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IN THE CORONERS COURT FOR NORTHERN IRELAND

IN THE MATTER OF AN INQUEST INTO THE DEATH OF DANIEL CARSON

Before: **COLTON J**

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A. Introduction

[1] Daniel Carson was born on 31 January 1945. He was shot dead in Belfast on 1 November 1973. He married his wife Anne in 1969 and he had a 3 year old son at the time of his death. Anne was pregnant at the time with their second child and she subsequently gave birth to another boy. The sons are Michael and Daniel.

[2] At the time of his death Mr Carson worked as a salesman in a firm called Batty Brothers on Dayton Street, close to the lower Shankill in Belfast. Batty Brothers was a wholesale china, hardware and fancy goods warehouse. He had worked there for around 4 years and was the only Catholic working in the firm.

[3] In the course of the inquest I heard moving evidence from Mr Carson's widow, Anne. It is clear from her evidence that she and her husband were both hardworking parents, committed to their work and family. Although originally from Belfast, Mrs Carson moved to Dublin about three years after her husband's murder. She raised her two boys, both of whom have PhDs. One works in a university and the other is involved in an IT business. Their lives have been grievously affected by the events of 1 November 1973. Their fortitude and success in life is a fitting tribute to Danny's memory.

B. Death of Mr Carson

[4] On 1 November 1973, Mr Carson after finishing work shortly before 5:30pm got into his car, a red Mini, Registration Number COI 987, which he had parked just outside the firm's premises. He drove along Dayton Street in the direction of Greenland Street. His direction of travel home would have been to turn left at the T-junction where Dayton Street meets Greenland Street. At or around the time of his making that turn, a man who was standing at this junction fired a number of shots at Mr Carson in his car. Witnesses at the scene speak of hearing two or three shots at the time of the incident.

[5] One of the shots penetrated the glass of the driver's door and struck Mr Carson in the head. The car left the road and crashed into the rear garage doors of a car sales company, Frazer & Bells, in Greenland Street. There were several people in the vicinity at that time, a number of whom gave statements to the police, in which they describe approaching a car and seeing Mr Carson slumped forward and blood coming from his head.

[6] The emergency services were called at 5:30pm. An ambulance driver, Thomas Dodds, stated that on arrival at the scene he saw the red Mini crashed into the garage doors. The driver was slumped over the steering wheel of the car. He noticed a gunshot wound to Mr Carson's head. Mr Carson was still alive. The ambulance driver and his colleague placed Mr Carson on a stretcher and brought him to the Royal Victoria Hospital.

[7] When Mr Carson was admitted to hospital, resuscitation was attempted, but there was no sign of life. He was certified dead by Dr Mollan at 5.45pm. On the morning of 2 November 1973, Mr Carson's father, Charles Patrick Carson, identified his son's body to DC Edward Cassells. DC Cassells then identified the body to the Deputy State Pathologist, Dr Derek Carson, who conducted a post mortem at 10:30am on 2 November. The cause of death was confirmed as laceration of the brain due to a gunshot wound to the head. The findings recorded as follows:

> "*Death was the result of a single gunshot wound of the head. The bullet had entered the right side of the face just behind and below the outer angle of the right eye. It had then passed backwards and to the left and slightly upwards through the base of the skull and lodged in the brain, from where the spent bullet, of 0.455 calibre, was recovered. The brain injury was of a severity which would have caused immediate unconsciousness and rapid death.*
>
> *The entrance wound was surrounded by multiple small abrasions of a type caused by broken glass. This is in keeping with the view that the bullet had first passed through and broken a window before striking the deceased. It was not clear from what range the bullet had been discharged.*
>
> *The gunshot wound apart, there was (sic) no other marks of violence.*"

[8] Dr Derek Carson is deceased. Professor Jack Crane conducted a review of the autopsy findings on behalf of the Coroner and gave evidence at the inquest. Professor Crane agreed with the findings of Dr Carson although he did raise a query about the multiple abrasions noted by Dr Carson around the entrance wound which Dr Carson felt were of a type caused by broken glass.

[9] Professor Crane pointed out that such abrasions may also be caused by particles of unburnt powder and are seen in close range discharge of a weapon where the muzzle of the weapon is less than 10-12 cms from the skin. He could not exclude the possibility that some of the punctate abrasion was caused by discharge particles of unburnt powder indicating a close range discharge. However, Professor Crane accepted that the abrasions were also consistent with the bullet having shattered the window pane in the car before striking Mr Carson. This is entirely consistent with all the contemporaneous eyewitness evidence and I accept that this was the cause of the abrasions noted by Dr Carson.

Witness Accounts

[10] Statements were taken by police from a number of individuals who were at or near the scene of the shooting. One man, David Todd, was at home nearby in Greenland Street. He said in his statement that he heard two shots close to the house. He then went out and saw the crashed car. He said that after the shots were fired, he saw or heard no-one running away. He heard some women screaming.

[11] A number of employees of Batty Brothers made statements to the police. James Graham made two statements, the first on the evening of 1 November and the second the next day, 2 November 1973. He said that he left his work with a number of colleagues at around 5:25pm. He referred to those colleagues as Mr Carson, a Mr Stewart Elder, a Mrs McIlwaine, a Mrs Ross and another colleague who was referred to in the inquest proceedings as Witness A. He said that Mr Carson's car was parked to the left hand side of the front gate of Batty Brothers facing towards Greenland Street. He described Mr Carson turning left and walking to his car. Mr Graham then went to his own van, which was parked further up the street towards Greenland Street on the same side as Batty Brothers and facing back towards Townsend Street. He cleaned the windscreen and was then cleaning the headlamps of his van when Mr Carson passed him in his Mini. Mr Graham said he then heard a crack. He saw Mr Carson's car turning left into Greenland Street. About 10 seconds later he heard one or two bangs in quick succession. He ran to the Mini after it had crashed and saw Mr Carson in the car. He said that he did not see any gunmen at any time. He did not hear a car drive off after he heard the cracks, nor did he hear or see anyone running away.

[12] Stewart Elder also worked for Batty Brothers. He made a statement on 2 November 1973, the day after the shooting. He said that he left work alone and that he was the first of the staff to leave that day. He walked up Dayton Street in the direction of Greenland Street to his car, which was parked on the left hand side of Dayton Street and facing Townsend Street. He got into his car and started to clean the windscreen. He saw Mr Carson get into his car, drive up the street towards him and then pass by him. He said that Mr Carson's car went out of sight around the corner. He then heard 3 shots and the sound of one of his female colleagues, Witness A, "squealing". He got out of his car and met that colleague running back towards McIlhagga's. She shouted "Danny, Danny". Mr Elder then went round the corner, he saw the crashed car and saw Mr Carson inside. He said that he did not see any gunman and he did not hear any cars going away.

[13] Agnes McIlwaine (or "Nessie" as her workmates called her) also made a statement on 2 November. She said that she left work with Witness A at about 5:20pm. They walked up the right hand side of Dayton Street. She stopped to wait for Maria Ross. She saw Mr Carson go past in his car and they waved at each other. She said that Witness A went towards Maria Ross's car, which was parked on the other side of the street. Agnes McIlwaine then heard a smack. Witness A screamed. Agnes McIlwaine heard another smack. Witness A ran towards Mr Carson's car. Agnes McIlwaine ran to McIlhagga's gateway. She said:

> *"That's where I saw the figure of a person, I don't know if it was a man or a woman, standing in the roadway on the coroner of Greenland Street/Dayton Street. The two arms of this person were outstretched. I was screaming at this time."*

She did not recall seeing Witness A after that until she went into a woman's house in Greenland Street later on. She too went to the car and saw Mr Carson slumped in the driver seat. She prayed for him. She said that there was no car driven away from the scene. She could give no description of the person she saw in the road and she did not see where the person went.

[14] Maria Frances Ross (or "Ria") made a statement on 2 November. She said that her car was parked close to Stewart Elder's car near the junction of Dayton Street and Greenland Street. She said Stewart Elder was moving his car. She walked towards her car, with Witness A and Nessie McIlwaine walking a few yards in front of her. As they were walking up the street, Daniel Carson passed in his car. She heard a bang. Witness A and Nessie McIlwaine began to scream. She said in her statement:

> *"I then saw a person standing at the corner of Greenland Street/Dayton Street, that is the right hand side of Dayton Street going up from Townsend Street. His arms appeared to be in front of him as if in an aiming position and I saw a small gun. I then saw a flash and I heard a bang and Danny's car disappeared around the corner and I heard it crashing. Nessie then ran down Dayton Street towards our firm and I saw Witness A running towards the direction of Danny's car. I tried to stop her in case the gunman would shoot her."*

[15] Maria Ross also went to the car and saw Mr Carson slouched down in the driver's seat. She then went in to a house in Greenland Street with Witness A and Agnes McIlwaine to settle their nerves. She said:

> *"I cannot give you a description of the gunman, to me he was just a black shadow."*

In the handwritten version of Maria Ross's statement, there is some further detail. In that she says that some person the night before said it was a person who has been referred to throughout this inquest as S1 "who had done it". She said she spoke to a soldier at the scene and told him that she heard a name. She said that she gave the name of S1 to a policeman.

[16] Witness A made a statement on 2 November 1973. Detective Inspector Nesbitt, who was in charge of the investigation, personally took the statement. She described leaving Batty Brothers at about 5:30pm with Nessie McIlwaine, Stewart Elder and Mr Carson. She said that Mr Carson got into his car and Mr Elder went across the street to his car. She was intending to get a lift with Maria Ross. She walked up the street to wait for Mrs Ross. She walked up to opposite where Mrs Ross's car was parked. At

that point Mr Carson drove past. She said she and her colleagues then started to cross the road towards Mrs Ross's car. When they reached the centre of the road she heard a shot. She looked up and saw a man in Greenland Street at the right hand coroner of Dayton Street. She continued:

> "*I ran forward and as I did so I saw that the man was holding a gun in his two hands with his arms extended straight out and pointing in front of him towards Danny's car. I then realised that it was Danny he was after. Just at that he fired two more shots in quick succession.*"

[17] Witness A said that she was 3 or 4 yards away from the gunman. She screamed at him to leave Danny alone, that he had never done anyone any harm. She said that after firing the shots the man turned and ran away down Greenland Street towards Boundary Street in the Shankill direction. She described Mr Carson's car careering round the corner and crashing into a wall. She too went to the car and saw Mr Carson. She said she screamed and ran back down to work and shouted to a man in McIlhagga's to get an ambulance. She said that some women then brought her into a house in Greenland Street.

