Lane CJ stated in *R v South London Coroner, ex parte Thompson* (1982) 126 SJ 625 and Sir Thomas Bingham stated in *Jamieson's* case at 24 F-G, this type of inquest is a fact finding exercise not a method of apportioning guilt. It is also clear that decisions by a coroner as to the scope of enquiry and as to which witnesses to call are a matter of judgment which may only be challenged on the ground that they are *Wednesbury* unreasonable, i.e. irrational: see *R v Inner West London Coroner, ex p. Dallaglio* [1994] 4 All ER 139 and *R (Mack) v HM Coroner for Birmingham and Solihull* [2011] EWCA Civ 712 at [9].”

9. By reference to these and other authorities, we consider that the following legal principles are relevant to the matters contained in these submissions.⁵
- a. A coroner has a statutory duty to answer four questions: who died, when, where and how.⁶
 - b. Where necessary in order to avoid a breach of article 2 ECHR, the question of 'how' is to be interpreted as meaning '*by what means and in what circumstances the deceased came by his or her death*'.⁷

⁵ Reference is made in the sub-paragraphs that follow to the jury determining the statutory questions. For the avoidance of doubt, the principles remain the same regardless of whether a jury or a coroner returns the determination. See also the Chief Coroner's Law Sheet No. 5, 'The Discretion of the Coroner' at §§3-17.

⁶ Section 5(1) of the Coroners and Justice Act 2009 ('the 2009 Act'); *Hambleton* [§46]. A coroner must also ascertain the particulars (if any) required to register a death under the Births and Deaths Registration Act 1953.

⁷ Section 5(2) of 2009 Act; *R (Middleton) v HM Coroner for Western Somerset* [2004] 2 AC 182, [§35].

- c. Even where article 2 is engaged, the statutory questions remain relatively narrow and specific. *'The scope of an inquest is not determined by looking at the broad circumstances of what occurred and requiring all matters touching those circumstances to be explored.'*⁸
- d. A coroner must ensure that relevant facts are fully, fairly and fearlessly investigated, and that they are exposed to public scrutiny, particularly if there is evidence of foul play, abuse or inhumanity. The coroner *'fails in his duty if his investigation is superficial, slipshod or perfunctory'*.⁹
- e. A coroner must explore and call sufficient evidence to allow the jury to address the *'central issues'* that arise from the four statutory questions.¹⁰ A coroner does not need to call every witness who might be able to give relevant evidence.¹¹
- f. While the test in criminal law of evidence being *'more prejudicial than probative'* is not binding in the coronial jurisdiction, it may in some circumstances assist a coroner in his or her deliberations as to whether or not to adduce evidence.¹²
- g. Decisions on which witnesses to call, and on the bounds of the inquiry, are matters for the coroner to determine exercising a discretion or judgement (there being no material difference between those words in this context).¹³
- h. The courts will be slow to disturb the coroner's decisions.¹⁴ They will do so only when they are infected by a public law failing.¹⁵ Such a failing may, in

⁸ *Hambleton* [§51].

⁹ *R v North Humberside Coroner, ex parte Jamieson* [1995] QB 1, [§14].

¹⁰ *Middleton* [§36]; *R (Allen) v Inner North London Coroner* [2009] EWCA Civ 623, [§33], *Hambleton* [§47].

¹¹ *Mack* [§8]; ¹¹ *R (Ahmed) v South and East Cumbria Coroner* [2009] EWHC 1653 Admin, [§35].

¹² *Jervis on Coroners* (2014, 13th Edition), 12-75 and 12-78; Ruling of Sir John Goldring in the Inquests into the Deaths Arising from the Hillsborough Stadium Disaster, 28 April 2014 (transcript p.80).

¹³ Paragraphs 1 and 2 of Schedule 5 of the 2009 Act; *Jamieson* [§14]; *R (Warren) v HM Assistant Coroner for Northamptonshire* [2008] EWHC 966 (Admin); *R (Lepage) v HM Assistant Deputy Coroner for Inner South London* [2012] EWHC 1485 (Admin) [§§51-52]; *Hambleton* [§§48-50].

¹⁴ *R v Inner West London Coroner, ex p. Dallaglio* [1994] 4 All ER 139, [p.155]; *R v Secretary of State for Defence, ex parte Smith* [2011] 1 AC 1, [§208]; *R (Mack) v HM Coroner for Birmingham and Solihull* [2011] EWCA Civ 712, [§9]; *R (Sreedharan) v HM Coroner for the County of Greater Manchester* [2013] EWCA Civ 181, [§48]; *Maguire* [§3]; *Hambleton* [§§48-50].

¹⁵ *Hambleton* [§§48-51].

some cases, include a failure to call sufficient evidence to satisfy the procedural obligation under article 2 ECHR.¹⁶

- i. A coroner is not under a duty to call a witness who does not have evidence that passes the threshold of positive assistance to the inquiry. Speculation is no firm foundation for calling evidence.¹⁷
- j. There may be instances where a coroner will be justified in calling a witness whose evidence is of little or no value to the investigation in order to allay unjustified suspicion of deliberate wrongdoing. This will amount to an exercise of '*practical justice*' rather than the fulfilment of a legal duty.¹⁸ However, there will also come a time, even in a wide ranging inquest, when sufficient evidence has been called and further witnesses are unnecessary. The argument that '*the further you have gone the further you ought to go*' is unpersuasive in such circumstances.¹⁹
- k. The coroner's investigation '*is almost bound to stretch more widely than strictly required for the purposes of a verdict. How much wider is pre-eminently a matter for the coroner.*'²⁰ The metaphor of a funnel has been employed to describe the process by which evidence is refined.²¹ At the start of the inquiry a broad approach is taken. The evidence is thereafter filtered and refined through decisions taken on disclosure, the evidence to be adduced, and the matters to be left to the jury.

10. It follows from these authorities that, in our submission, the task of allaying unjustified suspicion of deliberate wrongdoing may be achieved before the substantive hearings through a process of disclosing evidence and (where appropriate) opening it to public scrutiny in pre-inquest hearings. When assessing whether the

¹⁶ *R (Goodson) v Bedfordshire and Luton Coroner* [2006] 1 WLR 432 [§59]; *Maguire* [§3].

¹⁷ *Lepage*, [§§36, 54, 60].

¹⁸ *Lepage*, [§61], citing *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653, [§31] and *Dallaglio* [p.156].

¹⁹ The decision of Scott Baker J not to call the Queen and the Duke of Edinburgh to the inquests into the death of Diana, Princess of Wales and Mr Dodi Al Fayed, 12 March 2008, https://webarchive.nationalarchives.gov.uk/20090216191643/http://www.scottbaker-inquests.gov.uk/docs/reasons_not_calling_120308.pdf.

²⁰ *Dallaglio* [p.155].

²¹ *R (Lewis) v Mid and North Shropshire Coroner* [2009] EWCA Civ 1403, [§26].

coroner has discharged his or her statutory duty, proper regard must be paid to all stages of the investigation and the inquests, not just to the issues of which witnesses were called and which questions were put to the jury.

Co-operation from the organisations to whom requests have been made

11. In the course of this investigation, the Coroner's legal team (CLT) have received full co-operation from each and every organisation that they have approached. Where searches have been requested, they have been conducted, with the results provided to the CLT. Where extant papers have been identified and requested, they have been provided. No request for access to information has been refused. The Coroner has been kept informed of the work conducted throughout, and has himself reviewed some of the relevant materials.

The Agent/Informant Topic

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. Such activities may amount to a breach of article 2, and in any event give rise to a central issue about how (by what means and in what circumstances) 21 people came by their deaths. Similarly, we consider that any credible evidence that the actions of an agent or informant were covered up should also be adduced, not least as such evidence may be indicative of an attempt to conceal wrongdoing before the events.

13. The caveat that the evidence be *credible* is, in our submission, important and justified by the authorities cited above. Ultimately, the jury can only be asked to return determinations where the *Galbraith* Plus test is met, namely: (i) there is sufficient evidence upon which a properly directed jury could properly reach a particular conclusion, and (ii) it would be safe for the jury to return such a conclusion.²² It would neither be safe nor proper for a jury to reach a determination on the basis of

²² *R v Galbraith* [1981] 1 WLR 1039; [1981] 2 All E.R. 1060, CA (Crim Div); *R v Inner South London Coroner, ex parte Douglas-Williams* [1999] 1 All ER 344; *R (Longfield Care Homes Ltd) v HM Coroner for Blackburn* [2004] EWHC 2467 (Admin); *R (Bennett) v HM Coroner for the Inner South London* [2007] EWCA Civ 617 (CA); *R (Secretary of State for Justice) v HM Deputy Coroner for the Eastern District of West Yorkshire* [2012] EWHC 1634 (Admin). See also the Chief Coroner's Law Sheet No. 2, 'Galbraith Plus'.

evidence from a witness wholly lacking in credibility. Such a witness would not provide positive assistance to the inquest, nor dispel unjustified rumour and suspicion.

14. However, considerable caution should be exercised when applying this filter. Questions of credibility are, in general, for the jury to determine. It is only in cases where a witness is demonstrably wrong about fundamental elements of his or her account, and where such errors (a) fatally undermine that account insofar as it is relevant to the Inquest, and, (b) are incapable of being remedied by oral evidence, that a decision not to call what would otherwise be relevant and admissible evidence would be justified. In making this assessment, the Coroner will, in any event, wish to consider all relevant factors, including the nature of the evidence, its potential importance, and whether it is supported by other documents or accounts.

Professor Mark McGovern

15. Professor Mark McGovern has provided an ‘Expert Affidavit’, dated October 2018, entitled ‘State Infiltration of the Irish Republican Army (IRA) and use of agents and informers prior to the Birmingham Pub Bombings, 21 November 1974’. This was produced following a letter of instruction sent on behalf of the legal representatives of some of the families, Jackson Canter and KRW Law. The letter of instruction is dated 30 October 2017.²³

16. Professor McGovern’s report provides no evidence of any involvement by the state in the bombings in Birmingham on 21 November 1974. As he makes clear, he has not had access to police and intelligence records.²⁴ Those instructing him have not requested that he be given access to the materials disclosed by the CLT. Understandably in those circumstances, his work consists primarily of a review of secondary literature. It is focussed on establishing what is known, or what has been alleged, about the degree of infiltration of the IRA by the police, military and intelligence agencies in the 1970s and 1980s. As Professor McGovern says:

The intention is therefore to focus less on the circumstances of the Birmingham Pub Bombings themselves or, in the main, on events in England. Rather the report will

²³ For the avoidance of doubt, the CLT were not aware of the instruction of Professor McGovern at that time, and only became aware of it in October 2018.

²⁴ McGovern, p.3.

largely look at the wider context of agent and informer use (though in terms of evidence, means and methods relevant to the matter in hand) in the conflict in and about Northern Ireland during the early to mid-1970s.

17. Professor McGovern notes that two individuals, Thomas Watt and James Kelly, have been named in connection '*with agency or providing information to the police, in public reporting, which may be relevant to the bombings*'.²⁵ He provides no evidence that either man was, in fact, involved in the bombings. The CLT have been aware of both names, and the allegations made in respect of them, since the earliest stages of this investigation. The CLT are unaware of any suggestion that Mr Watt, a witness for the Crown in the trial of the Birmingham 6, was himself in any way involved in the bombings. None of the Interested Persons have suggested that he should be a particular focus of investigation in this regard.
18. In respect of James Kelly, detailed submissions are made below. Professor McGovern notes that his analysis of the use of 'local recruits' in infiltrating the IRA, '*may have particular relevance to James Kelly*'.²⁶ He does not expand on this passing reference. While he does present other accounts of people from Northern Ireland, some of whom had army training, taking on such roles,²⁷ these do not provide any support for an argument that this is what Mr Kelly did.
19. Professor McGovern also provides a summary of the accounts given of the 'Littlejohn affair' in two books, Martin Dillon's *Dirty War*,²⁸ and Raymond Murray's, *The SAS in Ireland*.²⁹ The CLT are aware of both works. Kenneth Littlejohn is considered in further detail below. Again, Professor McGovern provides no evidence of Mr Littlejohn's involvement in the bombings on 21 November 1974.
20. Other than this, Professor McGovern's work does not dwell on the West Midlands bombing campaign, the IRA in Birmingham, or the events leading up to and culminating in the bombings in Birmingham on 21 November 1974. The only mentions of Birmingham relate to disputed evidence of the presence there of Seamus

²⁵ McGovern, p.4.

²⁶ McGovern, p.6.

²⁷ McGovern, pp.23-26 and 30-36.

²⁸ London: Arrow Books, 1991.

²⁹ Cork: Mercier Press, 1990. See McGovern, pp.28-30.

Wright,³⁰ an account of a study of the Sparkbrook Irish community in the late 1960s,³¹ the development of the West Midlands Police (WMP) Special Branch,³² and the presence and later arrest in the city of Kenneth Lennon.³³

21. Among the questions that Professor McGovern was asked to consider were:³⁴

The likelihood that the UK Government, its agencies or its agents, may have had advance notice of IRA and/or PIRA bombings through its informers, including in 1974, and

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 (in so far as relevant to the Birmingham Pub Bombings)

22. There is a fundamental problem with the questions that he was asked. The real issue to be addressed is whether or not the state had forewarning of, or was involved in, the bombings on 21 November 1974. That is a question of fact. It is not a matter for opinion evidence, no matter how expert. It is also a matter of fact that can only be answered by reference to the available evidence concerning the bombings, which Professor McGovern has not seen (and no request has been made for him to see it). It cannot be answered by looking at other incidents and considering what various authors have said about state infiltration of the IRA units involved. In these circumstances, it is perhaps unsurprising that Professor McGovern found himself unable to answer the questions posed of him.

23. Had it been suggested that it was so inherently unlikely that an agent or informant was involved in the Birmingham pub bombings on 21 November 1974 that the issue need not be investigated by the Coroner, then Professor McGovern's report may have served a useful role in rebutting that argument. However, no such suggestion has been made. The Coroner and his legal team have certainly not made any assumptions about this issue. A thorough investigation has been conducted by the CLT, with reference to the police, security and intelligence files that Professor McGovern has, through no fault of his own, not seen. In those circumstances, his report provides nothing of additional value to the Inquest and for that reason we submit that he should not be

³⁰ McGovern, p.15.

³¹ McGovern, p.26.

³² McGovern, p.37.

³³ McGovern, p.44 and pp.46-48.

³⁴ McGovern, pp3-4; see also the Letter of Instruction, dated 30 October 2017.

called. If Interested Persons consider that particular sections of the report may be of assistance, we would be happy to discuss that with them, although for the reasons given above we are doubtful of its value.

24. This is not in any way a criticism of Professor McGovern's standing as an academic, his independence and integrity in producing the report, or the quality of the work contained within it. He did what he could with the questions and materials available to him. In our view, there was an inevitable limit to how much assistance he could provide to this Inquest.

General evidence

25. The CLT have undertaken extensive investigation of this topic, the details of which are set out in the Agent/Informant Note. Save for the matters raised in these submissions, the CLT have 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. Nor have the CLT found any evidence that the activities of such an agent/informant were covered-up in the aftermath of the bombings.
26. The Coroner has received, or is due to receive, disclosure statements or gists from or on behalf of the following organisations. Put shortly, it is understood that these are to the effect that the organisations in question have found no evidence in their searches of (a) the organisation or organisations having prior knowledge of the Birmingham bombings of 21 November 1974 as a result of the actions of an agent/informant, and (b) the organisation or organisations being aware of or involved in covering-up the actions of an agent/informant. The organisations are:
- West Midlands Police,
 - The Home Office,
 - The Foreign and Commonwealth Office,
 - The Ministry of Defence,
 - The Secret Intelligence Service,
 - The Security Service,
 - The Metropolitan Police Service,
 - The Police Service of Northern Ireland.

27. Extensive investigation and examination of the circumstances of the Birmingham bombings has been conducted over the past four decades by police, journalists and lawyers. The detail of those investigations is set out in the report of ACC Cann dated 7 August 2017,³⁵ and the Agent/Informant Note.³⁶
28. In summary, the bombings, or matters arising from them, have been subject to the following police investigations:
- a. The original murder enquiry, which resulted in the convictions of the Birmingham 6 and three other men, including James Kelly.³⁷
 - b. Three investigations – Operations Aston 1, 2 and 3 – conducted by Devon and Cornwall Police between 1987 and 1993.³⁸ Operation Aston 2 was tasked to address specific questions posed by the lawyers of the Birmingham 6. These questions included those relating to intelligence materials connected with the arrest of the Birmingham 6, the involvement of other suspects in the bombing, and whether intelligence information existed that may call into question the safety of the convictions of the Birmingham 6.³⁹
 - a. A further investigation by WMP between 1991 and 1994, known as the Birmingham 1974 Inquiry or Operation Review. The objective was described as, *‘an open minded search for the truth’* in which the *‘investigation would leave no stone unturned’*.⁴⁰ During the course of the investigation, the Office of the Director of Public Prosecutions (‘DPP’) and Treasury Counsel received eight interim reports.⁴¹ In 1994, Dame Barbara Mills, the DPP, issued a joint statement in which she said that the enquiries carried out were to her satisfaction and that she was unable to suggest any further reasonable lines of enquiry that could be pursued.⁴²

³⁵ INQ00122

³⁶ §19

³⁷ ACC Cann, INQ001222/26-45, §§91-199.

³⁸ ACC Cann, INQ001222/48-60, §§216-269.

³⁹ ACC Cann, INQ001222/71, §§244.

⁴⁰ ACC Cann, INQ001222/60, §271.

⁴¹ ACC Cann, INQ001222/62, §275.

⁴² ACC Cann, INQ001222/64, §287.

- b. A further ‘*assessment*’ conducted by WMP, entitled Operation Castors, which was instigated in 2012 and remains ongoing. Operation Castors is currently tasked with providing assistance to the Coroner in this Inquest.⁴³

29. It is not for the Coroner or his legal team to comment on the quality of these various police investigations. However, we note the following:

- a. On any assessment, Operation Aston, Operation Review and Operation Castors have seen large amounts of police resources devoted to the investigation of matters arising from the bombings over extended periods of time.
- b. Those investigations have considered matters relating to intelligence. They have resulted in officers examining the contents of Special Branch and other archives for evidence or information about who perpetrated the bombings. The fruits of those investigations have been provided in interim and final reports, which have been disclosed to Interested Persons.⁴⁴
- c. The Inquest has obtained a statement from Robert Adkins, a former WMP officer who worked on Operation Review. Mr Adkins provides evidence of the approach that he and Detective Inspector Fullwood took to reviewing intelligence materials as part of that Operation.⁴⁵ Earlier statements provided by Mr Adkins to Operation Castors have also been disclosed to Interested Persons.⁴⁶ There is no suggestion in these statements that Mr Adkins and his colleagues were instructed to do anything other than investigate matters fully and thoroughly.
- d. It is axiomatic that any police officer who became aware, during the course of his investigation, of the role of an agent or informant of the British state in the bombings would have been under a duty to bring the matter to the attention of

⁴³ ACC Cann, INQ001222/65, §§289 and following.

⁴⁴ See in particular the Agent/Informant Note at §§29-30.

⁴⁵ INQ004123.

⁴⁶ INQ003917 and INQ003918.

the investigation. Those with command of the investigation would have had a duty to pursue that line of enquiry.

- e. The investigations cannot be dismissed out of hand as ‘*whitewashes*’. The work of Operation Aston led directly to the release of the Birmingham 6 and the bringing of criminal charges against a number of WMP officers. In respect of Operation Review, the CPS and Treasury Counsel regularly reviewed the case and the DPP stated that she was satisfied with the enquiries conducted. Operation Castors continues to consider materials relevant to the bombings.
- f. Both the High Court and the Court of Appeal have rejected arguments that the investigations into those who perpetrated the bombings were insufficiently independent or thorough to satisfy the investigative duty under article 2 ECHR.⁴⁷ The High Court commented that, ‘*Although the identification of the perpetrators has so far been unsuccessful it has not been through apparent want of resources, effort or expertise.*’⁴⁸

30. The bombings were also investigated by the journalist and politician Chris Mullin. Mr Mullin has carried out extensive research over a number of years on this topic. He has interviewed numerous individuals in connection with the bombings, including many members of the IRA who were active in Birmingham in the early 1970s and Kenneth Littlejohn. Mr Mullin’s central thesis – that the Birmingham Six were innocent – would have been advanced by evidence of state involvement and cover-up. Mr Mullin did not reach any conclusion in his book that suggested that an agent or informant of the British state was responsible for the bombings.

31. Mr Mullin was asked by the CLT to clarify a sentence he had written in an article in *The Guardian* in 2016, which read as follows: ‘*Prior to the bombings the only informant of whom I am aware was an IRA man who was detained as part of an earlier round of arrests.*’ Mr Mullin said that these were arrests carried out in August 1974. He believed that one of those arrested co-operated with the police, but he did not believe that he could have provided any information relevant to the pub bombings.

⁴⁷ *R (Hambleton and ors) v Coroner for the Birmingham Inquests (1974)*, [2018] EWHC 56 (Admin), [§§50-59]; *Coroner for the Birmingham Inquests*, [§§58-62].

⁴⁸ *R (Hambleton)*, [§58].

Mr Mullin added: *'For what it is worth. I know of no evidence to suggest that the West Midlands Police had advance notice of the pub bombings.'*⁴⁹

32. The CLT have also questioned relevant witnesses on whether they were aware of the involvement of an agent or an informant in the bombings.
33. Kieran Conway has stated, both publicly and in his evidence to the Inquiry, that in November 1974 he was the Director of Intelligence for the Provisional IRA.⁵⁰ In a witness statement he has said that while he was in that role he *'was not aware of any suggestion that British Intelligence were involved in the Birmingham Pub bombings.'*⁵¹ He only became aware of such a suggestion when he was interviewed by a *Birmingham Mail* journalist in May 2016.⁵²
34. Witness O was an IRA volunteer who had links with Birmingham in the early 1970s.⁵³ He was in Winson Green prison at the time of the bombings.⁵⁴ He was subsequently convicted of involvement in the IRA's mainland bombing campaign.⁵⁵ He gave evidence that people to whom he spoke after the bombings believed that MI5 had allowed the bombs to happen by not responding to the warning call or calls given on the night of 21 November 1974. Witness O said that those people did not think MI5 had actually taken part in the bombings. His evidence on these points consisted entirely of hearsay.⁵⁶
35. At the suggestion of some of the families, the CLT contacted Operation Kenova, which is investigating allegations concerning a suspected British agent within the IRA known as Stakeknife. The Chief Constable leading the investigation confirmed that it held no information that would be of assistance to the Inquest.⁵⁷
36. Also at the suggestion of some of the families, the CLT contacted the journalist and writer Ed Moloney to ask whether he was aware of materials relevant to the Inquest

⁴⁹ INQ003919.

⁵⁰ INQ003928/1, §4.

⁵¹ INQ003928/6, §39.

⁵² INQ003928/6, §§38-39

⁵³ INQ003839/1, §3.

⁵⁴ INQ003839/3-6, §§16-37

⁵⁵ INQ003839/6, §42.

⁵⁶ INQ003839/6-9, §§42-53.

⁵⁷ Agent/Informant Note, §41.

within the oral history project that he oversaw in collaboration Boston College and others. In short, Mr Moloney said that he was not aware of interviews having been conducted with the eight individuals identified to him, and he doubted that the tapes held by the PSNI as a result of legal proceedings would be of assistance to the Inquest.⁵⁸

37. Further witness evidence, specific to Kenneth Littlejohn and James Kelly, is considered below.

38. CTI are unaware of any published book or article that provides direct evidence of the involvement of an agent or informant in the bombings of 21 November 1974.

39. It follows that there is a considerable weight of evidence that there was no involvement of a British state agent or informant in the Birmingham bombings of 21 November 1974. If there was such an agent or informant, then:

- a. There has been no confession by that individual, or anyone connected with him, in the 44 years that have passed (subject to the evidence of Paul Cleeland, below).
- b. The activities of the agent/informant were either missed by or deliberately concealed from or by: the initial WMP criminal investigation, the three investigations carried out by Devon and Cornwall Police (Operation Aston 1, 2 and 3), the further WMP investigations in 1991-1994 (Operation Review) and 2012 to the present day (Operation Castors). These investigations involved many hundreds of police officers, and range over a 40 year period.
- c. The activities of the agent/informant were also missed by Chris Mullin in the course of his extensive investigations.
- d. The activities of the agent/informant were either missed by or deliberately concealed from those conducting the disclosure searches requested by the Coroner at the Home Office, the FCO, the MOD, MI5, SIS, the MPS and

⁵⁸ Agent/Informant Note, §46.

PSNI. Alternatively, it would seem that no paper record of the activities of such an agent/informant either exists or can now be located.

- e. The activities of the agent/informant were unknown to the IRA's then Director of Intelligence, and to Witness O.

40. If a state agent or informant had been involved in the Birmingham bombings then this information has been the subject of a most remarkable and successful cover-up over the course of four decades of intensive scrutiny from police, judicial authorities, lawyers, journalists and the families. The hundreds of individuals involved would all have had to have failed to identify the relevant evidence, or have failed to have acted on or exposed it either at the time of discovery or years later.

41. Nonetheless, the CLT have continued to examine all potentially relevant evidence and, in particular, have investigated the rumoured involvement of two men: Kenneth Littlejohn and James Kelly. They have also invited Interested Persons to make suggestions as to lines of enquiry to be pursued in respect of all aspects of this topic.