[18] Witness A also said in her statement that she recognised the person who fired the shots. She named the person. He is the person referred to as S1 in this inquest. She said she had known S1 for about 5 years. She went on in her statement to explain the circumstances in which she had got to know him, she gave a description of him and she gave details of conversations that she said they had had with each other.

[19] In those conversations, she said that S1 had made derogatory comments about Catholics. In one conversation about a year and a half before the death of Mr Carson, he referred to "*the Troubles*" and said that "*they had to get all the Taigs out of McIlhagga's and they were going to clear them all off the road*."

He had also said:

> "*There is one left in your place but he'll run when he sees the rest running*."

[20] Witness A understood S1 to be referring to Mr Carson. She said that, in a more recent conversation with her approximately 3 weeks prior to the shooting, S1 had asked her whether that "Iron Haig" was still working in her place. Again, she understood this to be a reference to Mr Carson.

[21] In the course of the inquest I heard evidence from both Witness A and S1 to which I will refer later.

[22] Given that more than 4 decades have passed since Mr Carson's death the inquest has not had the opportunity to hear from many of the civilian witnesses who made statements as they are now either too ill to attend or deceased. As a result it has not been possible to hear evidence from David Todd, James Graham, Stewart Elder,

Nessie McIlwaine and Ria Ross. Their statements have been admitted under Rule 17 of the Coroners (Practice and Procedure) (Northern Ireland) Rules 1963 (as amended) ("the Rules").

[23] As a result of extensive enquiries by the Coroners Service and the Legacy Support Unit of the PSNI it has been possible to trace some other witnesses who were in the vicinity of the shooting but who did not make statements at the time. In particular, Alfred Martin, the owner of Batty Brothers at the time, made a statement for the purposes of the inquest. He did not see the incident, although he heard the shooting and rushed to attend the scene at which Mr Carson's car had crashed. The inquest heard evidence from Mr Alfred Martin to which I will refer later. The inquest also received a statement from John Russell (or "Jackie" as he was known). He was the manager of McIlhagga's at the time. He too heard the shots and attended at Mr Carson's car. He did not see any person or vehicle that appeared to be connected with the shooting. The inquest also heard an account from Wilson McGarel, who was in the vicinity at the time. The statements of Mr Russell and Mr McGarel, which were admitted under Rule 17, did not significantly add to the inquest's understanding of what occurred in relation to Mr Carson's murder.

C. Scene after the shooting

[24] The police attended the scene shortly after the shooting. There is a statement from Constable Warke who gave evidence at the inquest. He said that he was on a vehicle mobile patrol with a colleague and received instructions to attend the scene at 5:32pm. He arrived at the scene at 5:35pm. He saw what he described as a "*considerable crowd*" around Mr Carson's Mini. He saw Mr Carson at the wheel. Constable Warke said that the ambulance arrived shortly after his arrival. He made enquiries at the scene about what had happened, called for detectives and preserved the scene until Detective Constables Starrett and McCoy arrived.

[25] The records relating to the subsequent investigation and actions by the police at the scene fall well short of what one would expect to see in a modern murder enquiry. There is a handwritten note recording the first police officers at the scene as Sergeant Tease, Inspector McMaster, DC Starrett, DC McCoy and another Detective Sergeant whose name cannot be deciphered. Of the four named individuals it has been confirmed to the Coroner's Service that Sergeant Tease is deceased. It also appears that Inspector McMaster is deceased. DC McCoy did provide a statement for the inquest and gave evidence but says that he does not have a recollection of the incident. DC Starrett also provided a statement for the inquest in which he said that he had a vague memory of attending the scene. DC Starrett gave evidence at the inquest to which I shall refer later. In the documentation, there is also a contemporary handwritten Police C6 Occurrence Book entry timed at 5:30pm on 1 November 1973. It refers to DCI Patterson, DC McCoy and DC Starrett. If also refers to SOCO being on the way to the scene.

[26] There is a signed note in the papers from Sergeant Tease in which he said that he arrived at the scene at 5:45pm. On arrival, he saw Constables Warke and Stewart, as well as members of the Army. Three aspects of the note are of significance.

[27] Firstly, he spoke to two women at the scene and, although he does not name them, it appears from his description that they must have been Maria Ross and Witness A. Both women had seen the gunmen. One of the women told him that the other woman to whom he spoke had named S1 as the gunman. This accords with the handwritten statement from Maria Ross that she gave the name of S1 to a policeman.

[28] Secondly, Sergeant Tease also said:

> *"A young boy at the scene told me that he heard that the man after the shooting ran towards Boundary Street and got into a car that was waiting, he was driven away – direction not known."*

[29] There is no statement from the boy in the papers and as appears from Sergeant Tease's note the boy was reporting to him what he had been told by someone else. There is no other evidence to suggest that the gunman was conveyed from the scene in a car and indeed the preponderance of the evidence available overwhelmingly suggests that he was not.

[30] Thirdly, at the conclusion of his note, Sergeant Tease said that at no time did any police personnel converse with the Army personnel present.

[31] Before referring to army personnel at the scene I should refer to other records that are in existence.

[32] There is a report from a Scenes of Crime officer, Constable McCrum. He noted a fresh pock mark on the wall of the Fraser & Bell premises in Dayton Street. He searched the locality for bullet fragments but could not find any. He said that the army and the special patrol group also carried out a search of the street with negative result. Constable McCrum also searched the car for bullet fragments but could find none. He attended the post mortem and received from Dr Carson, the pathologist, a .45 type copper jacketed bullet which he forwarded to the Department of Industrial and Forensic Sciences (DIFS), which was the forerunner of Forensic Science Northern Ireland (FSNI).

[33] There is a set of contemporaneous scene photographs taken by a Constable Simpson of the police Photograph Branch. He took 5 scene photographs on the evening of the shooting and a further 4 the following morning.

[34] There is an ordinance survey map of the area of the shooting prepared contemporaneously by a Sergeant Faulkner of the police Mapping Section.

[35] Finally, there is a very rudimentary sketch of the scene. The sketch appears to show the parked vehicles of Mr Elder and Mrs Ross and also the car of the deceased as it turned the corner to Greenland Street. It is not clear from the papers by whom the sketch was prepared.

D. Action of military after the incident

[36] I have already referred to the presence of army personnel at the scene. The action of soldiers after the shooting was a matter of importance in this inquest. In the papers there are statements from 3 military witnesses, first, Major Moneypenny of the First Queen's Regiment, who gave evidence at the inquest; secondly, Sergeant Major Ebbens (formerly referred to as M2), now deceased; and thirdly, a Lance Corporal Hendry (formerly referred to as M3), who is still alive but living abroad and whose statement was admitted under Rule 17.

[37] It appears from a report compiled by a Detective Sergeant Walker in December 1973 that Major Moneypenny and Sergeant Major Ebbens attended Tennent Street RUC Station on 2 November 1973 at the request of police. Sergeant Major Ebbens made a statement in Tennent Street at that time. Major Moneypenny did not make a statement at that time. Sergeant Major Ebbens' statement was made to Detective Constable Elliott who gave evidence at this inquest.

[38] DS Walker's report suggests that Detective Sergeant McKimm, who was excused from attending the inquest on medical grounds, tried to interview all of the military personnel who were at the scene. The report says that he was informed that due to the nature of the soldiers' duties, it would be some time before they would be available to be seen by police. DS Walker's closing suggestion was that his report be sent to the Army Liaison Office in Lisburn so that arrangements could be made to have military personnel who were at the scene interviewed and statements taken from them. In the event, Major Moneypenny and Lance Corporal Hendry made statements to police at the Brown Square Army Base in January 1974. Those are the only statements taken from soldiers in the papers. It is not known whether anyone else from the military was spoken to about the incident at the time.

[39] Lance Corporal Hendry said, in his police statement of 18 January 1974, that he was in charge of a mobile patrol consisting of two land rovers covering the lower Shankill area. He was based at Brown Square. He received a message by radio to go to Greenland Street. When he arrived, Mr Carson had been taken to hospital. He obtained details of what had happened from police and passed those details back to his base by radio. He said that he detailed two men to search an alleyway while he and two others did house to house enquiries. The other 3 men guarded the vehicles at the scene. He received no useful information as a result of his enquiries. After about 10 minutes, Major Moneypenny arrived and took charge. Lance Corporal Hendry stayed at the scene for a further 5 minutes before returning to base.

[40] There are three handwritten notes relating to house to house enquiries. Those enquiries were conducted in the Dayton Street and Greenland Street areas. The notes are not signed, but in all probability they are police notes rather than army notes as they were found with the other police papers in the case. In any event, the available records do not suggest that any significant information emerged from those enquiries.

[41] Sergeant Major Ebbens said in his police statement of 2 November 1973 that he attended the scene at approximately 5:40pm with three soldiers. He referred to Major Moneypenny being in another vehicle with 7 soldiers. He saw a large crowd. He said

uniformed police and a member of CID were present. He met a woman in a distressed state who gave her name as Mrs Ross. He said she was unable to give a clear picture of what had happened, she said "*a name was called out*". When he asked what name she gave the name of S1 and she gave the name of Witness A as the person who had mentioned S1's name. She also said Witness A "*would not say anything now*" or words to that effect. He said that he did not see Witness A at the scene. Mrs Ross gave him an address to which Witness A had been taken.

[42] He also spoke to another person who was previously known to him. He asked that person if he knew a person by the name of S1. The other person replied that S1's father was "*a big name in the UDA*" and described S1 as a bit of a "*tear away*". The person then directed him to S1's home.