Evidence relating to Kenneth Littlejohn

42. Kenneth Littlejohn's activities in England and Ireland in the early 1970s are summarised at §§56-59 of the Agent/Informant note. At the Coroner's request, WMP have conducted searches and produced a report on the materials that they hold on Mr Littlejohn.⁵⁹ These include a set of papers that appear to be Mr Littlejohn's memoirs, which were recovered from a suitcase left in a house in which he used to live.⁶⁰ Requests for disclosure searches relating to Mr Kelly were also made of other organisations.⁶¹

43. Mr Littlejohn led an eventful life. He was a convicted bank robber but, on his account, his actions were directed by the British intelligence agencies for whom he worked clandestinely in Ireland, infiltrating the IRA and then carrying out crimes to undermine them. Mr Littlejohn was arrested and extradited to Ireland. In early 1974

⁵⁹ INQ004377.

⁶⁰ See WMP Report INQ004377/8.

⁶¹ The Agent/Informant Note, §18.

he escaped from a Dublin prison and returned to his home city, Birmingham. In December he was arrested at the home of a man who would later be a key prosecution witness (Mr Watt) in the trial of the Birmingham 6.

44. It is perhaps unsurprising, then, that rumours have been generated around Mr Littlejohn and the Birmingham bombings of 21 November 1974. These rumours are longstanding.⁶² In light of them, the CLT have undertaken thorough research examining what evidence, if any, there is of Mr Littlejohn's involvement in the bombings.
45. Two questions fall to be considered. First, what evidence is there that Mr Littlejohn was involved in the bombings on 21 November 1974? Second, if he was involved, what evidence is there that his actions were directed by elements of the British state? Logically, these questions must be addressed in turn. It is only if there is evidence of his involvement in the bombings that the question of Mr Littlejohn's relationship, if any, with the UK intelligence community has any possible relevance to the Inquest. Those representing HMG have indicated that it is neither confirmed nor denied that Mr Littlejohn had any dealings with the intelligence agencies.
46. We consider first, the direct evidence that Mr Littlejohn was involved in the bombings, second the inferences and assertions of his involvement, and third, the circumstantial evidence that may suggest it was unlikely that he was involved. We conclude with our submissions on which evidence, if any, should be adduced at the Inquest.

Paul Cleeland

47. Paul Cleeland is, by his own admission, a career criminal.⁶³ He was convicted of murder in 1973, but publicly maintains that this was a miscarriage of justice.⁶⁴ He has recently obtained permission to pursue a judicial review of the refusal of the Criminal Cases Review Commission (CCRC) to refer his conviction to the Court of Appeal.⁶⁵ It appears from press reports that the CCRC will contest the case at the substantive

⁶² C Mullin, *Error of Judgement*, (Dublin: Poolberg Press, 1997), p.259.

⁶³ Cleeland statement, INQ003985/1 [§2].

⁶⁴ BBC News article, Tanya Gupta, 12 July 2018, www.bbc.co.uk/news/uk-england-44520554.

⁶⁵ BBC News article, Tanya Gupta, 12 October 2018, www.bbc.co.uk/news/uk-england-45841373.

hearing.⁶⁶ Mr Cleeland has contested his conviction on many previous occasions, including in two unsuccessful appeals heard by the Court of Appeal in 1976 and 2002, and through several applications to the CCRC.⁶⁷ Mr Cleeland has twice failed in attempts to quash decisions of the CCRC not to refer his case to the Court of Appeal.⁶⁸

48. Mr Cleeland provided an affidavit to this Inquest. In this, he stated that:⁶⁹

- a. On release from Wormwood Scrubs in the *'late 1960s'* he was provided with a telephone number by the Governor, who advised him to *'contact the people on that number before I returned to my criminal ways'*.⁷⁰
- b. Mr Cleeland called the number and spoke to someone from Hertfordshire Police Special Branch. As a result he was recruited into the *'security services'*.⁷¹
- c. In 1968-1969 Mr Cleeland was taken to a country house and was told that his younger brother, who was in the military, would *'soon be posted to Northern Ireland'*.⁷² Mr Cleeland agreed to help protect his brother. When he asked how he could help, he was told to *'kill those bastards IRA'*.⁷³
- d. Mr Cleeland was then given a revolver and told to shoot *'a tramp'* who was sitting in an out-building. Mr Cleeland said that he did so, shooting the tramp in the head.⁷⁴
- e. Mr Cleeland says that on five occasions over the next four months he was flown to Belfast to assassinate selected targets in the IRA, the UDA or the

⁶⁶ BBC News article, Tanya Gupta, 20 November 2018, www.bbc.co.uk/news/uk-england-46265662.

⁶⁷ *R (Cleeland) v Criminal Cases Review Commission* [2015] EWHC 155 (Admin), [§§24-38].

⁶⁸ *R (Cleeland) v Criminal Cases Review Commission*, [2009] EWHC 474 (Admin); *R (Cleeland)* [2015] EWHC 155 (Admin).

⁶⁹ INQ0003985/1.

⁷⁰ INQ0003985/1, [§4].

⁷¹ INQ0003985/1, [§§5-6].

⁷² INQ0003985/1, [§7].

⁷³ INQ0003985/2, [§7].

⁷⁴ INQ0003985/2, [§8].

UVF. He referred to being driven around Belfast by a man who, from his speech, he knew to be Irish.⁷⁵

- f. Mr Cleeland was imprisoned in 1973 following his conviction for murder. During his '*second spell*' at HMP Gartree in the 1980s he saw the driver again. He learned that this man was Kenneth Littlejohn. Mr Littlejohn told him that '*he had been given six years for selling flak jackets to the IRA.*'⁷⁶
- g. Mr Cleeland also referred to a prisoner known to the Inquest as Witness Y, who was said to be the commander of the IRA in HMP Gartree. Mr Cleeland said that Witness Y approached him and said that '*the IRA believed that [Mr Littlejohn] had something to do with the Birmingham bombings.*'⁷⁷
- h. On Mr Cleeland's account, the following day he orchestrated a conversation between Mr Littlejohn, Witness Y and himself. In the course of the conversation he asked Mr Littlejohn if he had anything to do with the Birmingham bombings. Mr Littlejohn told Witness Y that he (Mr Littlejohn), '*had planted the bombs in Birmingham on the orders of the British Intelligence.*' Mr Littlejohn's understanding was that this was done to stop money being raised from supporters of the IRA.⁷⁸
- i. Witness Y said that he would '*inform the IRA high command.*' Mr Cleeland said that they now had first hand evidence that the Birmingham 6 were innocent and were framed by '*British intelligence*' to cover-up Mr Littlejohn's role.
- j. A week or so after the meeting, Mr Cleeland was '*suddenly transferred*' from the prison, and '*the IRA*' attacked Mr Littlejohn in a toilet.⁷⁹
- k. Mr Cleeland said that after his release from prison he was approached by an elderly man who informed him that he was a retired MI5 officer. This man said that during his work for MI5 he had obtained a file about the Birmingham

⁷⁵ INQ0003985/2, [§§10-12].

⁷⁶ INQ0003985/3, [§16].

⁷⁷ INQ0003985/2, [§14], [§17].

⁷⁸ INQ0003985/3, [§§19-20].

⁷⁹ INQ0003985/4, [§21].

bombings that mentioned Mr Cleeland's name, confirmed that Witness Y had advised the IRA high command that Mr Littlejohn had admitted to the bombings, and stated that the British government was going to take no further action as it *'had come to an agreement with the IRA'*. The man also told Mr Cleeland that he must never say anything about what he knew or they would kill him.⁸⁰

49. Mr Cleeland also contacted the solicitors for several of the families, KRW Law. A telephone note dated 5 January 2017 has been provided to the Inquests. This note refers to the alleged conversation between Mr Cleeland, Mr Littlejohn and Witness Y in which Mr Littlejohn is said to have confessed to planting bombs in the Mulberry Bush and the Tavern in the Town on 21 November 1974.⁸¹ According to this note:

- a. Mr Cleeland had originally been recruited by MI5 in around 1966, and assisted MI5 in arranging the escape of the Soviet spy, George Blake, from Wormwood Scrubs prison.⁸²
- b. At the time when he was recruited, Mr Cleeland was told that *'they could stop soldiers being killed'*. Reference was again made to Mr Cleeland's brother being in the military, and the comment about soldiers being killed seems to relate to the situation in Northern Ireland.⁸³
- c. Mr Cleeland said that he was involved in *'at least 7-8 assassinations'* in Northern Ireland in the period 1968-1971.⁸⁴
- d. Mr Cleeland thought that the conversation in which Mr Littlejohn said he planted the bombs in Birmingham took place in approximately 1980 to 1982.⁸⁵

⁸⁰ INQ0003985/4, [§§23-24].

⁸¹ INQ003984/3-4.

⁸² INQ003984/4.

⁸³ INQ003984/3.

⁸⁴ INQ003984/1-2.

⁸⁵ INQ003984/3.

50. Mr Cleeland was interviewed by the Solicitors to the Inquest. A transcript of that interview has been disclosed to Interested Persons.⁸⁶ This is not always easy to follow, but some further details about the accounts above emerged:

- a. Mr Cleeland denied that he had been recruited by MI5 to assist with George Blake's escape in 1966, although he did admit to making a telephone call that may have played a role in events.⁸⁷
- b. Mr Cleeland said that he was released from Wormwood Scrubs in around October 1967 and that he made contact with the Special Branch officer in November 1967.⁸⁸ He was then taken to the country house where he killed '*the tramp*' in early 1968.⁸⁹
- c. At the country house he was told that his brother was '*being drafted to Ireland soon*'. Mr Cleeland was concerned as, '*I promised my mother never to get him hurt and the Army are going to send him over to Ireland and they're killing them.*'⁹⁰
- d. He went to Northern Ireland for the first time about '*a week later*', where he killed the first of the paramilitary figures.⁹¹ This was still in early 1968.⁹²
- e. Following the killings, it was reported in the press that either the UDA or the IRA had claimed responsibility for them.⁹³
- f. Mr Cleeland claimed to have been involved in six incidents in Ireland and two on the mainland.⁹⁴ The chronology is not entirely clear. Mr Cleeland said that he killed six people in a three or four month period, seemingly all in Northern Ireland.⁹⁵ This would suggest these killings all took place in 1968. Mr

⁸⁶ INQ003970.

⁸⁷ INQ003970/37-40.

⁸⁸ INQ003970/35-36.

⁸⁹ INQ003970/58-63.

⁹⁰ INQ003970/62.

⁹¹ INQ003970/70.

⁹² INQ003970/81.

⁹³ INQ003970/80.

⁹⁴ INQ003970/83.

⁹⁵ INQ003970/86.

Cleeland said that the killings were done quickly as *'they were losing troops'*, seemingly a reference to the British military.⁹⁶ He said that he killed four members of the IRA and two members of the UDA.⁹⁷

- g. For the two killings in England, Mr Cleeland claims to have been taken out of prison for two weeks at a time, under a Home Office ruling stating that he was an informer.⁹⁸ Mr Cleeland claims the victims were two Russian Embassy officials. The killings took place while he was in prison between July 1968 and August 1969.⁹⁹
- h. The conversation in which Mr Littlejohn said that he had been involved in the Birmingham bombings took place in about 1983 in HMP Gartree.¹⁰⁰ On Mr Cleeland's account, Mr Littlejohn implicated *'Special Branch and MI5'* as being the ones who gave him the orders to plant the bombs,¹⁰¹ and said that he was not working alone.¹⁰²
- i. Shortly after the conversation, Mr Cleeland was removed from HMP Gartree. About a week later, Mr Littlejohn was attacked by the IRA, who attempted to kill him.¹⁰³ Mr Cleeland was taken to Parkhurst prison where he was *'certified insane'*. Mr Cleeland claimed that this was a fabrication and that there was *'nothing wrong with him'*.¹⁰⁴
- j. Mr Cleeland made a number of other claims in the course of the interview. These included allegations that:
 - i. MI5 and *'Special Branch'* involved him in supplying heroin as part of an effort to control the UK illegal drugs trade.¹⁰⁵
 - ii. He was framed for a murder carried out by MI5 and which was again related to the illegal drugs trade.¹⁰⁶

⁹⁶ INQ003970/86.

⁹⁷ INQ003970/86-89.

⁹⁸ INQ003970/89

⁹⁹ INQ003970/91.

¹⁰⁰ INQ003970/93-94. See also, /93-102 generally.

¹⁰¹ NIQ003970/104.

¹⁰² INQ003970/105.

¹⁰³ INQ003970/107.

¹⁰⁴ INQ003970/11-114 and /133.

¹⁰⁵ INQ003970/50-55.

¹⁰⁶ INQ003970/142-144.

- iii. Some eight months before the interview (thus in 2017) he had a meeting with *'the IRA'* in which he was told, first, that the Good Friday Agreement was the result of a threat from the IRA to reveal the truth about the British government's involvement in the Birmingham bombings and, second, that the IRA intended to use the Inquest as a way of achieving a united Ireland.¹⁰⁷
- iv. There had been 10-15 attempts on his life by the British government, the most recent of which was a poisoning some three weeks before.¹⁰⁸
- v. About six months before the interview, Damian Collins MP, arranged for him to have a meeting with MI5 in a service station layby.¹⁰⁹
- vi. Shirley Williams *'had me put in the nut house.'*¹¹⁰

51. The Solicitors to the Inquest also contacted Witness Y, a man who was convicted and imprisoned in the 1970s for terrorism offences associated with the IRA. Witness Y declined the invitation to make a witness statement, but an account of the telephone conversations is contained in a statement made by the Solicitor to the Inquest, Timothy John Suter.¹¹¹ Three conversations took place, two in March 2018 and one in September 2018. In them, Witness Y gave the following evidence:

- a. Witness Y initially said that he could not remember if he had ever met Mr Littlejohn, although he had a vague recollection of him in a prison segregation unit.¹¹² He later said that, having given the matter further thought he was more certain (*'99.9% sure'*) that they had not met.¹¹³
- b. Mr Cleeland's name meant nothing to Witness Y and he had not met him.¹¹⁴
- c. Witness Y stated repeatedly that he did not recall any conversation about the involvement of Mr Littlejohn in the Birmingham pub bombings.¹¹⁵ He thought

¹⁰⁷ INQ003970/115-119.

¹⁰⁸ INQ003970/126-130.

¹⁰⁹ INQ003970/137-140.

¹¹⁰ INQ003970/131.

¹¹¹ INQ003965.

¹¹² INQ003965/2, [§6].

¹¹³ INQ003965/2, [§§11, 14, 16 and 17].

¹¹⁴ INQ003965/2, [§§7 and 13]. The cipher 'Witness V' is used in the statement, but this redaction on Mr Cleeland's name has now been lifted.

¹¹⁵ INQ003965/2, [§§8-9, 11, 16]

he would have remembered if anything significant had been said to him.¹¹⁶ He doubted whether he had been in HMP Gartree in the early 1980s.¹¹⁷

- d. Witness Y said that he wanted to help the Inquest and that he had spoken to people who agreed he should provide whatever information he could.¹¹⁸ He said that from his political perspective he would like to be able to tell the Inquest that there was some British government involvement in the bombings, but the truth was the truth and he was 99.9% sure that he had not had the conversation in question.¹¹⁹

52. The Inquest has obtained the prison records of Mr Cleeland and Witness Y. The prison file for Mr Littlejohn has been destroyed,¹²⁰ but the Inquest has some information about his custodial record from other sources. Taken together, and if correct,¹²¹ these documents show that the three men were not in the same prison together at any time prior to 1990, let alone in the period in which Mr Cleeland claims the conversation about the Birmingham bombings took place.

- a. Mr Cleeland was, according to his record, held at HMP Gartree between February 1976 and October 1978, and between October 1984 and March 1987.¹²² Mr Cleeland's evidence, as set out above, was that the conversation with Mr Littlejohn happened during his 'second spell' at HMP Gartree, in the 1980s.
- b. Between October 1978 and March 1990, Witness Y was held at the following prisons: Long Lartin, Hull, Wormwood Scrubs, Albany, Frankland and Full Sutton.¹²³ This is consistent with Witness Y's recollection that he was not present in HMP Gartree in the early 1980s.

¹¹⁶ INQ003965/2, [§8].

¹¹⁷ INQ003965/2, [§§15, 18]

¹¹⁸ INQ003965/2, [§9]; see also [§19].

¹¹⁹ INQ003965/3, [§16]

¹²⁰ Statement of Barney Clifford, 6 December 2017, INQ004365/3, §12 and INQ004366.

¹²¹ As is discussed below, Mr Cleeland has claimed that the prison record showing his movements in prison is not correct and may be a forgery.

¹²² INQ003969/1.

¹²³ INQ003968/1.

- c. Witness Y was present at HMP Gartree between May 1976 and October 1978. Mr Cleeland would have been in the same prison for at least some of that time. However, in this period Mr Littlejohn was serving a custodial sentence in Ireland for bank robbery.¹²⁴
- d. Mr Cleeland's recollection was that the conversation took place shortly before Mr Littlejohn was attacked by IRA prisoners. There was such an attack, which took place in HMP Gartree in January 1983.¹²⁵ At that time, according to his prison file, Mr Cleeland was in HMP Long Lartin, having been transferred from HMP Parkhurst via HMP Canterbury.¹²⁶ Mr Cleeland denied that the record from the prison file was accurate and seemed to suggest that it had been forged.¹²⁷ However, a number of other documents, including a letter sent by an MP raising concerns about Mr Cleeland's well-being, all suggest that the record from the prison file is accurate.¹²⁸
- e. In January 1983, Witness Y was in HMP Long Lartin.¹²⁹

53. There are further objective difficulties presented by the dates contained in the accounts given by Mr Cleeland.

- a. Mr Cleeland's affidavit and interview both suggest that he took part in the murder of paramilitary figures in Northern Ireland at some point in 1968. This is not consistent with the highly respected book, *Lost Lives*, which seeks to record the deaths of each of those who died in the Troubles.¹³⁰ No murders of paramilitaries are recorded in 1967 or 1968. CTI are unaware of any other source that gives details of the murder of five or six paramilitary figures in this period.

¹²⁴ WMP Report on Kenneth Littlejohn, INQ004377/13.

¹²⁵ WMP Report on Kenneth Littlejohn, INQ004377/13; Irish Times report, 10 Feb 1983, INQ003561/1; Irish News, 30 Jun 1984, INQ003559/1. In his interview with STI, Mr Cleeland thought these press reports related to the attack he recalled: INQ003970/108-109.

¹²⁶ INQ003969/1.

¹²⁷ INQ003970/109-111 and /114.

¹²⁸ INQ003969//28-29, 35-38, 41-43, 104, 106-108, 109, 129.

¹²⁹ INQ003969/1.

¹³⁰ D McKittrick, S Kelters, B Feeney and C Thornton, *Lost Lives*, (Mainstream Publishing: Edinburgh and London, 1999).

- b. Mr Cleeland says that he co-operated with the ‘*security services*’ because he was concerned about his brother, whom he was told would shortly be deployed to Northern Ireland with the British military. Again, his affidavit and interview suggest that this happened at some point in late 1967 or early 1968. Troops were not sent to Northern Ireland under Operation Banner until August 1969.
- c. If Mr Cleeland was originally recruited in 1966, as is recorded in the KRW note, the chronology is still harder to reconcile with the deployment of troops to Northern Ireland.

54. There are other, subjective, matters that raise concerns about his reliability.

- a. As set out above, Mr Cleeland makes a number of eye-catching claims that at first sight seem improbable at best.
- b. Mr Cleeland is a career criminal and a convicted murderer. Although he disputes the charge on which he was convicted, his own account of events contains admissions to several murders.
- c. Mr Cleeland’s accounts contain a number of critical inconsistencies on significant matters including: (i) the number of people that he killed in Northern Ireland; (ii) the time-scale during which he killed them; (iii) whether Mr Littlejohn spoke to him when he was in Northern Ireland;¹³¹ (iv) the accent of the man who trained him to kill in the country house.¹³²
- d. DPA
DPA
DPA
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DPA

¹³¹ INQ003970/82-83. Mr Cleeland maintained that Mr Littlejohn had a Belfast accent [INQ003970/95], although Mr Littlejohn was born in Scotland and grew up in Birmingham [INQ004377/10].

¹³² INQ003979/59-60.

¹³³ INQ003969/13.

- f. During the course of his interview with STI, Mr Cleeland agreed to review materials to be provided to him and provide comments upon them.¹⁴² However, since the interview he has not co-operated with the Inquest.

The Anonymous Call of 22 November 1974

55. On 22 November 1974, an anonymous caller to Digbeth Police Station claimed that: *'He [Littlejohn] knows and assisted in the bombs last night.'* The caller also said that two other men, whose names were given, may know Mr Littlejohn's whereabouts. WMP do not hold any information that suggests the two men were further identified or traced. CLT are unaware of the identity of the anonymous caller.¹⁴³
56. The caller also said in his message that Mr Littlejohn had been under surveillance in a particular road in Birmingham, but the police had been watching the wrong house, allowing Mr Littlejohn to walk out *'under their noses'*.¹⁴⁴ This part of the anonymous account is similar to that provided by Mr Littlejohn in his memoirs about his movements that night.¹⁴⁵ The name of the road given by the caller is redacted in the materials provided to the Interested Persons, but CTI can confirm that it is the same road at which surveillance was being carried out on 21 November 1974.¹⁴⁶
57. The record of the anonymous call was marked to be passed to DS Roy Bunn, who was tasked to find Mr Littlejohn.¹⁴⁷ The CLT have not found any reference to this message in the statements he made in respect of the Birmingham bombings.¹⁴⁸ However, we have recently learned that DS Bunn is still alive and efforts are being made to see if it is possible to interview him. An update will be provided in due course.

Alan Hill's book

¹⁴² INQ003970/114.

¹⁴³ See WMP report at INQ004377/23 and INQ004439.

¹⁴⁴ See WMP report at INQ004377/23 and INQ004439.

¹⁴⁵ See WMP report at INQ004377/12-13 and /18; Mr Littlejohn's memoirs at INQ004456.

¹⁴⁶ See WMP report at INQ004377/0017.

¹⁴⁷ See WMP report at INQ004377/23 and INQ004439.

¹⁴⁸ INQ001613.

58. Alan Hill, a retired firefighter, wrote a book about the Birmingham bombings in which he claimed that Kenneth Littlejohn was involved in the attacks.¹⁴⁹ The extent of Mr Littlejohn's alleged involvement is not made clear; indeed, Mr Hill's writing consists primarily of unsupported assertions and references to allegations about Mr Littlejohn's activities in Ireland and Northern Ireland. The only objective evidence cited in support of his thesis is the following:¹⁵⁰

Littlejohn was seen in Birmingham at the time of the bombings by Alan Hill. He was wearing a high visibility tabard over his smart clothing and Hush Puppy Chelsea boots. He had his hair dyed black and wore glasses to hide his mastoid scars... [Niels] McGuinness took a photograph of the first ambulance arriving at the scene which inadvertently captured Littlejohn as he walked by...

59. Mr McGuinness was a press photographer present in the aftermath of the bombings. The Inquest has obtained at least some of the photographs taken that night. The photograph at INQ003125 seems to be the one to which Mr Hill is referring.¹⁵¹

60. STI have interviewed a retired ambulance attendant called Melvyn Courtney. He has identified himself in that photograph. He has also provided another photograph of himself from the early 1970s. A draft witness statement has been prepared, which is with Mr Courtney for his signature. This will be disclosed in due course.

61. Mr Hill also claimed in his book that:

The truth lies within two top secret files, DEFE (MOD) 13/759 'The Littlejohns 1973-1976' and DEFE 13/612. 'The K B Littlejohn Affair, 1972-1973' which are held by the MOD. Both are closed and subject to the 75 year disclosure rules in the interest of national security.

62. These files are closed, although contrary to Mr Hill's assertion there is no evidence that Dame Barbara Mills somehow imposed a 75 year closed period on documents relevant to the bombings. These two files were among those reviewed in full by the CLT. No materials fell to be disclosed from them.

¹⁴⁹ INQ000146/48, INQ000147/29. See also the evidence of Anne Brodie and John Frayne in respect of Mr Hill's book.

¹⁵⁰ INQ000147/35.

¹⁵¹ See also the photographs showing the same individual at INQ003124 and INQ000690.

Other suggestions of Kenneth Littlejohn's involvement in the bombings

63. There is no direct evidence, of which CTI are aware, of Mr Littlejohn's involvement in the Birmingham bombings. There are, however, insinuations or inferences that may be drawn from other sources.

64. Mr Littlejohn was arrested in the house of Thomas Watt on 11 December 1974.¹⁵² Mr Watt was one of the main prosecution witnesses in the trial of the Birmingham 6. Mr Littlejohn's connection with Mr Watt was explored at that trial, and the jury was directed by the judge to consider whether this had implications for Mr Watt's credibility.¹⁵³ Regardless of whether any wider suspicions should reasonably be aroused by the association between Mr Watt and Mr Littlejohn, there is nothing in these known facts to suggest that Mr Littlejohn participated in the bombings.

65. Archibald Sheridan has given evidence suggesting that Mr Littlejohn provided police with information while staying with Mr Watt.¹⁵⁴ It is possible that he was mistaken, and intended to refer to information provided by Mr Watt instead of Mr Littlejohn. In any event, Mr Littlejohn and Mr Watt's evidence was that the former only took refuge with the latter on the night of 21 November 1974,¹⁵⁵ and hence any information passed to the police would have post-dated the bombing.

66. Mr Littlejohn's own memoirs suggest that his brother-in-law may have thought that he was a bomber.¹⁵⁶

One strange reaction came from brother-in-law. He refused me a bed because he thought I was a bomber!

67. The same passage of Mr Littlejohn's memoirs record that he was upset about the bombings.¹⁵⁷

As we [Mr Littlejohn and his brother] drove along we were both in tears, how could it happen in this country? The murdering bastards! How paradoxical, the police wasting their time searching for me whilst these Irish fanatics roam at will planting their bombs.

¹⁵² See WMP Report, INQ004377/19.