[43] Sergeant Major Ebbens said that he then contacted Major Moneypenny, who was talking to others at the scene. They then went to the address that Sergeant Major Ebbens had been given for S1. When they arrived a woman came to the door. They said they were making enquiries about the shooting and asked if she could assist. She said she had heard some bangs. When asked if anyone else was in the house, she said her brother was. He asked if her brother was at home at the time of the shooting and she replied, "*no, he has just come home from work*". He asked to speak to the brother and she invited them into the front room and called out S1's name. Within a few seconds a young man came into the room. Sergeant Major Ebbens asked him his name and he replied S1.

[44] Sergeant Major Ebbens asked the man if he could help them. The man replied, "*No, I was lying asleep on the settee watching television and I had fallen asleep*". Sergeant Major Ebbens said that the other man's sister made no attempt to contradict him.

[45] Sergeant Major Ebbens said that he then went with his own crew in a vehicle to an address at which Mrs Ross, Witness A and others were present. He asked Witness A if she could help and if the name S1 meant anything to her and to each of these questions she answered "*No*". He said he then left and spoke to Witness A's father outside the house and advised him to contact the police should Witness A be able to help.

[46] He returned to base, discussed the information he had received with his Company Commander and had it passed to his TAC HQ at North Queen Street. He also said that he "later" gave the information to a police officer who came to Brown Square. There appears to be no record of that passing of information "later". Sergeant Major Ebbens appeared to be referring to the evening of the shooting. He made a statement on 2 November 1973, the day after the murder, so the information concerning the visit to the house by the soldiers was conveyed to the police by that date at the very latest.

[47] The inquest heard evidence from Major Moneypenny. In his police statement made on 18 January 1974, he described the scene on his arrival at approximately 5:40pm. He instructed his men to search for an empty shell or shells of bullets. He said he spoke to various people at the scene.

[48] He described the visit with them to the address of S1. He said that he heard Sergeant Major Ebbens asking the woman who answered the door if S1 was at home and that he heard the woman say that he was at work. He said that Sergeant Major Ebbens went into the front room with the woman and he remained at the front door. He said that as Sergeant Major Ebbens was going into the living room a young man arrived at the door. He heard the woman say "*hello*" to the man by name and the man then went into the living room after the woman and Sergeant Major Ebbens.

[49] Major Moneypenny said that he remained at the front door but that he could see and hear everything that was taking place in the living room. He assumed that the man was S1. He heard the man being asked if he had heard shooting and answering that he had not. He heard him say that he had been lying on the settee and had fallen asleep. He said that he and Sergeant Major Ebbens left and returned to the Dayton Street area. He said there was a time lapse of about 15 minutes between his arrival at the scene of the shooting - that is, presumably, his initial arrival (which was after Mr Carson's body had been removed by the ambulance crew) – and his arrival with Sergeant Major Ebbens at the address they visited.

[50] In February 2010, the Historical Enquiries Team spoke to both Major Moneypenny and to Sergeant Major Ebbens in the course of their review of the case. At that time the HET recorded that the retired Major had no recollection of the incident and that Sergeant Major Ebbens had only a very vague recollection. Sergeant Major Ebbens, according to the HET, could not recall speaking with any suspects or witnesses.

E. Arrest of S1

[51] S1 was arrested in respect of the incident on 5 November 1973. Detective Inspector Nesbitt was the officer in charge of the police investigation. In the papers, the following documents relating to or arising from the arrest can be located:

(i) A handwritten note dated 5 November 1973 and timed at 10:10am. The note gives S1's name and address and some other details about him.

(ii) An undated handwritten note with S1's name and date of birth and a description. That note also lists three other individuals whose names do not appear anywhere else in the papers. The note also says: "A/M picked up by the army recently". DC Elliott recognised the writing as his. He was asked about this note when he gave his evidence before the inquest.

(iii) There is a handwritten note which states simply "*Interview Note of S1*" and that is followed by 4 handwritten pages of what appears to be a custody record rather than interview notes. By modern standards, it would certainly be regarded as a very rudimentary record and one could not say with certainty that it is a complete record of S1's period in custody. The order of the pages as presented is confusing and they appear to be in the wrong order. Specifically, pages 164 and 165 seem to relate to 5 November 1973 which would tie in with

the interview notes to which I will refer later. It is possible that page 163 runs on from page 165 and the record appears to end on page 162 which is dated the following day. (Although confusing, the date of 6 November 1973 appears at the top of that page before the time 9:15pm.) It looks from the records as though S1 was released on 6 November at 11:50am. The entry on page 162 says:

> "*Left station at 11:50 am with DI Nesbitt*."

(iv) There is also a 9 page handwritten note of an interview with S1, timed at 6:50am to 7:20am on 5 November 1973 with DI Nesbitt and DS McKimm. This corresponds with the custody record at page 164 which notes that S1 was brought to the station in a car with DI Nesbitt, McKimm and Elliott and that DI Nesbitt and DS McKimm were with him from 6:45-7:20am. The 9 handwritten pages provide notes in Q and A format of the interview with S1. There appears to be a gap at the beginning of the note. Again, the note is fairly basic. This was, of course, long before the introduction of tape recorded interviews.

(v) The custody record reveals that at 7:20am DI Nesbitt and DS McKimm were relieved by DC Starrett. The record then refers at 7:45am to "DC Elliott and DS McKimm" and it looks as though another officer, possibly Cassells, takes over from DS McKimm. There is another 2 page handwritten note undated but timed at 7:45. Logic would suggest that this is a note of a further conversation with S1 conducted by the officers who took over at 7:45am.

(vi) The next document in the sequence is a statement after caution of S1, which is recorded as having been taken by DI Nesbitt at Tennent Street on 6 November 1973 at 10:15am. In this statement, he gave an account of what he had done at work throughout 1 November. He said that he had left the house of a man called Morrison, at whose house he had earlier been doing some work in the bathroom. He said that he had broken the toilet basin in the course of the work and had gone off to enquire about the price of a new one before returning to Mr Morrison's house. He said that he left Mr Morrison's house at about 5pm and then went straight home. Regarding the time of the incident, he said:

> "*My sister (redacted) was still in bed when I got home. I lay down on the settee in the kitchen and turned on the TV. I lay on the settee for a while and I was lying there about 15 or 20 minutes. I heard two bangs that sounded like shots. I went out to the front door and looked down the street*."

He said that he saw two women at their front doors and heard one of them say "*that looks like two shots*". He said that his sister got up and heated his dinner. After he got his dinner and the news was on the TV, two soldiers came to the door and his sister brought them into the house. He said:

> "*They asked us if we had heard any shots. I told them I hadn't heard any. This was not the truth really. I said this to them because I am afraid of getting involved in any way with the*

Troubles. I thought if I said I heard the shots I would have been asked other questions and got involved in some case and I was scared."

He then referred to a terrorist incident to which he had been a witness the previous year and which had impacted on his nerves. He went on to say that he was told later that evening by two uncles –it seems separately – about his name being mentioned in connection with the shooting. He said he told each of them that he had not been involved. He said in the police statement that he saw the man who was shot on one occasion prior to Mr Carson's death when S1 had gone into Batty's with his brother, who had bought him a radio there. He said: "*It was the fellow who served us*". He said that he did not know this until after the day the man was shot, when his brother told him it was the man who had given them the radio. He went on to say in the statement:

"*I didn't know the man's name but (my brother) told me at the time we got the radio that he was a Catholic but that he played football with him and he was a decent fellow.*"

He said he did not like the IRA but had nothing against ordinary Catholics and that he worked with them and got on well with them. He said he could never shoot anybody. His statement ended as follows:

"*I swear before God I had nothing to do with any shooting of any man. If I knew or heard who did it I would tell the police. I always try to lead a good life.*"

(vii) A further document is an authority under Section 32(2) of the Firearms Act (Northern Ireland) 1969 to search premises for firearms and ammunition. That document is dated 5 November 1973 and is signed by a Chief Superintendent which appears to read D McChesney. The document relates to a search of the home of S1. There is no record in the papers of any search having been conducted. The HET spoke to DI Nesbitt about this matter on 26 March 2009. The note of the conversation records that DI Nesbitt explained that a search warrant was not sought. He said that a Superintendent's search order was obtained as a precaution so that the house could be entered and searched even if no one was present. The note quotes DI Nesbitt as saying that that was done the day after the murder at around 6am. He went on to say that the house was searched very thoroughly, that the search order was not executed because S1 was present and he was arrested. It is clear from the evidence heard during the inquest and from all the papers available that the arrest of S1 did not occur the morning after the murder, but on the morning of 5 November 1973.

(viii) The final document in this sequence is a statement from a Mr Morrison, at whose house S1 said he had been working in the afternoon before going home. In the police statement, taken on 5 November 1973, Mr Morrison gave an account of S1 being at his house, leaving for a period of time after the toilet

basin had been broken, S1 returning to the house and then leaving at about 5pm.

F. Release of S1

[52] Apart from the entry in the custody record which states "*Left station at 11.50am*", there does not appear to be a formal contemporaneous record of the circumstances in which S1 was released from custody. In 2004, 30 years after the death, the case was reviewed by the Serious Crime Review Team within PSNI. The SCRT papers include a report from a Detective Inspector Mike McErlane dated 27 September 2004 to a Detective Superintendent Stewart. In the report DI McErlane says that he spoke to the then retired Detective Superintendent Nesbitt on 22 September 2004. DI McErlane records that Mr Nesbitt's recollection was as follows:

> *"Witness A was incensed about the murder as she worked with Mr Carson and knew his wife. Although not in her statement, she shouted S1's name as she ran towards him. The recognition/identification was never in doubt. Based on the statement, the then DI Nesbitt personally went on the search/arrest operation for S1 on 5 November 1973. He felt he was best placed to identify clothing identified by the witness.*
>
> *While S1 was in custody, Witness A attended at Tennent Street with her father and other family members to express their fear that should it be known she named S1 she would be murdered to prevent her giving evidence. In the circumstances that existed at the time that outcome was a real possibility. There was no real witness protection scheme. After discussion with the then Divisional Commander Ch Supt Chesney (possibly McChesney) they were satisfied she would have been killed and on that basis S1 was not charged."*

[53] Both DI Nesbitt and Chief Superintendent McChesney are deceased. There is no written record available of any discussion between the two senior officers of the decision that was taken to release S1. DI Nesbitt also spoke to the HET on 5 December 2006. The note of that conversation records that he said his knowledge of the case was limited because he had not attended the initial scene. He believed the Chief Superintendent probably would have referred the matter to the Chief Constable's Office before making his decision. He also said that all evidential opportunities had been lost by the army calling at S1's house without arresting him or liaising with the police. He said that clothing had all been disposed of or cleaned and that there was nothing of evidential value at the house.