¹⁵³ See WMP report, INQ004377/20-21.

¹⁵⁴ See WMP report, INQ004377/21-22.

¹⁵⁵ See WMP report, INQ004377/12 and /21.

¹⁵⁶ See WMP report, INQ004377/24 and INQ004456/169.

¹⁵⁷ INQ004456/169.

“Well, the powers that be won’t let me work so I’ll do their job for them and hunt down the IRA in England.” This was my immediate reaction.

68. Considerable caution needs to be exercised when judging the veracity of Mr Littlejohn’s memoirs; for example, he claims that his first Secret Intelligence Service handler was Lord Lucan.¹⁵⁸ However, even treating the source with care, it would seem odd for him to conceal his involvement in the Birmingham bombings, only to then leave in a suggestion that his brother-in-law thought that he might have been responsible.
69. The Inquest notes that Mr Littlejohn spoke to Chris Mullin. The account he gave, as reported by Mr Mullin, does not support the suggestion that he was involved in the bombings. However, the detail contained is inconsistent with other accounts given by Mr Littlejohn and other witnesses. Mr Mullin clearly regarded Mr Littlejohn’s story with considerable scepticism.¹⁵⁹
70. Witness O commented on Kenneth Littlejohn, whom he knew from his time in prison, in his statement. He said that he regarded him as a ‘*Walter Mitty character*’. He said that he had never come across Mr Littlejohn while he was in Birmingham prior to the pub bombings.¹⁶⁰

Circumstantial evidence weighing against Mr Littlejohn’s involvement

71. There are many aspects of Mr Littlejohn’s story, and of the events of 21 November 1974, that suggest that he was not involved in the bombings. First, and most tellingly, it would have been a remarkable risk for all involved for him to have played any part. In November 1974 Mr Littlejohn was on the run from the authorities. He had chosen to adopt a high public profile, including giving interviews to the media while a fugitive.¹⁶¹ He had dramatically claimed to have been a British agent who infiltrated the IRA in Ireland, causing a diplomatic incident and significant embarrassment to the

¹⁵⁸ See WMP report at INQ004377/9 and INQ004456/38.

¹⁵⁹ Mullin, *Error of Judgement*, pp259-261.

¹⁶⁰ INQ003839/8-9, §§60-62.

¹⁶¹ http://news.bbc.co.uk/onthisday/hi/dates/stories/march/11/newsid_2800000/2800267.stm ; Dillon, *The Dirty War*, p.113.

then Government and its Ministers. He was the subject of questions in Parliament and television news reports.¹⁶²

72. In those circumstances, it would have taken a remarkable courage or folly for Mr Littlejohn to seek to infiltrate the IRA again, this time in his home town of Birmingham. If he did so at the behest of the British state, he would have been a remarkable choice for the operation – a highly visible public presence who had already ‘blown’ his cover and who was prone to give media interviews. If the Birmingham IRA accepted him into their ranks for such a sensitive operation, this would represent a remarkable leap of faith, or a remarkable oversight. Unless it is argued that Mr Littlejohn acted alone, a thesis which presents even more challenges in light of the other evidence, some or all of these remarkable occurrences must have occurred.

73. Further, there is compelling evidence that Mr Littlejohn was under surveillance on the night of the bombings, although the police appear to have identified the road but not the house in which he was staying.¹⁶³ It may be that the operation was compromised; or that Mr Littlejohn was able to evade detection. However, the presence of a team of police officers seeking to identify and arrest him on 21 November 1974 may be felt to make it still more unlikely that he was involved in the bombings.

74. Mr Littlejohn himself gave no indication in his memoirs or anywhere else that he was involved.¹⁶⁴ While in one sense this is unsurprising – why admit to the killings, particularly in your home city? – Mr Littlejohn was prepared to write about his other crimes (albeit with a strong tone of self-justification). Perhaps more importantly, nobody else, other than Mr Cleeland, has suggested that Mr Littlejohn told them he was involved, or gave other direct evidence of his involvement. Those who have spoken about relevant events without referring to Mr Littlejohn being involved include Witness Y, Witness O, Kieran Conway, and those interviewed by Chris Mullin and the police officers involved in Operations Aston, Review and Castors.

¹⁶² See Dillon, *The Dirty War*, pp95-115, and in particular pp.108-112 for the political and diplomatic response to Mr Littlejohn’s public claims at his extradition hearing in 1972-1973.

¹⁶³ See WMP Report at INQ004377/17-18.

¹⁶⁴ See references above.

75. Finally, there is the fact of Mr Littlejohn's arrest in December 1974 and his subsequent extradition. If he had been involved in the bombings, what purpose was served by these actions? Given that Mr Littlejohn had used his first extradition proceedings to make allegations that he was working for British intelligence in conducting bank robberies, was there not a risk that he would 'go public' again? Mr Littlejohn went on to serve seven more years in prison in Ireland. Within twelve months of his return to England he was imprisoned again, for armed robbery.¹⁶⁵ These events do not suggest that Mr Littlejohn was given preferential treatment in order to reward him or buy his silence. Again, it would have been a remarkable risk to count on Mr Littlejohn keeping his own counsel if he felt betrayed by his former handlers.

Submissions on evidence to be adduced at the Inquest

76. We submit that no evidence should be adduced on Mr Littlejohn's alleged involvement in the bombings. We say this only after an extensive investigation that has thoroughly considered materials from relevant witnesses and archives.

77. Mr Cleeland is not, in our view, a witness of sufficient credibility to justify being called. Fundamental aspects of his account are contradicted by contemporary documents or a simple factual chronology of historical events. His evidence is denied by the only other living witness to the relevant conversation. It is unsupported by other accounts (with the possible exception of the anonymous telephone call). Mr Cleeland's own criminal record and the inconsistencies between his accounts further undermine his credibility. Any objective observer will also have considerable doubts about the more fantastic elements of his story. Finally, there are also real concerns about whether a serious medical condition at the time of the alleged conversation has rendered his memory unreliable.

78. These are not flaws in his evidence that can be remedied by oral evidence. The whole premise of his story of Mr Littlejohn's confession is undermined by external, objective factors which cannot be explained away. Further, Mr Cleeland has been given the opportunity to engage with the Inquest and to consider the documents that touch upon his account. He has not taken this opportunity and has not even provided a

¹⁶⁵ See WMP Report, INQ004377/13.

written statement to the Coroner. There is no reason to think that he would be able to square circles in oral evidence, particularly as he ceased to engage with these proceedings once it became clear that his account would be held up to forensic scrutiny.

79. In those circumstances, and in keeping with the authorities cited above, we do not consider that Mr Cleeland would provide positive assistance to the Inquest. His account is insufficiently credible. Were he to be called, the jury would also have to consider the large amount of evidence outlined above that suggests that his evidence is unreliable.

80. Nor do we consider, at present, that evidence should be adduced about the anonymous telephone call. This is because there is insufficient evidence to allow a jury to draw any conclusions from it. We do not know who made the call, or how he or she knew about the information contained within it. It is, at best, anonymous hearsay evidence, and possibly multiple hearsay evidence. As such, it is more prejudicial than probative. Again, were it to be admitted, evidence to the opposite effect would also have to be adduced.

81. However, we note that this position may change if DS Bunn is able to give an interview, and is able to provide evidence about the note. Further updates will be provided in due course.

82. We do not consider that the other matters considered above amount to evidence that it is appropriate to put before the jury. The inferences and suggestions are little more than rumour and speculation. They could not form the basis of a proper and safe determination.

83. We note that there is a valid argument that Mr Cleeland should be called if only to allay the suspicion and rumour his evidence has helped to generate.¹⁶⁶ On balance, we do not agree for the following reasons. First, Mr Cleeland's evidence is so demonstrably flawed that it would not be fair to him, to the jury or to the families as a whole to adduce it in oral evidence. He referred in his interview with STI to *'get[ting]*

¹⁶⁶ See references to *Lepage*, above.

the stage at the end of the day'.¹⁶⁷ That is not the purpose of these proceedings and it is right to guard against the Inquest being diminished by the admission of incredible evidence. Second, it is unlikely that even the most forensic deconstruction of Mr Cleeland's evidence would satisfy those (such as the late Alan Hill) who are already convinced of Mr Littlejohn's involvement. Third, for those approaching the Inquest objectively and with an open mind the investigation set out above will, it is hoped, serve to allay rumour and suspicion insofar as it is possible to do so after four decades.

84. We recognise, however, that the force of the argument that Mr Cleeland should be called would grow if there were to be submissions from Interested Persons in support of such a course of action. We await those views. It would also be wise, in our view, to revisit any decision if DS Bunn is able to give evidence.

85. Given the conclusions reached above, we say nothing further in these submissions about evidence suggesting that Mr Littlejohn acted as an agent or informant for the intelligence agencies or any other state body.

Evidence relating to James Kelly

86. James Kelly was arrested on 29 November 1974 following information provided to WMP by one of the Birmingham 6, John Walker. Mr Kelly was charged with offences relating to the possession of explosive materials and conspiracy to cause explosions. He was tried alongside the Birmingham 6, Michael Sheehan and Mick Murray. His defence rested on the claim that he had sought to infiltrate the IRA in Birmingham and was intending to contact the police to become an informant. He was convicted of possession but cleared of the conspiracy charges. He was sentenced to 12 months in prison and was released in August 1975 in light of time served on remand.

87. There have been suggestions that Mr Kelly was, in fact, an agent/informant or an agent provocateur whose actions were in some way connected with the bombings.

¹⁶⁷ INQ003970/148.

88. At the Coroner's request, WMP have conducted searches and produced a report on the materials that they hold on Mr Kelly.¹⁶⁸ That report, and the documents underlying it, have been (or will be) disclosed to Interested Persons. Requests for disclosure searches relating to Mr Kelly were also made of other organisations.¹⁶⁹ Among the materials subsequently disclosed to Interested Persons are:

- a. Arrest documentation, noting Mr Kelly's personal effects.¹⁷⁰
- b. Mr Kelly's written statement dated 29 November 1974.¹⁷¹
- c. The full transcripts of Mr Kelly's trial, including the relevant section of the judge's summing up to the jury,¹⁷² the plea in mitigation, and the judge's sentencing remarks.¹⁷³
- d. Mr Kelly's full prison file.¹⁷⁴
- e. A document recording some of the research undertaken by WMP in respect of Mr Kelly in 1991.¹⁷⁵
- f. Documents from the DWP confirming Mr Kelly's death.¹⁷⁶
- g. A statement from HH John Maxwell, junior prosecution counsel at Mr Kelly's trial.¹⁷⁷
- h. The CLT also contacted the legacy law firm of the solicitors who represented Mr Kelly. The outcome of those enquiries are set out in the Agent/Informant note.¹⁷⁸ No information was held concerning the reasons for the length of Mr

¹⁶⁸ INQ004376.

¹⁶⁹ The Agent/Informant Note, §18.

¹⁷⁰ OMQ001194

¹⁷¹ INQ000115.

¹⁷² INQ000122.

¹⁷³ INQ000123.

¹⁷⁴ INQ003994.

¹⁷⁵ INQ004319.

¹⁷⁶ INQ004301.

¹⁷⁷ INQ003842.

¹⁷⁸ §§42-43.

Kelly's custodial sentence. The remainder of the material remained privileged. The CLT have made efforts to contact Mr Kelly's family, but with no success.¹⁷⁹

Mr Kelly's defence

89. In his signed witness statement dated 29 November 1974, made following his arrest that day, Mr Kelly admitted to holding weapons and explosive materials. He denied being a member of the IRA,¹⁸⁰ and said:¹⁸¹

I kept them for about two weeks and at that time my intentions were to tell the police, but didn't because I was frightened, and worried about my wife and kids.

90. This remained his defence at trial, namely that he had *intended* to tell the police about the materials but had not done so by the time of his arrest.¹⁸² He was found guilty of possession but not guilty of conspiracy, suggesting that the jury either accepted his defence or considered that it gave them reasonable doubt as to his guilt on the conspiracy charge.¹⁸³

91. It is important to note that while he was tried at the same time as the Birmingham 6 he was not charged with any offence directly connected with the bombings on 21 November 1974.

The suggestion that Mr Kelly was an agent or informant before his arrest

92. It has been suggested that Mr Kelly's defence was not true, and that he was involved with the police (or some other state body) prior to his arrest and was, in that role, somehow involved in the bombings on 21 November 1974. It is further argued that his sentence, which saw him released in August 1975 (and thus was the equivalent of a '*something over 12 months*' imprisonment' when discounted for remission) may

¹⁷⁹ Agent/Informant note, §50.

¹⁸⁰ INQ000115/4.

¹⁸¹ INQ000115/3.

¹⁸² See WMP Report at INQ004376/8 and INQ004215.