[54] I note again that there is no available contemporaneous documentation relating either to any contact with the Chief Constable's Office or to the conduct of the search of the house. There is no contemporaneous written statement from DI Nesbitt. The inquest was therefore limited to second hand accounts at many years removed from the incident in assessing this aspect of the inquiry.

[55] Before outlining the history of the previous inquest in this matter and what led to this inquest there are three specific issues which I propose to address.

G. The Car Issue

[56] I have already referred to Sergeant Tease's note in which he said that a young boy at the scene told him that he heard that a man after the shooting ran towards Boundary Street and got into a car that was waiting. None of the other primary witnesses at the scene referred to a car and in fact some said positively that they did not hear a car driving off after the shooting.

[57] In the investigation papers there is a single handwritten note that begins "*Car believed to be used in murder*". The note refers to a car with registration number DIA 1854 stolen between 5.00pm and 6.00pm on 1 November 1973 from Agnes Street, which is relatively close to the scene of the shooting. The note says that the car was recovered on 4 November 1973 in Aberdeen Street. The note also gives the name of the owner of the car. This car features in another handwritten note headed "*Work to be done*" which contains essentially the same information.

[58] There is also a reference to the car in one of the military logs, that is a log sheet from 3 Royal Green Jackets. It states at entry number 58 at 9.32pm on 1 November 1973 "*Stolen car; BMC? 1100, registration number DIA 1854. This car was stolen earlier today and is wanted in connection with the murder.*" In a column in the log sheet entitled "*Action*", the entry is "*All Coys informed*".

[59] In the police papers there is a report on the result of a finger print examination in relation to the taking and driving away of that vehicle. The report is dated 15 November 1973 and states that the car was examined for prints on 5 November 1973. The report reads:

> *"Four very fragmentary finger imprints found on a crook lock in above car are available for comparison with the impressions of the occupant and suspects.*
>
> *It is believed that this car was used in the murder of Mr Carson in Dayton Street on 1 November 1973."*

[60] When the SCRT and the HET reviewed the case, they both attempted to locate the file in relation to this issue but those efforts were unsuccessful. There is an email message in December 2008 from an officer in the HET fingerprint bureau stating that the file had been destroyed. He said that his only conjecture was that the offence for the above file was theft or "Taking and Driving Away" and was not cross-referred to the murder. If that was the case, he said that the file would have been destroyed after 5 years. At the request of the next of kin the matter was followed up by the Coroners Service in preparation for the inquest. In 2016 PSNI had further searches conducted, but it was not possible to locate the file. The issue featured in the review of the case carried out by Lord Justice Weir in January 2016. He inquired as to whether,

notwithstanding the absence of the file, the fingerprint lifts themselves might still be in existence. In correspondence of 10 February 2016, the Crown Solicitor's Office explained the position as follows:

> *"PSNI have carried out further inquiries and can confirm that the file cannot be located. I am instructed that as the lifts would have been stored in the file, it is safe to assume they were also destroyed. Volume crime type files were routinely destroyed after a period of time so unless it was linked to the murder at the time, the file would not have been kept past the weeding date."*

[61] Other attempts have been made to discover whether there was any fingerprint file relating to the death of Mr Carson. In 2004, the SCRT asked for a check to be conducted, but no file was located for the case. The SCRT also ascertained that there was no register for 1973 cases, so it could not be confirmed that a file ever existed. Prior to the inquest the representatives of the next of kin raised a specific query as to whether fingerprints were ever taken from S1. The Coroners Service received a report on this matter from PSNI on 9 February 2017. In summary, the report says that the records held by PSNI do not definitively show either the receipt of or the existence of S1's fingerprints within the fingerprint bureau. No entry could be found for S1 in the ledger that recorded prints taken under emergency legislation at the time of the death of Mr Carson. There is, however, some indication that a record bearing S1's name was *"weeded from"* from the system in 1986. The report says that this does not mean that prints were actually held for S1. The report suggests one possibility for the appearance of S1's name on a record. The possibility is that his name may at some point in time have been recorded in connection with a motoring incident and that, at a later point in time, this record was weeded from the system but without any actual prints ever being held. What is clear is that prints for S1 are not currently held. There is no record of actual prints for S1 ever being held. How his name was recorded at some point within the system remains unclear.

[62] The position relating to the car appears to be as follows:

- A car was reported stolen from a nearby location on the afternoon of the murder.
- It did feature in some way in the investigation.
- Fragmentary imprints were lifted from the crook lock of the vehicle when it was recovered.
- There is no file in relation to that matter.
- Further, there is no fingerprint file in relation to the present case and there may never have been one.
- Witness support for the proposition that a car was used to convey the gunman after the shooting is confined to a hearsay remark from an unidentified boy at the scene.
- Finally, there are a number of contemporaneous witness statements that directly contradict the suggestion that a getaway car was used in the immediate aftermath of the shooting.

H. Intelligence/Incident at Batty Brothers

[63] Aside from ballistic intelligence which I will deal with shortly there is very limited intelligence material relating to the death. There is a SB50 report, that is an RUC Special Branch report, with information dated 2 November 1973. It is a report on discussions among individuals associated with the UDA and in those discussions it is reported to have been said that *"the UDA should issue a statement expressing horror at the murder of Daniel Joseph Carson."*

[64] Secondly there is a report of information concerning UDA activities dated 6 November 1973. One paragraph of that report reads:

> *"FNU (that is first name unknown) Carson who was murdered in the Lower Shankill last week, was killed because he had knowledge of the persons who were responsible for the theft of goods from Battie's (sic) Warehouse in Dayton Street."*

[65] In the limited original papers available to this inquest there is no mention of this matter featuring as a line of inquiry in the investigation into Mr Carson's death. In 2004, when the SCRT was reviewing the case, they received correspondence from the Pat Finucane Centre on behalf of the deceased's family. The correspondence posed a number of questions about the case, including the following:

> *"A number of weeks before his killing, Danny Carson prevented what appeared to be an armed robbery at Battie* (sic) *Bros Ltd. Did the RUC consider the possibility of a connection between the supposed robbery and the shooting on 1 November 1973? The family is curious to find out if this incident formed part of the RUC investigation".*

[66] The SCRT looked into this matter, but as far as they could ascertain, there were no papers in the Crime Registry regarding the attempted robbery mentioned in the correspondence. The SCRT spoke to Mr Carson's brother, who did recall the incident. His recollection was that it was around a month before the murder, but he had no knowledge of any part played by the deceased at the time of the incident and could not assist any further with the matter. The HET also made inquiries about the incident. They took a statement from Witness A. She could recall that a robbery or attempted robbery had taken place in either June or July 1973, but she was not at work at the time and could not provide details of the incident. The HET also asked DI Nesbitt about this matter, but he did not recall that it featured in the original investigation. In a statement made shortly before this inquest DS Starrett says that he does remember the robbery being considered by the investigation team but he does not recall what actions were taken or what the outcome was.

[67] Shortly prior to the inquest commencing the Coroner's investigator also took a statement from Alfred Martin who, as I have already said, was the manager of Batty's at the relevant time. He recalls the robbery. He says there were two or maybe three men involved whose identities never became known. He says that all the regular staff

were present. He says that he himself was pushed to open the safe and the men took what they could get. He is not sure if the police followed the matter up.

[68] Finally, in a statement prepared shortly prior to the inquest a Hugo Kennedy, who worked in McIlhagga's and who was friendly with the deceased, says that Mr Carson told him about an incident at work that may or may not be the same incident as that recounted by Mr Martin. Mrs Carson also referred to an incident when she recalled her husband coming home early from work with scrapes on his neck and his t-shirt ripped. Her recollection was that Danny had told her he had disturbed two men on the way down the stairs and they had grabbed him whilst they made their escape. She recalls that she was anxious about him returning to work after that. She thinks they may have taken a few weeks off at the time. Her recollection was that the incident occurred a few months before Danny's murder. The evidence does not suggest that this robbery was related to the subsequent murder of Daniel Carson.

[69] The reference to intelligence material does raise an issue about the attribution of responsibility for the death. There does not appear to have been a claim of responsibility for the murder at the relevant time. The UDA is referenced in the two items of post murder intelligence to which I have referred, but not in terms of attribution of responsibility. The entry in Lost Lives (a respected publication outlining details of all the deaths in the Troubles in Northern Ireland) in respect of the death states:

> *"According to reliable Loyalist sources the UVF was behind the killing."*

There is, however, nothing in the investigation papers that definitively attributes the death to any particular organisation. There is a note in the papers relating to the criminal injury claim which states:

> *"It would appear that the criminal injury was inflicted by a person acting on behalf or in connection with an unlawful association."*

No particular organisation was specified.

I. Ballistic Linkage

[70] I have already referred to the fact that a bullet was recovered from Mr Carson's body but that no other ballistic material was retrieved from the scene of the shooting. The weapon has never been recovered. There is a brief report in the papers by Victor Lesley Beavis, who was then of the Department of Industrial and Forensic Science, dated 13 December 1973. The report records:

> *"This is a spent bullet of calibre .455 revolver and has been discharged from a Webley pattern revolver".*

[71] There is a further report dated 14 November 1973 from N C Tulip, the officer in charge at the police Data Reference Centre (DRC) (1971-1983). The DRC was the precursor of the Weapons and Explosives Research Centre (WERC) (1983-2009), which has more recently been renamed the Centre for Information on Firearms and Explosives (CIFEX) (2009). The report by N C Tulip concerns the murder of Mr Carson and two other murders that took place prior to the murder of Mr Carson, namely the murder of Alfred Fusco at York Road on 3 February 1973 and the murder of Joseph Murphy at Kennedy Way on 10 August 1973. The findings of the report are as follows:

> *"(1) We have had an opportunity of comparing .455 bullets from the murders of Alfred Fusco (DIFS463/73) and Murphy (DIFS3248/73), and it is believed that the same revolver (possibly a Webley) was used to commit both murders.*
>
> *(2) Comparisons between above and the murder of Carson (DIFS 4685/73) have also been made, but although a similar type revolver was used with the same groove widths it cannot be confirmed that the same revolver was used in that incident."*

[72] In the sensitive papers there are also several ballistic intelligence reports stating that the weapon used in the murder of Daniel Carson was used in three other shooting incidents subsequent to the murder. They are as follows:

(i) A shooting incident at the Salisbury Arms, 207 Shankill Road on 1 June 1974.

(ii) A shooting incident at a private address at Clifton Park Avenue, Belfast on 17 November 1974.

(iii) A shooting incident at a private address in Alliance Avenue, Belfast, on 4 March 1975.

[73] There are duty officers' reports in respect of the latter two incidents. No one was injured in the three subsequent shooting incidents. The linkage between the incidents was made purely on the basis of forensic examination of ballistic material retrieved from the scenes of the shootings.

[74] The ballistic linkage issue was considered by both SCRT and HET. At my direction Jonathan Greer of FSNI, in conjunction with the Scottish Police Authority Forensic Services Laboratory, conducted further forensic work in relation to this issue. The ballistic material relating to all six incidents, that is the murder of Mr Carson, the two prior murders and the three subsequent shootings was microscopically examined again in the laboratory in Scotland, using the latest technology, for my assistance. The key findings of the report from Scotland can be summarised as follows:

(i) First, relating solely to the murders of Alfred Fusco and Joseph Murphy, it is likely that the weapon used in those murders was the same weapon, but it cannot be stated definitively that the same weapon was used.

(ii) Secondly, it is likely that the weapon used in the shooting of Daniel Carson and the three other non-fatal shooting incidents was the same weapon, but it cannot be stated definitively that the same weapon was used.

(iii) Thirdly, *there is no link* between the weapon used in the Carson murder (and the subsequent three incidents) and the weapon used in the Fusco and Murphy murders.

Mr Greer provided two reports and gave evidence at the inquest. He confirmed the conclusions set out above.

J. Background history leading to this Inquest

(i) Inquest in 1974

[75] No person was ever charged in relation to the death. There is no record in the papers of any contemporaneous report having been sent to the Director of Public Prosecutions. The police report for the purpose of the inquest states:

> *"The matter has not been reported to the DPP and up to the present no persons remain amenable for this murder".*

There is correspondence from a police Chief Inspector to the Coroner in January 1974 indicating that a duplicate inquest file had been forwarded for the information of the Director of Public Prosecutions and Chief Crown Solicitor. In 2004, SCRT looked into the matter and they could find no record of any correspondence between the police and the DPP in relation to the death, either in the Police Crime Registry or the DPP Registry.

[76] An inquest into the death took place on 18 June 1974 before the then Deputy Coroner sitting with a jury. An open verdict was recorded. The list of witnesses summoned to attend was confined to six: the deceased's father, Maria Ross, James Graham, Agnes McIlwaine, Constable Warke and DC Cassells. The list of depositions comprised those witnesses and six others; the mapper Sergeant Faulkner, the photographer Constable Simpson, Stuart Elder and David Todd as well as the ambulance driver Thomas Dodds and Dr Mollan who certified the death. Significantly, neither the written nor oral evidence of Witness A was before the inquest in 1974. There is no documentary evidence available to this inquest to indicate what, if anything, the then coroner was told about Witness A.

[77] In fact, when one considers the material that was before the inquest in 1974, it is apparent that it was a rather limited exercise when judged by today's standards. The limitations of the 1974 inquest featured prominently in the submission of the next of kin to the Attorney General in 2012 that he should direct that a fresh inquest be held.

(ii) Serious Crime Review Team (SCRT) 2004-2005

[78] I have already referred to the review carried out by the SCRT. The remit of that review appears to have been guided by a series of nine questions posed on behalf of the deceased's family in correspondence with the Pat Finucane Centre dated 20 July 2004. The SCRT conducted what is described as a Preliminary Case Assessment (PCA). In correspondence of 27 January 2005, Detective Superintendent Stewart provided responses to the nine questions, but added:

> "*It is with regret that I have to inform you that the Preliminary Case Assessment has failed to identify any investigative opportunities.*"

[79] In the course of the review, the assistant investigator who was dealing with the case, a Mr Preator, asked another officer, a Detective Constable Graham, who gave evidence at the inquest, to carry out research to locate the witnesses S1 and A. DC Graham reported that he had identified an address for S1 and that S1 did not appear in any police records. He also located Witness A and went to speak with her at her home address. He reports in September 2004 that, while she was keen to help, she "*gave the impression that she had more than reasonable doubt about her original identification of S1 and later changed her mind about his being involved*". It is recorded that she initially thought S1 was the gunman, but then suggested that it was dark and that she did not see the gunman's face so she changed her mind about S1 being involved.

[80] It should, however, be noted that shortly after the officer had spoken to Witness A, the officer's actions were described by a senior officer, Detective Inspector McErlane (who is deceased) as "*overzealous*". Detective Inspector McErlane noted that DC Graham had been unaware of the basis on which the police at that time had not pursued the case. No doubt this refers to the explanation provided by DI Nesbitt to DI McErlane. It appears that that conversation took place on the very day that DC Graham visited Witness A, that is 22 September 2004. In a report dated 27 September 2004 to Detective Superintendent Stewart, DI McErlane noted as follows:

> "*I would have preferred that whoever spoke to witness A was aware of this information (that is, the information given to him by DI Nesbitt). I intended to refer to the issue of whether or not it was appropriate for SCRT staff to interview her or whether the service of an advanced interviewer, fully briefed, by SIO would have been more appropriate. At this stage, a further SCRT interview is not an option.*"

[81] DI McErlane went on to recommend that the investigation be referred to an SIO for full investigation. He noted that, even if Witness A maintained her position, a report to the DPP would be required. He also referred to the points raised by the Pat Finucane Centre having to be addressed. Finally he referred to the fact that S1 had not come to the attention of the police in the intervening years.

[82] As far as one can glean from the papers, the review in 2004 did not progress beyond a PCA, the outcome of which was conveyed to the Pat Finucane Centre in correspondence of 27 January 2005, to which I have already referred. Thereafter there is correspondence from Detective Chief Inspector Patterson dated 2 November 2005 forwarding the papers in the case for transfer to the Historical Enquiries Team. The papers reveal that, prior to that date, the family's details had been passed to the HET by the Pat Finucane Centre. There is a letter to the deceased's sister dated 7 October 2005 from the Director of the HET, which had then only recently been established, setting out the objectives of the HET and the procedures that it would be following in its review of historical cases.

(iii) Historical Enquiries Team (HET) Review 2006-2010

[83] The case was the subject of examination and review by the HET from 2006 to 2010. The inquest had access to the material generated by that exercise. I refer to three matters arising from the review.

[84] First, in the course of the review, two officers from the HET attended at Witness A's address on 4 September 2007 and interviewed her about the incident and her original statement. She made a further witness statement on that date. She gave a further account of the incident and said that she had made a statement to the police the day after the murder. She said:

> *"I think now that I may have been mistaken that it was S1. The man was the same build as S1 but I couldn't now say 100% that it was him."*

[85] She also recounted an incident a few weeks later when she was out on her own for the first time since the shooting. This was on the Shankill Road. She said she was approached by a man she described as an uncle of S1. She said she did not know who the man was. The man called her by her name. The man made a remark to her along the lines of "*Our S1 is like a big child, he wouldn't have it in him to hurt anybody*". She thought that from his appearance the man would probably be a relative of S1. She said that she got the impression the man had been watching her and waiting for a chance to speak to her. She was nervous as he kept staring in her face when he was speaking to her. At the conclusion of the statement she stated:

> *"I was very upset when Danny was shot. He had always been like an elder brother to me."*

[86] The second matter to which I wish to refer is the HET's initial review summary report which was delivered in September 2008. The conclusions were as follows:

- A gunman, acting alone, shot (Mr Carson) in the head and killed him. He was identified at that time by an eyewitness, referred to as "A". This witness made a statement shortly after the murder but following real and significant concerns, for their safety a decision was taken by senior police officers not to use this evidence.

- "A" has since failed to confirm the identity of the gunman stating that they could not be positive beyond all reasonable doubt that it was him. "A" was not involved in the identification procedure at the time this person was arrested.

- The lack of positive action by the Army personnel with a suspect so soon after the murder in all likelihood terminated any realistic chance of finding evidence and a subsequent conviction of the suspect.

- The delay in a suspect's arrest and a lack of formal identification in 1973 cannot be recovered after 34 years.

- There were no other witnesses identified in the original investigation and two subsequent reviews to this murder which support "A's" account and identification of the suspect.

- The weapon was never recovered.

- There is an absence of fingerprint evidence linking the suspect or any other person to this murder.

- In the light of the above conclusions there are no further avenues of investigation, which can be proceeded with by the HET to locate those responsible for this murder.

- The HET greatly appreciates the cooperation of the family in this review process and recognises the courage that this takes on their part. It is our hope that the information in this report will provide you with a better understanding of the events surrounding Danny's murder.

[87] The third matter which I refer to is that following publication of the initial review summary report, the HET, was asked to address a number of additional questions and issues raised on behalf of the family by the group Justice for the Forgotten. The history of this phase of the HET review is set out in a HET document entitled "Post Resolution Delivery Debrief" dated 16 December 2009. In November 2008, Justice for the Forgotten had posed 62 additional questions and issues for consideration by the HET. Justice for the Forgotten then raised an additional 13 questions in March 2009. The HET addressed those questions and issues sequentially from the original 9 questions that had been asked by the Pat Finucane Centre on behalf of the family.