¹⁸³ INQ000123/1.

indicate that he was treated favourably by the authorities as a quid pro quo for his assistance.¹⁸⁴

93. The argument that Mr Kelly was a police informant prior to his arrest was advanced by the barrister, Mr Richard Ferguson QC, who represented Hugh Callaghan and John Walker at their appeal in 1987. Mr Ferguson accepted that this was merely a suggestion, based upon a comment made by Chief Superintendent George Reade in an interview with Operation Aston: *'You must remember there was a Special Branch involvement with Kelly. I didn't know about that. I didn't want to know.'*¹⁸⁵ Mr Reade also referred to Special Branch involvement with Mr Kelly in a later interview with Operation Aston.¹⁸⁶
94. The only direct evidence presented in support of Mr Ferguson's thesis was a statement by a police officer to the effect that they searched the house of Mr Kelly on the night of 21 November 1974, some days before the information provided by Mr Walker. If correct, this would suggest that Chief Superintendent Andrew Crawford had not been honest in his evidence, which was to the effect that they knew nothing of Mr Kelly before being given the information by Mr Walker. This, Mr Ferguson argued, could be evidence of Mr Crawford concealing a pre-existing source.¹⁸⁷
95. However, the officer in question subsequently told Operation Aston that he had been mistaken in his evidence, and that in fact it was Patrick Hill's house, not that of Mr Kelly, that had been searched on the night of 21 November.¹⁸⁸ Chief Superintendent Crawford also reiterated his evidence that there had been *'nothing known'* about Mr Kelly or other residents at this home before Mr Walker provided them with information.¹⁸⁹ The materials identified by WMP in its report record that the first meeting between Superintendent Crawford and Mr Kelly took place on 29 November 1974, which is in line with both men's evidence.¹⁹⁰ Further, as of November 1974, Mr Crawford was head of WMP's Serious Crime Squad and did not join Special Branch

¹⁸⁴ INQ000125/6.

¹⁸⁵ See WMP Report, INQ004376/9 and INQ004398.

¹⁸⁶ See WMP Report, INQ004376/19-20.

¹⁸⁷ See WMP Report, INQ004376/9-10.

¹⁸⁸ See WMP Report, INQ004376/9.

¹⁸⁹ See WMP Report, INQ004376/10. There is, however, an inconsistency between the evidence of Mr Crawford and that of Mr Kelly and his legal team as to how many times Mr Crawford after his arrest: see WMP Report, INQ004376/11-12.

¹⁹⁰ See WMP Report, INQ004376/10.

until February 1975, undermining any potential link between him and the comments made by Chief Superintendent Reade.¹⁹¹

96. Even if, contrary to this evidence, Mr Ferguson's theses were to be correct, it would not implicate Mr Kelly in the Birmingham bombings.

Mr Kelly's sentencing

97. Mr Kelly was represented at his trial by Edwin Jowitt QC (later Mr Justice Jowitt). In his plea in mitigation Mr Jowitt stressed the basis on which the jury had found him guilty, his client's '*well-intentioned foolishness*', the hardship his client had faced in prison (in which he had spent a lot of time '*by himself*', seemingly a reference to being segregated from other prisoners), and the risks to Mr Kelly once he was released.¹⁹² The trial judge, Bridge J (later Baron Bridge of Harwich), referred to reading a Social Enquiry Report on Mr Kelly, but his comments suggest he attached little weight to it.¹⁹³ He stated that he '*accepted fully*' the point made by Mr Jowitt about his acquittal on the conspiracy charge, adding that he considered the expression '*well-intentioned foolishness*' to be '*perfectly appropriate*'. He also accepted the points made about his '*long months*' in prison and considered that these punished Mr Kelly adequately '*for your folly which led you into this criminal act*'. He therefore acceded to Mr Jowitt's submission that Mr Kelly be released on 23 August 1975 to allow for arrangements to be made '*on your behalf*'.¹⁹⁴

98. CTI see nothing in the sentence, or the sentencing remarks, that implies that Bridge J was discounting Mr Kelly's sentence as a reward for clandestine activity undertaken on behalf of the state in respect of the bombings of 21 November 1974. Nor is there any evidence from the lawyers involved in the trial to suggest that this was so. In fact, there is evidence to the contrary:

¹⁹¹ See WMP Report, INQ004376/10.

¹⁹² INQ000123/2-3.

¹⁹³ INQ000123/3.

¹⁹⁴ INQ000123/6-7.

- a. Mr Maxwell, the junior prosecution counsel, has stated that he has no information to contradict the police evidence that they knew nothing of Mr Kelly until they were tipped off by Mr Walker following the bombings.¹⁹⁵
- b. Further, Mr Maxwell points out that the inevitable effect of Mr Kelly's defence was that he would be found guilty of the possession charge. *'If Kelly had been a police informer it is difficult to see any disadvantage to him in revealing this in evidence and this would have provided him with a possible defence to possessing explosive substances.'*¹⁹⁶
- c. Mr Maxwell stated that the prosecution did not believe Mr Kelly's defence and made no concession when prosecuting the conspiracy charge.¹⁹⁷
- d. Once Mr Kelly had been convicted of possession but acquitted of conspiracy, Mr Maxwell considered that there was *'a real possibility'* that his sentencing would lead to his immediate release. Mr Maxwell's memory was that all relevant discussion took place in open court and that arrangements were made to provide protection for Mr Kelly as *'it seemed likely that the IRA would seek retribution'*.¹⁹⁸
- e. Mr Maxwell also gave evidence of providing disclosure to Mr Kelly's defence team of the circumstances in which he came to be arrested, despite the objections of Chief Superintendent Crawford of WMP. This led to the relevant officers being called and cross-examined, thereby bringing more of the details of Mr Kelly's arrest into the public domain than would otherwise have been the case. This suggests due process rather than behind-the-scenes dealings.¹⁹⁹
- f. John Buckingham, Mr Kelly's defence solicitor, was interviewed by officers from Operation Review around March 1992. The detail of that interview is redacted from the WMP report, but as is indicated in the gist, Mr Buckingham

¹⁹⁵ INQ003842/2, §11-12.

¹⁹⁶ INQ003842/3, §12

¹⁹⁷ INQ003842/3, §13.

¹⁹⁸ INQ003842/3, §14

¹⁹⁹ INQ003482/2, §9.

said that there was no deal between the prosecutor and the defence about the conduct of Mr Kelly's prosecution in 1975.²⁰⁰ Mr Buckingham is deceased.²⁰¹

- g. Henry Graham was junior counsel for Mr Kelly at his trial. He was interviewed on 21 November 1992 and he described Mr Kelly as '*insignificant*' in terms of his role with the IRA.²⁰² Mr Graham is deceased.²⁰³
- h. Shakespeare Martineau, the legacy law firm of the solicitors who represented Mr Kelly at the trial have stated that they do not hold any papers concerning the reasons for the length of Mr Kelly's custodial sentence.
- i. It may also be relevant that Bridge J stated that although he suspected that Michael Sheehan was more heavily involved than the evidence at the trial had suggested, he would '*sentence him on what the evidence does disclose*.'²⁰⁴ This, it may be felt, is consistent with the approach Bridge J took to Mr Kelly, accepting the facts established by the court as the basis of the sentence rather than taking into account extraneous matters. Baron Bridge is deceased.²⁰⁵

Mr Kelly's evidence to Operation Review

99. Mr Kelly was interviewed by officers from Operation Review on 27 April 1993. Two reports of that interview have been identified, although one is incomplete.²⁰⁶ While some of the information in the interview is redacted on the grounds of relevance and sensitivity, its contents are covered by the general gist provided by WMP. This is to the effect that WMP has no information that an agent/informant working on behalf of WMP or other state agencies was involved in the bombing. As is pointed out in the WMP report, Mr Kelly, made no mention of passing information about handling guns and detonators on behalf of Mick Murray, Michael Sheehan and John Walker to the police at the time when he was involved in this activity.²⁰⁷

²⁰⁰ See WMP Report at INQ004376/12.

²⁰¹ Agent/Informant note, §54.

²⁰² See WMP Report at INQ004376/13.

²⁰³ Agent/Informant Note, §54.

²⁰⁴ INQ000123/5.

²⁰⁵ Agent/Informant Note, §54.

²⁰⁶ INQ004394 and INQ004308. The latter has a page missing.

²⁰⁷ INQ004376/15.

Mr Kelly's release

100. Mr Kelly was released on 20 August 1975, three days ahead of the date given publicly by Bridge J. This was done on the order of the judge, who said that the release date, '*was really for the benefit of the media*'. His prison files indicate that he was released into the care of Special Branch.²⁰⁸ Mr Maxwell's evidence was that the arrangements were '*well known to counsel in the case*' and were presumably intended '*to throw the IRA and the press and any other interested person off the scent*'.²⁰⁹
101. The records also indicate that the plans were nearly derailed when the military authorities issued an arrest warrant for Mr Kelly, who had deserted from the Royal Signals in 1964. This problem was '*overcome*' by a Royal Signals officer attending to discharge Mr Kelly from the Army.²¹⁰
102. CTI do not find anything in this evidence that suggests that Mr Kelly was an agent or informant of the British state who was protected because of his involvement in the bombings of 21 November 1974. Given the nature of Mr Kelly's defence, it was inevitable that he would have required some protection on his release. This was addressed in open court by his barrister, Mr Jowitt.²¹¹ Mr Maxwell's evidence is that other counsel were also aware, and the prison file shows that the measures were taken at the direction of the trial judge. Nor do we find it surprising that Special Branch officers attended the trial.²¹²

Alan Hill

103. In his book, Mr Hill claims that Mr Kelly was '*a young British intelligence operative using the cover of an unemployed deserter from the British Army*' who was '*parachuted*' into Imperial Metals Industry works at Kynoch Works, Witton. He claims that Mr Kelly was, on his release from prison, transported by '*persons*

²⁰⁸ INQ003994/1-2.

²⁰⁹ INQ003842/3, §14.

²¹⁰ INQ003994/1-2.

²¹¹ INQ000123/2-3.

²¹² See WMP Report, INQ004376/20.

unknown to a barracks in Northern Ireland that had its own runway in order to allow intelligence operatives to arrive with discretion.²¹³

104. Mr Hill presents no evidence at all in support of these claims.

Witness O

105. Witness O gave an interview in 2016 to An Garda Siochana in which he said that he had been told after the bombings that a man from the North of Ireland was supposed to be a police informer. This man had been arrested with the Birmingham 6 but had been *'let off'*. Witness O appeared to say that he personally did not know if these suggestions were true. WMP formed the view, with which CTI agree, that this appeared to be a reference to Mr Kelly.²¹⁴

106. Witness O has provided a witness statement to the Inquest. In respect of Mr Kelly, Witness O said that he did not know him personally and had never met him. He said that, *'everything I know about James Kelly I have read in the newspapers'*; however, he added that he talked with members of the Birmingham 6 about him. Nothing in Witness O's account suggests that he has any information suggesting that Mr Kelly was an agent or informant who was involved in the pub bombings.²¹⁵

Submissions on evidence to be adduced at the Inquest

107. It is difficult to see what actual evidence could be adduced before the jury in respect of the rumours that have surrounded Mr Kelly's role in the Birmingham bombings. There is no evidence that links him directly to the attacks on 21 November 1974, and he was not charged with offences related to those attacks. Nor is there any direct evidence that suggests that he was working as an agent or informant for the state prior to his arrest.

108. In contrast, there is a considerable body of evidence to suggest that he had not contacted the police about his alleged involvement with the IRA prior to 29

²¹³ INQ000147/019.

²¹⁴ Se WMP Report, INQ004376/18; see also INQ003840/20-21.

²¹⁵ INQ003839/8, §§57-58.

November 1974. Mr Kelly's evidence before, at and after his trial suggests that he had no contact with WMP before this. Given the situation in which he found himself – charged with possession and conspiracy, facing a potentially lengthy sentence, and with the prosecution making no concessions – it is difficult to see why Mr Kelly would have decided not to be open about his contact with WMP prior to his arrest. Further, his evidence is consistent with the records held by WMP about his contact with Chief Superintendent Crawford. The only witness who suggested that there may have been knowledge of Mr Kelly before his arrest subsequently explained that he had confused Mr Kelly's house with that of Patrick Hill.

109. The events of Mr Kelly's trial, sentence and release do not, in our view, provide evidence of his role as an agent/informant who was involved in the bombings of 21 November 1974. The consistent evidence of those involved in the trial is that no special treatment was provided. Mr Maxwell is clear that the prosecution did not believe Mr Kelly's defence and prosecuted him in full.

110. Mr Hill's book provides no evidence in support of his wholly unsubstantiated allegations.

111. We have given thought to whether some evidence should be adduced in order to allay rumour and suspicion. On balance we are not in favour of such an approach. The fragmentary nature of the evidence set out above would be extremely difficult for a jury to follow, particularly if one hypothesis were to be woven using selective interpretations of some of the documents, only for a counter-theory to be presented using others. The jury would, understandably, be confused by such an approach. It also seems unlikely to allow for a satisfactory public airing of the relevant issues. Given that almost all of the relevant witnesses are now dead, oral evidence would be of little assistance. Perhaps the only witness would be Mr Maxwell, called to rebut a flimsy case held together by insinuation rather than facts. This seems to us, with respect, a rather pointless exercise.

112. However, we are conscious that the Interested Persons may have helpful proposals as to how evidence could be called properly and effectively. They may also

have a different interpretation of the matters set out above, or have identified other witnesses who may assist. We await those submissions.

The 'C' document

113. The 'C' document is referred to at §§66-70 of the Agent/Informant Note. For the reasons given there, CTI had concluded that the 'C' Document did not refer to the James Kelly who is the subject of the submissions made above. This position is further confirmed by a report on this matter by WMP that will be disclosed to Interested Persons shortly.

114. Since the Agent/Informant note, the Inquest has obtained a statement from William Squires, a former WMP officer. Mr Squires explains that he was the officer who arrested and questioned the man who was the source of the information in the 'C' document. Mr Squires said that this man was asked if he knew who planted the bombs on 21 November 1974. The man replied by saying that he had no idea as he was not in Birmingham during that period. Mr Squires also said that the man did not indicate that he had previously given information to, or worked for, the police or any other British state agency prior to 21 November 1974. Nor did Mr Squires receive information from any other source that the man had been an agent or informant prior to 21 November 1974.²¹⁶

115. In light of this evidence, we do not consider that the information contained in the 'C' document, or the fact of the existence of the 'C' document, provides any information that is of relevance to the agent/informant or forewarning topics.

The Forewarning Topic

Conversation on 9 November 1974

116. The evidence relating to the conversation between Witness O and Witness P in Winson Green Prison on 9 November 1974 is summarised at §§12-16 of the Forewarning note, and is not repeated here.

²¹⁶ INQ004369/2-3, §§18, 20-22.

117. This issue has been investigated by the CLT and attempts have been made to identify and interview any of those involved or named:
- a. The people identified as having the conversation on 9 November 1974, Witness O and Witness P, have both been contacted: Witness O has provided a witness statement;²¹⁷ Witness P, who is outside the jurisdiction, has refused to assist.
 - b. Mr Gerald Vincent, the author of the message dated 10 November 1974 and the subject of a further message dated 12 November 1974, provided a witness statement to Operation Aston, but has since died. A number of Mr Vincent's relatives have been interviewed and have provided statements.
 - c. Attempts have been made to identify the prison librarian who is recorded as the individual who overheard the conversation between Witness O and Witness P. Irene Dixon was the prison librarian at the time, but has no recollection of the alleged incident.²¹⁸ It has not been possible to trace other librarians.
 - d. Trevor Waterhouse, the author of the telephone message dated 12 November 1974 has been interview and has provided a statement.²¹⁹
 - e. As set out in the witness statements of Timothy Suter, dated 14 November 2018,²²⁰ and Terence Bannister, dated 8 November 2017,²²¹ it has not been possible to identify 'DI Bannister' who is recorded to have received the telephone message on 10 November 1974.
 - f. It has also not been possible to identify 'DPW Daniels' who is recorded to have received the telephone message dated 12 November 1974. Enquiries have been made but WMP and the Ministry of Justice have been unable to assist in identifying Daniels.
 - g. Chief Superintendent Crawford, for whose attention the telephone message was marked, is deceased.

²¹⁷ INQ003839.

²¹⁸ INQ003835

²¹⁹ INQ003929.

²²⁰ INQ004364.

²²¹ INQ003565.

118. The evidence contained in the telephone messages suggests, *prima facie*, that WMP had intelligence of a possible attack in Birmingham in the weeks prior to the pub bombings. A statement from WMP on this incident is currently awaited. There were a number of bombings in Birmingham between 9 and 21 November 1974, and the detail of the recorded conversation is unspecific. Nevertheless, it is considered that this evidence is relevant to the forewarning topic and the Coroner's Legal Team propose that the Coroner should adduce evidence on this issue at the Inquest.

119. We make the following proposals:

- a. That Witness O be called by the Coroner to give evidence: He is the subject of the telephone message and is alleged to have been overheard saying '*Birmingham is going to be hit next week.*' He denies that he had advanced knowledge of the Birmingham pub bombings and denies that the recorded conversation took place.
- b. That the Coroner call Trevor Waterhouse: He is recorded as the author of the Bomb Squad message dated 12 November 1974, and gives evidence about his recollection of Mr Vincent, Winson Green Prison and his recollection of the events in question.
- c. That the evidence of Gerald Vincent be summarised under rule 23(1)(a) as he is deceased.
- d. That the witness statements of Anne Lochhead, Stephen Vincent, Christopher Vincent, Claire Lochhead and Irene Dixon be read or summarised under rule 23(1)(d).
- e. That evidence relating to the identity of 'DI Bannister' be read or summarised under rule 23(1)(d): It is proposed that this should include the witness statement of Terence Bannister, and the witness statement of Timothy John Suter, dated 14 November 2018.
- f. The CLT have already proposed that Chris Mullin be called to give evidence concerning his interview with Michael Murray. In respect of the forewarning

topic, it is proposed that Mr Mullin be asked about those sections of his interview that suggest that the bombings were planned the weekend before the 21 November 1974, and thus well after the alleged conversation on 9 November 1974.

Witness B

120. The evidence relating to the account provided by Witness B is summarised at §§17- 21 of the Forewarning note. This evidence is to the effect that WMP officers stationed at Tally Ho Police Training Centre were told on 21 November 1974 of a conversation that suggested that a bomb attack would take place in Birmingham that night. We consider that this is plainly relevant to the forewarning topic and that some of the evidence in question should be adduced at the Inquest.
121. Extensive efforts have been made to identify police officers or others who were present at Tally Ho Police Training Centre on Pershore Road on 21 November 1974. Witness B's account is that he spoke with a Sergeant and a Constable there. It has not been possible to identify these officers.
122. Witness B was contacted and interviewed by the CLT, providing a witness statement. Unfortunately, he has since died. We consider that all reasonable lines of enquiry have now been explored. If Interested Persons have any further suggestions then we would be grateful to hear them.
123. The Coroner's Legal Team make the following proposals as to the evidence to be adduced on this topic:
- a. Witness B: it is proposed to read or summarise his witness statements under rule 23(1)(a).²²²

²²² INQ003806, INQ000765.

- b. It is proposed that one of the daughters of Witness B, either Witness M²²³ or Witness J,²²⁴ be called to give live evidence, with the evidence of the other to be read or summarised under rule 23(1)(d).
- c. It is proposed that the evidence of other witnesses in relation to Witness B's account of the events in question be read or summarised under rule 23(1)(d), including the witness statements of Witness H,²²⁵ Witness N, Witness R,²²⁶ Witness D,²²⁷ Witness E, Witness F, Witness G, Witness K,²²⁸ Witness L,²²⁹ Roger Panter,²³⁰ and Edward Terry²³¹.

Cancellation of the Steelhouse Lane visit

124. The evidence relating to the cancellation of the visit to Steelhouse Lane Police Station organised for the evening of 21 November 1974 is summarised at §§22 – 25 of the Forewarning note. It is suggested that the cancellation of the visit to Steelhouse Lane Police Station is evidence that WMP had advanced notice of the events in question. It is proposed that evidence is adduced on this topic.

125. The Coroner's Legal Team make the following proposals as to the evidence to be adduced on this topic:

- a. It is proposed that Karen Hill²³² or David Bennison²³³ be called to give live evidence. They give evidence that such a visit on 21 November 1974 was planned but was subsequently cancelled.
- b. It is understood that the person who organised the visit, Erica Moody, is deceased. Her widow, Peter Moody,²³⁴ has no knowledge of this visit. It is

²²³ INQ003718.

²²⁴ INQ000740.

²²⁵ INQ000719.

²²⁶ INQ000718.

²²⁷ INQ003834.

²²⁸ INQ000749.

²²⁹ INQ000742.

²³⁰ INQ003567.

²³¹ INQ003868.

²³² INQ004576, INQ003713.

²³³ INQ003566.

²³⁴ INQ000756.

proposed that his witness statement be read or briefly summarised under rule 23(1)(d).

- c. Other witnesses have been identified and interviewed to establish the reliability of these accounts. It is proposed that the evidence of these witnesses be read or summarised under rule 23(1)(d). This will include the witness statements of Karen Hobley,²³⁵ Dawn Jeynes,²³⁶ Anita Farrow,²³⁷ Susan McGarry,²³⁸ and William Phillips.²³⁹

Arthur Jolley

126. The evidence relating to the arrest of, and the account given by, Arthur Jolley is summarised at §§26-33 of the Forewarning note. As above, this evidence shows, *prima facie*, that the Regional Crime Squad had information on 20 November 1974, that explosives had possibly been delivered to Birmingham from Merseyside on 13 November 1974.

127. Further enquiries have not been possible given the lapse of time. Arthur Jolley is deceased, enquiries are being made about David Speake.

128. The Coroner's Legal Team make the following proposals as to the evidence to be adduced on this topic:

- a. Arthur Jolley is deceased. It is proposed that the report of his arrest and the account that he gave is adduced into evidence under r.23(1)(a).
- b. The witness statements of Frank Skuse be summarised, again under r.23(1)(a). It is further proposed that evidence about the reliability of Dr Skuse's examinations, as identified by the Court of Appeal in *R v McIlkenny* [1992] All ER 417, be briefly summarised for the jury.

²³⁵ INQ000743.

²³⁶ INQ000759.

²³⁷ INQ003564.

²³⁸ INQ003589.

²³⁹ INQ003714.

- c. The evidence of David Speake,²⁴⁰ William Squires and Thomas Jenkinson be read or summarised for the jury.
- d. A summary of the evidence relating to Edward O'Reilly²⁴¹ and Peter Byrne²⁴² will be summarised for the jury.
- e. As is discussed above, we have already proposed that Chris Mullin should give oral evidence concerning his interview with Michael Murray. Again, for the purposes of the forewarning topic, we propose that he be asked about those parts of the interview that suggest that the bombings were planned the weekend before the 21 November 1974, and the explosives were brought into Birmingham only a few days prior to the bombings.

Talk of the Town

129. The evidence in relation to the account given by Witness W is summarised at §§34 – 38 of the Forewarning note. A number of documents potentially relevant to this issue have been reviewed by CLT but the contents are sensitive. As such, a gist of this evidence is being prepared for disclosure. Witness W is deceased and the officer to whom it is alleged that the witness spoke has not been identified. As such, it is proposed that the gist of this evidence is read under r.23(1)(a) and/or (b).

Journalist at Birmingham Elmdon Airport

130. The evidence in relation to the account given by DC Craddock about a journalist at Birmingham Elmdon Airport is summarised at §§39-42 of the Forewarning note.

131. In a witness statement dated 31 July 1990,²⁴³ DC Craddock, a Special Branch officer, gave evidence that, on 21 November 1974, he attended Birmingham Elmdon Airport as part of a large police presence to monitor the funeral entourage of James

²⁴⁰ INQ004284.

²⁴¹ INQ004139, INQ004151.

²⁴² INQ004239, INQ004346.

²⁴³ INQ004010.

McDade. There were a number of delays at the airport as the baggage handlers refused to load the coffin onto the plane. DC Craddock states that during a delay, he spoke to a Daily Mirror journalist, Dick Williams, who was due to fly on the plane with the coffin. He states: *'He had been sitting on the plane all of the time and he told me he wanted to get off, because he said he felt the Irish people travelling with the coffin were getting very agitated. Furthermore, he indicated he felt that something was going to happen in Birmingham round about 8pm. I told DI Pagett what I had been told.'*²⁴⁴

132. However, a subsequent statement from DC Craddock, dated 26 August 1992,²⁴⁵ gives a materially different account. He states that he saw Dick Williams checking in through passenger control to get on the plane. News of the bombings in the pubs came through at the same time as a bomb hoax at the airport, and a decision was made to stop the aircraft leaving. At that stage, DC Craddock, Dave Hunt and ACC Baumber got on the plane to remove two passengers. ACC Baumber informed the passengers of the explosions in the city centre and, *'I was then approached by Dick who asked me if he could get off the plane to cover the story because it was the biggest thing that he would cover. I said I couldn't, I left him there and left with Dave Hunt and Pagett with the two who were detained. As far as I know Dick left the plane.'*²⁴⁶

133. This second account, of a conversation taking place *after* news of the pub bombings had reached the airport, is more consistent with the statement of DC David Hunt, dated 1 July 1992.²⁴⁷ He states that he was a Special Branch officer at Birmingham Airport on 21 November 1974 along with his partner, DC Craddock. He states that during a delay as a result of the baggage handlers' protest, he heard about the explosions at the pubs in the city centre. Subsequently, he caused the aircraft to be stopped from taking off, and detained three men. He recalls being with ACC Baumber

²⁴⁴ INQ004010/6.

²⁴⁵ INQ004015.

²⁴⁶ INQ004015/5.

²⁴⁷ INQ004018.

at the time. He has no knowledge or recollection of DC Craddock's conversation with a photographer.

134. A statement from Philip Pagett, dated 14 June 1990²⁴⁸, makes no mention of any such account provided to him by DC Craddock.