[88] In June 2009 the HET then produced a further Review Summary Report on Supplementary Issues, containing all of the 84 questions and responses, in June 2009. The HET also had a meeting at that time with the family and Justice for the Forgotten, in which the family and the Justice for the Forgotten expressed their dissatisfaction with a number of the HET's responses. The HET then made some amendments to the

document and an amended Review Summary Report on Supplementary Issues was produced on 29 July 2009.

[89] In October 2009 the family raised a further 22 points in respect of the Review Summary Report on Supplementary Issues. The then Director of HET, Mr Cox, addressed those matters in correspondence of 16 November 2009. He stated that he had sought a number of opinions on whether there was any reasonable prospect of further work by HET resulting in realistic evidential opportunities. He was advised that there was not. He went on to say that no further HET resources could be committed to the case.

[90] The debrief document of December 2009 records that the HET considered that 69 of the 84 questions had been resolved. Fifteen were described as "*unresolved*", either because the answers to the questions were not available (six questions), or because the HET was unable legally to comply with the request (four questions), or because the matter could only be partially resolved (five questions). The debrief document report also observed that the family was not content with the HET review as the family felt that all witnesses should be interviewed and traced. Before moving on from the HET review I should mention that a recommendation was made by a reviewing officer that an advice file should be prepared for the PPS to enquire whether a prosecution might be possible. That recommendation was not supported at senior level, however, having regard to the state of the evidence in the case.

(iv) Attorney General's Direction 2013

[91] As I have already indicated, a submission was made to the Attorney General on behalf of the next of kin in 2012 that he should exercise his powers under Section 14(1) of the Coroners Act (Northern Ireland) 1959 to direct a fresh inquest. Section 14(1) reads as follows:

> *"Where the Attorney General has reason to believe that a deceased person has died in circumstances which in his opinion make the holding of an inquest advisable he may direct any coroner (whether or not he is the coroner for the district in which the death has occurred) to conduct an inquest into the death of that person, and that coroner shall proceed to conduct an inquest in accordance with the provisions of this Act ..."*

[92] The Attorney General made the direction on 2 September 2013. He referred to the limitations of the previous inquest, notably the absence of any consideration of the evidence of Witness A. He also observed that the scope of the inquest will ultimately be a matter for the new coroner to determine.

K. Scope of the Inquest

[93] Following the direction of the Attorney General, after input from all interested parties, the provisional scope of this inquest was set out in a document dated 20 December 2016. The document reads as follows:

> "*(1) The inquest will examine the death of Daniel Carson on 1 November 1973.*
>
> *(2) The inquest proceedings will consider the four basic factual questions, as required by Rule 15 of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, concerning;*
>
> *(a) The identity of the deceased;*
>
> *(b) The place of death;*
>
> *(c) The time of death;*
>
> *(d) How the deceased came by his death.*
>
> *(3) Related to the 'how' question, the coroner will consider;*
>
> *(i) The evidence of witnesses at or near the scene of the incident in which Mr Carson was fatally wounded;*
>
> *(ii) Pathology evidence;*
>
> *(iii) Forensic evidence relating to the weapon used in the incident;*
>
> *(iv) Evidence relating to the scene at which the incident occurred;*
>
> *(v) Evidence relating to the police and military investigation into the death;*
>
> *(vi) Evidence relating to any apparent link between the deceased's death and an earlier robbery at his employer's premises.*
>
> *(4) In addressing the question of 'how' and 'in what circumstances' the Deceased came by his death, the inquest will investigate the following (insofar as investigation of these matters can assist in addressing that question);*
>
> *(i) The issue of S1's suspected involvement in the death of the deceased;*

(ii) The question of whether S1 had any relationship with the military and/or police, either prior to or subsequent to the death of the deceased;

(iii) The immediate response of police to the incident and the subsequent investigation into the death;

(iv) Whether the police investigation into the death (and consequently any enquiry into the circumstances of his death occurred) was hindered by –

(a) The actions of soldiers who visited the home of S1;

(b) Any failure on the part of the police to attend the home of S1;

(c) Any failure on the part of the military or the police to search the home of S1 in the immediate aftermath of the shooting;

(d) Any failure to arrest S1 promptly.

(v) Whether members of the RUC and/or the military engaged in collusion with any person or persons responsible for the death of the deceased, either prior to or subsequent to the death, such investigations should include an investigation into the conduct of the police and the military in the aftermath of the death;

(vi) The issue of ballistic linkage between the weapons used in the incident and other incidents."

[94] In formulating the definition of scope it was necessary to have regard to Rules 15 and 16 of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963. Rule 15 governs the matters to which proceedings at inquests shall be directed. The rule provides as follows:

"*The proceedings in evidence at an inquest shall be directed solely to ascertain the following matters, namely:*

(a) Who the deceased was;

(b) How, when and where the deceased came by (his) death;

(c) (AM. SR 1980/444) the particulars for the time being required by the Births and Deaths Registration

(Northern Ireland) Order 1976 to be registered concerning the death."

[95] The inquest was conducted on the basis of this definition of scope.

[96] In this particular inquest there is no difficulty in determining the questions who the deceased was; when and where the deceased came by his death; or in recording the particulars required by the Births and Deaths Registration (Northern Ireland) Order 1976.

[97] The substantial issue to be considered by the inquest relates to "how" the death was caused.

[98] It is settled law that an inquest cannot attribute blame or make findings of civil or criminal liability.

[99] Rule 16 of the Rules provides that "*neither the coroner nor the jury shall express any opinion on questions of criminal or civil liability or in any matters other than those referred to in the last foregoing rule."* Nor can an inquest in Northern Ireland return a verdict of unlawful killing. An inquest is an inquisitorial fact-finding exercise and not a method of apportioning guilt.

[100] After the conclusion of the hearing in the course of closing submissions a dispute arose between the properly interested persons as to the extent of the coroner's obligations under Article 2 ECHR in the conduct of this inquest. Whilst I will return to this issue later, I take the view, having regard to the agreed scope of the inquest, that Article 2 of the ECHR is engaged in that it requires the State to have in place the necessary judicial mechanisms to provide for an effective investigation into the death of Mr Carson. To be effective, such an investigation must be capable of establishing the cause of death and of identifying the person(s) responsible. Nothing in the 1959 Act or Rule 16 prevents the coroner finding facts directly relevant to the cause of Mr Carson's death which may point very strongly towards a conclusion that criminal liability does exist or does not exist.

[101] The standard of proof in an inquest context requires that any fact has to be proved to the civil standard, that is the balance of probabilities.

[102] This inquest was conducted by me acting as a coroner sitting without a jury. The governing provision is Section 18 of the Coroners Act (Northern Ireland) 1959. Section 18(1) provides categories of cases in which a jury must be sworn. This case does not fall within that provision. Section 18(2) confers a discretion on the coroner to have a jury summoned in cases falling outside the mandatory categories, where it would be desirable to do so. I determined, with the agreement of the interested persons, that a jury would not be summoned to hear this case.

[103] The MOD/PSNI, the next of kin of the deceased and S1 were all granted properly interested person status for the purpose of these inquest proceedings. All were represented by solicitor, junior and senior counsel.

[104] In a provisional written ruling issued on 10 February 2017 I granted anonymity to Witness A and S1. In addition I ruled that they could give their evidence screened from the public. They were however visible to the next of kin of the deceased. These rulings are attached to these findings. In a written response dated 19th February 2017, the next of kin objected to the grant of anonymity and screening in respect of S1. I did not receive any representations in relation to my decisions in respect of Witness A. I confirmed my provisional decisions in relation to S1 on 1st March 2017. My decisions in relation to Witness A became final on 21st February 2017 on which date she gave oral evidence to the inquest.

[105] Up to the commencement of the proceedings Sergeant Major Ebbens and Lance Corporal Hendry had been referred to respectively as M2 and M3. I ruled that they were not entitled to anonymity in these proceedings.

L. History of Proceedings

[106] There were preliminary hearings in relation to this matter on the following dates: 2/10/14, 10/12/14, 3/2/15, 25/3/15, 18/11/15, 19/1/16, 13/6/16, 13/9/16, 14/10/16, 29/11/16, 8/12/16 (PII hearing), 21/12/16, 31/1/17, 17/2/17, 12/4/17, 12/5/17 and 28/6/17.

[107] The inquest hearing dates were as follows: 20/2/17, 21/2/17, 22/2/17, 23/2/17, 27/2/17, 28/2/17, 1/3/17, 2/3/17, 6/3/17, 10/3/17, 12/4/17 and 12/5/17.

[108] On 28/6/17 I heard closing submissions on behalf of the properly interested persons.

[109] On 9/9/2017 the next of kin provided written submissions on Rule 16 of the Coroners' Rules and the applicability of Article 2.

[110] On 13/10/17 the PSNI and MOD provided written submissions in response.

[111] Further inquiries were conducted on behalf of the coroner before the inquest findings could be completed. In summary these were as follows:

- 27/11/17 CSNI requested that CSO provide copies of codes and guidelines which had earlier been requested on 14/6/17 as to how Republican and Loyalist suspects were treated when in police custody in the 1970s.

- -/12/17 CSNI provided coroner's investigator's reports to CSO in relation to two persons named by Mr Moneypenny, for a sensitivity review prior to onward disclosure.

- 16/1/18 CSNI provided redacted copies of the coroner's investigator's reports in relation to the two persons named by Mr Moneypenny to the next of kin.

- -/2/18 CSNI were advised that PSNI have MOD intelligence on their databases and that until recently PSNI disclosure unit had been unaware of this and did not routinely search it when compiling disclosure of intelligence for the coroner.

- 6/2/18 The coroner directed PSNI to conduct searches of the MOD database for all material touching upon the death of Daniel Carson.

- 28/3/18 The coroner was informed that PSNI had completed this search and that one new document had been produced. It was subsequently assessed by Coroner's counsel that the information contained therein was the same as in a document previously disclosed by the MOD.