135. Owen Richard Williams provided a statement dated 26 February 1992.²⁴⁹ He states that, on 21 November 1974, he was employed as a photographer by the Daily Mirror and was detailed to accompany the funeral entourage of James McDade. He states that he had been unable to access the airport due to a bomb scare and that his bags, including his camera must have been collected from him outside the airport. He subsequently heard about a bombing in Birmingham city centre so he decided that he would not travel on the plane but sought to collect his possessions and go to the city centre. He spoke to a Senior Officer and was accompanied by a police officer to collect his possessions from near the aircraft. He states that he never got on the plane, and he is certain that there would have been another (different) Daily Mirror reporter on the plane.

136. Dick Williams is deceased.²⁵⁰

137. There have been attempts by WMP to identify other journalists who may have been on the plane or had such a conversation with DC Craddock, but these have been unsuccessful. Despite searches, the CLT have been unable to identify any contemporaneous documentary evidence which may corroborate DC Craddock's first account.

²⁴⁸ INQ004030.

²⁴⁹ INQ001799 (to be disclosed).

²⁵⁰ <https://www.mirror.co.uk/news/uk-news/veteran-mirror-photographer-dick-williams-83230>

138. There are a number of matters which call into question the reliability of DC Craddock's first account:

- a. As set out above, his subsequent account is materially different, providing that such a conversation took place *after* news of the bombings.
- b. Similarly, no other witness account corroborates DC Craddock's first account. Importantly, Richard Williams denies that he had any such conversation with DC Craddock.²⁵¹ In fact, he states that he never got on the plane and did not fly to Dublin.²⁵²
- c. Further, Phillip Pagett does not mention this incident,²⁵³ and David Hunt denies any knowledge or recollection of it²⁵⁴. Indeed, DC Hunt states that, other than three detained individuals, nobody else got off the plane after it was stopped and there is no suggestion that Mr Williams did fly to Dublin.
- d. It would be surprising that a warning received by two police officers, DC Craddock and DI Pagett, shortly before the news of the actual pub bombings would be overlooked or misremembered. It is highly likely, therefore, that DC Craddock's first account has become confused due to the lapse of time.

139. It is submitted that no evidence should be adduced on this issue at the Inquest. The account given by DC Craddock is contradicted by all other evidence, including his own later statement. Further efforts to identify a different journalist have been unsuccessful. We consider that, faced with this evidence (if it is adduced at all), the jury would have to conclude that any such conversation either (a) took place *after* the bombings, or (b) did not take place at all. In the circumstances, it is submitted that this evidence should not be adduced at the Inquest.

John Tonkinson

²⁵¹ INQ001799/3.

²⁵² INQ001799/3.

²⁵³ INQ004030.

²⁵⁴ INQ004018/4.

140. The evidence in relation to John Tonkinson is summarised at §§43-46 of the Forewarning note.

141. On 2 July 2016, an anonymous phone call was received by the Senior Coroner's office concerning Chief Superintendent John Tonkinson. It is understood that the caller stated that Chief Superintendent John Tonkinson was in charge or dealing with the case and that his daughter, Johanna Tonkinson, had a large amount of paper or documents regarding the pub bombings.

142. Johanna Tonkinson has provided two witness statements dated 14 June 2016²⁵⁵ and 25 July 2016²⁵⁶. In her first statement, she states that her father, *'never really said anything specific about what happened, other than he felt there was an injustice done as the 'powers that be' whoever they were, the Home Office, allowed the bombs to be planted, and wouldn't let him/the police, make any arrests before that happened. That was the gist of what he told me.'*²⁵⁷

143. In her second statement, she states that some *'higher power'* was already observing those who planted the bombs. Further, she provides an account that her father told her, concerning his movements on the day of the bombings. In summary, she states²⁵⁸:

- a. He would normally go out with friends on Thursdays but he cancelled because *"something was going down"*.
- b. He was in a police car when he overheard radio transmissions of officers tailing the bomb planters but they were lost before they could be arrested.
- c. An unidentified person or organisation would not allow the arrest.
- d. There was a male and female living next door to someone believed to be involved in the planting of the bombs and listening to their conversations

²⁵⁵ INQ000732.

²⁵⁶ INQ000733.

²⁵⁷ INQ000732/1-2.

²⁵⁸ INQ000733/3.

which enabled them to be tailed on the day of the bombings. They may or may not have been undercover officers.

144. Chief Superintendent John Tonkinson's son was contacted and stated that his father did not tell him anything concerning his involvement in the pub bombings.²⁵⁹

145. John Tonkinson is deceased. He provided a witness statement dated 28 February 1992²⁶⁰. He does not state the officers were tailing the bomb planters or that any person or organisation would not allow the arrest. He states:²⁶¹

I began to get interference cutting across my Police radio. It was a back to back' conversation – in other words you could hear both parties talking to each other. I could tell that it was a squad of some sort working. I can't recall the exact conversation but the gist was that a surveillance operation was going on... Whoever was being followed was lost. I did not hear any names mentioned, I did not recognise any of the voices. The persons making the transmissions must have been Police Officers or the Security services, as only they used UHF in those days. As I progressed along the Stratford Rd, this interference faded and I didn't really think much of this at that time. I knew that the surveillance would be in relation to terrorism, especially on the day of McDade's funeral – it would not relate to burglars or other crimes.

146. John Mason, a friend of Chief Superintendent Tonkinson, provided a witness statement dated 19 July 2016. He recalls that, on 21 November 1974, John Tonkinson called him at some point prior to 8pm to cancel before they were due to meet, stating '*can't make it tonight Mush something's on*'.

147. Adrian Howles has provided two witness statements dated 26 September 2016²⁶² and 28 September 2016²⁶³. He states that he was on a 12 till 10pm shift,²⁶⁴ and that the shift had been extended by two hours because of the funeral of James McDade. He also states that he was informed that there was a surveillance operation

²⁵⁹ INQ000800.

²⁶⁰ INQ000472.

²⁶¹ INQ000709/7.

²⁶² INQ000738.

²⁶³ INQ000739.

²⁶⁴ INQ000738/1-2.

taking place that evening so there may be officers on their radios. He overheard surveillance officers on the radio at some time between 4 pm and 6.30 pm. He recalls that someone was being followed.

148. Other evidence has been disclosed which suggests that there was a surveillance operation on Kenneth Littlejohn that day (on which, see above).

149. It is submitted that evidence pertaining to this issue should not be adduced at the Inquest. Ms Tonkinson's accounts amount to hearsay evidence provided to Ms Tonkinson many years after the events by her elderly father, who is no longer alive. The information provided is non-specific and cannot be properly and forensically tested. Even at its very highest, it is an *allegation* or *suggestion* of advanced knowledge and a refusal to act on the part of the Home Office or some other unidentified organisation, rather than any evidence on which a jury would be able to make any findings of fact.

150. The matter has been investigated by Operation Castors and the CLT. This investigation has revealed significant concerns about the reliability of the information contained in Ms Tonkinson's statements. Her hearsay accounts are undermined by other evidence given by the same source, Chief Superintendent Tonkinson. There is no other external evidence which corroborates Ms Tonkinson's account. Two aspects of her evidence are open to entirely innocent explanations:

- a. In relation to Chief Superintendent Tonkinson informing his friend that he was unable to meet him on the evening of 21 November 1974: this may have resulted from the fact that there was a major policing operation underway in relation to the funeral of James McDade. Indeed, Mr Howles has provided evidence that his shift was extended by two hours to 10pm as a consequence of the policing required by the funeral.²⁶⁵

²⁶⁵ INQ000738/1-2.

- b. In relation to the overheard surveillance operation on 21 November 1974, it is known that there was at least one such operation being undertaken that night in relation to Kenneth Littlejohn.

151. The other assertions made by Johanna Tonkinson are unsupported by any contemporaneous documentation of witness accounts. We consider that the matter has been investigated as far as it is now possible to do so, but again would be open to suggestions from Interested Persons as to further steps that could be taken.

Disclosure to HMP Assistant Governor

152. The evidence in relation to the disclosure to the Assistant Governor of HMP Gartree is summarised at §§47-51 of the Forewarning note. The Coroner's Legal Team do not consider that evidence relating to this issue should be adduced at the Inquest.

153. Deputy Chief Constable David Thursfield provided a witness statement dated 28 May 2016²⁶⁶. He states that a colleague, Nick Brooke, contacted him in May 2016. He advised that he used to be Assistant Governor at HMP Gartree. During this time, a man named Martin Foran, who had been attacked by members of *'the IRA'* who believed him to be an informer, disclosed to him that on the day of the pub bombings, he had delivered to *'the bomber'* a bag which he believed contained explosives. After making the delivery, he felt guilty and went to Perry Barr Police Station to confess. He was not believed and sent away.

154. Jon Nicholas Brooke provided a witness statement dated 28 May 2016.²⁶⁷ He states that he was Assistant Governor at HMP Gartree in the late 1970s. He built up a working relationship with a number of the prisoners on 'A' wing, including with Martin Foran. He states that, at some point prior to 1978, Foran was assaulted by *'the*

²⁶⁶ INQ000730.

²⁶⁷ INQ000731.

IRA prisoners ' and told Brooke that this was because they were worried he may speak out about the information he had. He then told Mr Brooke that he had collected a bag which contained the bomb for the Rotunda and delivered it to the city centre. Shortly after delivering the bomb, he had a '*prick of conscience*' and went to Perry Barr Police Station before the pub bombs exploded. However, he was not taken seriously and sent away. Brooke understood that these events took place on 21 November 1974.

155. Patrick Martin Foran has provided a statement dated 14 September 2016.²⁶⁸ He denies any knowledge of this conversation. In fact, Mr Foran states that at the time of the Birmingham Pub Bombings, he was in prison serving a three year sentence for a burglary, and understands that he was sentenced on 11 November 1974 for 12 months and then on 3 February 1975 for three years.

156. In their submissions,²⁶⁹ WMP state that Mr Foran was arrested on 30 August 1974 and was remanded in custody until his trial in 1975.

157. The Coroner's Legal Team consider that the evidence of Mr Brooke is wholly contradicted by contemporaneous documents and that it should not be adduced before the jury:

- a. The detail of the account supposedly provided by Mr Foran is lacking in any detail such that it cannot be properly forensically tested, and not relied on to make findings of fact.
- b. The hearsay evidence of an individual some 40 years after the event is unlikely to be considered to be more reliable than contemporaneous documentation. Given that it is understood that the records show that Mr Foran was in custody at the time during which he is meant to have delivered explosives, it is implausible that the events could have happened in the manner described.

²⁶⁸ INQ000747.

²⁶⁹ WMP Submission 6 at §310, INQ000980.

Letter to the Chancellor of England

158. The evidence in relation to this issue is summarised at §§52 – 53 of the Forewarning note. An individual has written a letter which suggests that an unidentified police force had advanced knowledge of the bombing.
159. In a letter dated 4 February 1990, addressed to the '*Chancellor of England, Keeper of the Queens Conscience*', he states that he went to Dun Loaghaire to try to join the Provisional IRA in 1969. At this time, he heard discussion of plans for a bombing of Birmingham pubs. He states that he told two police officers this information in 1973 but was accused of wasting police time.
160. It is apparent that this individual has a history of psychiatric problems, and the Coroner's Legal Team does not consider that he is a sufficiently credible witness to justify being called to the Inquest. His evidence could not be relied upon to make any findings of fact.

Cecil Lewis

161. The evidence in relation to this issue is summarised at §§54-55 of the Forewarning note. This concerns evidence that Detective Chief Inspector Cecil Lewis received information concerning the pub bombings from an informant. It is plain from the evidence that an individual provided information in relation to the pub bombings *after* the events of 21 November 1974. There is no evidence to suggest that any information relating to the pub bombings was provided by this individual prior to 21 November 1974. In the circumstances, while it is intended that this information will be disclosed or gisted to allay any public suspicion or concern, and on the basis that it *may* have been relevant, it does not constitute evidence of any advanced knowledge on the part of WMP or any other state body and should not be adduced at the Inquest.

PC Fleetwood

162. The evidence in relation to this issue is summarised at §56 of the Forewarning note. This concerns evidence that PC Keith Fleetwood received information concerning the pub bombings and, in particular, the names of five suspects who were alleged to have been involved in the Birmingham pub bombings. It is clear from the evidence that this information was provided *after* the event of 21 November 1974 and there is no evidence to suggest that any information relating to the pub bombings was provided by this individual prior to 21 November 1974. In the circumstances, while this information has been disclosed to allay any public concern or suspicion, and on the basis that it *may* have been relevant, it does not constitute evidence of any advanced knowledge on the part of WMP or any other state body. Therefore, the CLT do not consider that it should be adduced at the Inquest.

Conclusions

163. CTI make the proposals above while recognising that all decisions on which witnesses should be called and which evidence should be adduced are matters for the Coroner to determine. We also recognise that Interested Persons will have important submissions to make on these points, which may militate in favour of certain witnesses or certain evidence being put before the jury. We await those submissions and remain open to discussions with all Interested Persons on these and all other matters of relevance to the Inquest.

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5 December 2018