- 29/3/18 CSNI issued a letter to the NOK explaining the outcome of the search referred to above.

- 28/3/18 NOK wrote to the coroner seeking an update on the outcome of searches which had been directed (and referred to CSO in November 2017). NOK also requested that an individual identified by Mr Moneypenny should be asked further questions.

- 28/3/18 CSNI forwarded the NOK letter of 28/3/18 to CSO and requested MOD to provide a full and final response on the further searches directed no later than end of April 2018.

- 29/3/18 Coroner's investigator was tasked to contact the individual identified by Mr Moneypenny and put the NOK questions to him.

- 4/5/18 Officers report concerning contact with the individual identified by Mr Moneypenny prepared.

- -/5/18 CSO provided the further documents revealed by its search for the codes/policies/guidelines re arrest procedures to CSNI. CSNI deemed the documents potentially relevant. CSO subsequently indicated that they would need to take instructions from various departments as to the disclosure of the documents.

- 24/8/18 NOK requested that the coroner should consider directing the Chief Constable and MOD to conduct a search for all records and any ballistic analysis carried out by the Data Reference Centre in relation to the 0.455 calibre bullet recovered from the deceased and the weapon to which it was attributed. CSNI forwarded this letter to the CSO for response.

- 27/9/18 CSO confirmed that all disclosure around the bullet and including Data Reference Centre material had been disclosed.

- 10/10/18 CSO provided the MOD documents to the coroner with proposed redactions.

- 15/10/18 CSNI approved the proposed the redactions and asked CSO to provide fully redacted versions of the documents for disclosure.

- 9/1/19 CSNI wrote to the NOK to advise that the coroner had received all further disclosure from CSO and awaits redacted copies for provision within 14 days. CSNI also confirmed that CSO has confirmed the disclosure of all relevant forensic material including Data Reference Centre material.

- 9/1/19 CSNI requested CSO to provide all redacted disclosure for provision to the NOK within 14 days.

- 19/2/19 CSNI confirmed to CSO that the coroner had directed disclosure of the redacted documents within 7 days.

[112] The CSNI Officer's report and the material from the CSO have now been disclosed.

[113] The CSNI officer's report in relation to the potential witness has been redacted so as to not reveal his identity. I take the view that this redaction should not be maintained but before removing the redactions I will provide the MOD with the opportunity to make submissions.

[114] The remaining material relates to "Arrest Policy; Protestants". It is clear from reading this material that this relates to the approach of the MOD to internment and in my view does not impact on the conduct of this inquest or its findings.

[115] I am grateful to all the counsel who appeared in this protracted inquest for their written and oral submissions which were of enormous assistance. Legal representatives conducted the hearing with appropriate respect for the deceased and his family. Mr Sean Doran QC led Mr Joseph Aiken on behalf of the coroner. Mr Peter Coll QC led Mr Mark McAvoy on behalf of the MOD/PSNI. Ms Karen Quinlivan QC led Mr Mark McGarrity on behalf of the next of kin. Mr onan Laverty QC led Mr Paul Bacon on behalf of S1.

[116] I want to place on record my gratitude to the staff of the CSNI for their work in preparing and presenting this inquest. In particular I want to thank Ms Cathy McGrann, Solicitor, for her work in the preparation and presentation of the inquest and Rosalind Johnston, Solicitor, who dealt with some post-hearing disclosure issues. I am also grateful to the work of the Coroner's investigator Ms Amanda Logan for her work in tracing and interviewing witnesses for the purposes of the inquest.

M. The Central Issue - S1's suspected involvement in the death of the deceased

[117] The basis for S1's suspected involvement in the death of the deceased arises from the identification of him as the gunman by Witness A. As is clear from the agreed scope of the inquest this issue was central to addressing the question of "how" the deceased came by his death.

[118] Witness A's written statement to the police of 2 November 1973 provides a detailed account of what she saw on the evening of the murder, the day before.

[119] On any reading it is an exemplar of a convincing identification statement. It is a statement of someone right at the centre of the event she is describing. Her account is told with clarity. It conveys the horror of the unfolding events and is impressive in its detail. Witness A acted with great bravery and compassion, confronting the gunman and placing herself in danger as she ran towards the deceased's car. It appears she actually shouted out S1's name as she did so. What she says about the incident corresponds with the known facts about what happened.

[120] Dealing specifically with the identification of S1 there are a number of factors which point to its reliability.

[121] This was a recognition scenario. She knew S1. She explains how she came to know him and states that in the preceding three years she had seen him in the street on an average of 2 or 3 times per week. When this happened "*he always stopped and spoke to me*". She was able to give his correct address to the police.

[122] She concludes her statement by saying:

> "*I know S1 well. There is no question that he is the man who shot Danny Carson. When he fired the second two shots I was only 3 to 4 yards away from him. Although it was dusk at the time I saw the side of his face clearly and I immediately recognised him.*"

[123] She goes on to provide a detailed description:

> "*He was wearing a bottle green coloured suit jacket but I did not notice his own clothing. S1 is aged 18/19 years about 5/7 inches/8 inches. He has auburn gingery hair and straight round the back and long at the front and brushed to the side.*"

[124] She made this identification of someone she knew well and recognised when he was only 3 to 4 yards away from her. It is clear from her statement that she was fully aware of what was happening and unfolding before her.

[125] She was able to give further significant and relevant information about S1. Again referring to her statement, she says:

> *"About 3 weeks ago I went to the shop one morning about 10.00 am to buy some biscuits for the staff's morning tea. As I was walking round Greenland Street I met S1 at the side door of McIlhagga's firm. He spoke to me and asked me how I was. We exchanged a few words and he said to me (Witness A), Is that Iron Haig still working in your place'. I asked what he meant and he said 'You know rightly what I mean'. I told him that I did not know what he meant. He said 'Never mind, I'll find out anyway'. I realised that he was referring to Danny Carson who was the only RC employed in our firm and that the expression Iron Haig was slang for Taig. I walked on and did not answer. I also remember about 1½ years ago I met S1 in the street. He referred to the Troubles and he said that they had got all the Taigs out of McIlhagga's and they were going to clear them all off the road. He said they were doing a good job. He said 'There is still one left in your place but he'll run when he sees the rest running'. I know he was referring to Danny Carson."*

[126] It is difficult to envisage that these conversations are something which Witness A imagined or maliciously made up about S1.

[127] That Witness A was convinced that she recognised S1 is supported by what she said to other people on the night in question.

[128] Maria Ross's police statement confirms that S1 was identified by a person at the locus, although she states "*I cannot recollect who, but someone that night said it was S1 done it*". Mrs Ross said that she gave the name of S1 to a policeman and a note from Sergeant Tease confirms this to be the case. In his statement Sergeant Major Ebbens says that Mrs Ross told him that "*a name was called out*". When he asked what the name was she replied "*S1*". Sergeant Major Ebbens goes on to say:

> *"She said this name was mentioned by Witness A who had been walking ahead of her as they both left their place of employment at Batty Brothers. Mrs Ross said that witness A 'wouldn't say anything now' or words to that effect."*

[129] In the course of the inquest I heard evidence from Sheila Martin, who is the daughter of Alfred Martin, the owner of Batty Brothers. She now lives out of the jurisdiction and gave evidence via Skype. She points out that she was only 13 years old at the time of the shooting and was living in the family home with her parents. She had a recollection of two females employed by Batty Brothers visiting her parents' home, one of whom was Witness A. The other employee was known to her as Nessie (Agnes McElwaine). She thought it was on the day of the shooting but accepted that it could have been the following day. In any event she had a clear recollection that Witness A informed those present that she had positively identified the gunman. She said that Witness A was "*very certain of the identification*". She indicated that when she

found out later that Witness A's account had been "*dismissed*" she was very surprised because of her certainty on the night she visited the house.

[130] I found Ms Martin to be a most impressive witness. I have no doubt that she told the truth and that her recollection was accurate.

[131] For his part Alfred Martin had no recollection of the conversation to which his daughter referred. He did acknowledge the frailties of his memory given the passage of time. It was he who directed the Coroner to his daughter as someone who might assist. Notwithstanding his lack of recollection I am satisfied that Sheila Martin is accurate in her recollection.

[132] Mrs Ross and Sheila Martin were not the only persons who recall that Witness A said she could identify the gunman in the aftermath of the shooting.

[133] In the course of her evidence Anne Carson explained that after the shooting Alfred Martin visited her home along with two members of staff to express their condolences at her loss. At some point, both Witness A and Mrs Ross came into the living room and spoke to Mrs Carson. During that conversation with Mrs Carson, Witness A informed Mrs Carson that she had seen Mr Carson's killer. She claimed she recognised and knew him. She indicated she was confident she could identify the person who had killed Mr Carson and she mentioned that she had either informed the police of this or intended to do so. Mrs Carson remembers Witness A making a striking comment "*we will get him for you Anne*". I have no doubt that this is an accurate and truthful account of the conversation.

[134] The certainty of her contemporaneous identification is confirmed by all this evidence.

[135] As is clear from subsequent events Witness A no longer expresses such confidence. Her revised view on the identification of S1 goes to the heart of the central issue in this inquest. It is therefore necessary to examine, insofar as it is possible to do so, how that change has come about.

[136] The police officer in charge of this murder investigation was DI Nesbitt who is now deceased. His death has deprived the inquest of a highly significant source of information. His role is of central importance in assessing the issue of Witness A's reliability and also the conduct of the RUC investigation into Mr Carson's murder. His absence means that the court has to rely on second hand accounts of his actions in the course of the investigation.

[137] As Detective Superintendent Nesbitt he was questioned by the Serious Crime Review Team on 22 September 2004. As previously set out, a note of that conversation with Detective Inspector McErlane records that:

> "*Although not in her statement, she (Witness A) shouted S1's name as she ran towards him. The recognition/identification was never in doubt. Based on the*

> *statement, the then DI Nesbitt personally went on the search/arrest operation for S1 on 5 November 73. He felt he was best placed to identify clothing described by the witness. While S1 was in custody, "itness A attended at Tennent Street with her father and other family members to express their fear that should it be made known she named S1 she would be murdered to prevent her giving evidence. In the circumstances that existed at the time that outcome was a real possibility. There was no real witness protection scheme. After discussion with the then Divisional Commander, Chief Superintendent Chesney they were satisfied she would have been killed and on that basis S1 was not charged."*

Like DI Nesbitt, Chief Superintendent McChesney is also deceased and so he is not available to give important evidence on fundamental issues in this inquest.

[138] The Historical Enquiries Team consulted Detective Superintendent Nesbitt on 5 December 2006. He described Witness A as "*very sensible and in no doubt whatsoever about her identification of suspect S1*". He also alleged that S1 "*would be connected with the UDA or UFF*".

[139] Detective Superintendent Nesbitt was asked questions by HET investigators on 25 March 2009 in the course of which he responded "*This was a straightforward case. Suspect 1 was the killer and he would have been convicted but the witness retracted her statement*".

[140] Lawyers for the next of kin dispute that Witness A did in fact retract her statement. There is no statement on the police file from her withdrawing her statement. Nor is there a note recording the fact that she wished to retract her statement.

[141] Two police officers, Sergeant Stanley Preator and Detective Constable McCoy who were giving evidence on other issues in this inquest agreed in questioning by Ms Quinlivan that they both would have expected some written record of Witness A's withdrawal to have been generated and Mr Preator said he was "*sure it would be somewhere*".

[142] Mrs Carson indicated that sometime after her husband's funeral she was informed by her father-in-law, Charles Carson, and brother-in-law, Tom McIlveen that the person suspected of Mr Carson's murder had been released by the police because police advised them that Witness A had withdrawn the statement she had made. The family's understanding was that this was because she had been threatened.

[143] I have already referred to Detective Constable Graham's interview with Witness A in the course of the SCRT in which she expressed doubts about whether her identification of S1 was correct.

[144] Like DI McErlane, the next of kin were very critical about the manner in which Detective Constable Graham interviewed Witness A. He did so alone without authority from his senior officers. He appears to have been ill-prepared for an interview with the crucial witness in the case. He does not appear to have been aware of why the matter was not pursued back in 1973. He did not supply Witness A with a copy of her witness statement from 1973.

[145] Subsequently, two members of the HET, Bernard Deakin and Caroline Rhymes, interviewed Witness A in 2007. A witness statement was recorded dated 4 September 2007. In that statement Witness A is recorded as saying:

> *"I saw the man who shot him who was not far from me. It was getting dark. The man was of stocky build dressed in dark clothing. He was holding a small gun in both hands which were pointed out in front of him. I was very shocked by what I saw and I became hysterical. The man with the gun swung it in my direction when I screamed. I can't remember who it was, but I think it was one of the girls I worked with, pulled me away into a shop doorway nearby. The man who shot Danny then ran off very fast. The next day I made a written statement to police in which I identified the gunman as S1. He was a man I knew quite well. I think now that I may have been mistaken that it was S1. The man was the same build as S1 but I couldn't now say 100% that it was him. I thought it was him because he had recently been talking with me. I wasn't particularly friendly with S1. I didn't go out of my way to associate with him, he struck me as being a little bit slow. It would surprise me if he would be capable of the shooting.*
>
> *Immediately after the shooting I didn't go out much and my (redacted). A few weeks after the shooting I was out on my own for the first time since the shooting. I was on the Shankill Road when I was approached by an uncle of S1. I didn't know who the man was at the time. He said something like 'Our S1 is like a big child, he wouldn't have it in him to hurt anybody'. I didn't know the man but from his appearance I thought that he had the same build as S1 and would probably be a relative. I still don't know who the man was. He called me by my name, so I got the impression that he had been watching me and waiting for a chance to speak with me. I was quite nervous as the man kept staring in my face at the time when he was speaking to me."*

[146] It has not been possible to trace Bernard Deakin or Caroline Rhymes. Nor have any notes been produced in relation to the interview itself.

[147] The next of kin are critical of the approach taken by HET at this time. In particular it appears that no effort was made to approach the witness as a vulnerable

witness with a view to facilitating her giving evidence. The HET appear to have accepted the account of Detective Superintendent Nesbitt that Witness A had retracted her statement because she was in fear. Overall it is suggested by the representatives of the NOK that the statements recorded by SCRT and HET have to be considered in light of the evidence given by Witness A at the hearing which suggests that from the outset the RUC and subsequently SCRT and HET have reinforced a police view that she was an unreliable witness. In commenting on this criticism I would point out that this is not the view expressed by Detective Superintendent Nesbitt who is recorded as conveying a strong conviction to both SCRT and HET that Witness A's original identification was in fact reliable.

[148] I therefore turn now to the evidence given by Witness A in this inquest. Prior to giving evidence she was successfully traced by the Coroners Service and Witness A wrote to Ms Cathy McGrann, solicitor in the Coroners Service, on 19 December 2016. In that letter she wrote:

> *"I recall that I made a statement to the police in or around 1 November 1973. In that statement I implicated a named person. After police had completed their enquiries they informed me that my statement was unreliable as the person I had implicated had established an alibi which confirmed that he could not possibly have been on the Shankill Road on the date of this incident.*
>
> *I am at a loss therefore to see what reliable evidence I could give to the inquest.*
>
> *A short time after making my statement to the police I was approached by a relative of the person that I had named who told me that they knew me and all my family and that I was wrong in my statement. I was extremely concerned for my safety and the safety of all my family."*

[149] She went to say that if called to give evidence at the inquest she would have great concerns for her safety and the safety of her children. She requested anonymity and screening and submitted a letter from her GP outlining that attendance at court would be detrimental to her health.

N. Summary of evidence of Witness A

[150] Witness A accepted that she had made the statement of 2 November 1973. In her evidence to this inquest she sought to distance herself somewhat from her statement by saying that she had not lived on the Shankill Road for five years before the incident as she had said and that she "*didn't really know the guy, it's down there that I did, I didn't really know him, despite talking to him from passing at the corner.*" She felt that she probably moved to the Shankill in 1971/72. In describing the working environment in Batty Brothers it was clear that she was very fond of the deceased whom she referred to as "Danny". He was a good friend and he was described as a

"*nice guy, a family guy who talked a lot about his 'wee boy'*". He was described as "*just lovely*" – "*like an elder brother*".

[151] When it came to the detail of what took place she was vague and had difficulty remembering the particulars of the murder. She describes the incident as "*a blur, I can't, I can't remember, I can't remember it happening, I remember seeing the green figure … and the mask on but I can't remember hearing the shots.*"

[152] This was the first time Witness A referred to the gunman wearing a mask.

[153] She gave the impression to the court that she simply could not remember the details of what happened. Even when shown her statement of 2 November 1973 she remained unclear about the circumstances. The following passage from her evidence is a good example:

> "*Q. Now you say that as he fired you were 3 or 4 yards from him?*
>
> *A. I can't even remember that I can't remember being that close to him.*
>
> *Q. Do you remember seeing the man as he fired?*
>
> *A. No.*
>
> *Q. Well, at one point in this sequence of events at that time you recognised the man, isn't that right?*
>
> *A. I thought I did, just by the build of him, I didn't see his face or it was just the outline of him.*
>
> *Q. You see when you made your statement in 1973 you did say that you saw the side of his face clearly?*
>
> *A. I couldn't have because he masked up there was something over his face I couldn't have seen that.*
>
> *Q. Right you see when you made your statement in 1973, and this was the day after the incident?*
>
> *A. Yes.*
>
> *Q. You made no reference to a mask?*
>
> *A. Well I honestly, it's just a blank, it's just a blur, it was a terrible terrible time.*
>
> *Q. But is the mask something that has come to you in the intervening years?*

A. No, I just think he had, because I don't remember seeing his face, I don't remember, I just seen the bulk of the fellow turning and running away.

Q. But you accept that on 2 November, which is the day after the incident, you said it in your statement 'I saw the side of his face clearly'?

A. Well I don't remember saying it."

[154] When it was put to her that at the time she recognised the person who was doing the shooting she replied:

> "*No, I seen the bulky fellow and I thought it was the guy that I had seen standing at the corner manys a time and spoke to me but the detective that spoke to me told me that it was an unreliable statement."*

[155] She could not remember the specific conversations with S1 to which she referred in her statement about references to Taigs in McIlhagga's.

[156] She sought to play down the number of times during which she would have spoken to him prior to the shooting.

[157] When pressed about her confident identification in 1973 she replied:

> "*I thought it was him because of his build but later the detective said it could have been anybody with a bulked up jacket on him. It was the bulk of him that I just thought it was him. But when the detectives told me I was wrong, that it couldn't have been him, I just put it out of my head then, I just thought it wasn't him.*"

[158] She could not recollect any soldier speaking to her in the aftermath. In particular, she had no memory of the conversation described by Sergeant Major Ebbens.

[159] She had no recollection of visiting Mrs Carson's home or speaking to her. All she could remember was the funeral. She could not remember making any comment to her along the lines of "*we will get him Anne*". She only remembered speaking to Mrs Carson when she visited the workplace on a number of occasions with her young baby.

[160] Similarly, she had no recollection of the conversation described by Sheila Martin. She went so far as to say that she had not even been in Mr Martin's house and did not know where he lived. She indicated that she could remember nothing at all about making the statement which was recorded by DI Nesbitt.

[161] She had no recollection of ever going to the police station in the circumstances described by DI Nesbitt to SCRT. When this was put to her she said that it could not have happened because her father had had a stroke and he would not have gone to the police station with her. She said that "*I don't think it happened*".

[162] She was aware that S1 had been arrested in connection with the death but her understanding was that he had been let go because her statement was "*an unreliable statement because he wasn't on the Shankill Road that night*."

[163] She was very vague about the circumstances which gave rise to this understanding. She said that she was told this by a detective who visited her workplace. She was told by the detective that S1 had an alibi. She was unable to identify the detective. She said "*I remember being told it but I can't remember where or when I was told it*." When pressed she recalled that the police officer was in plain clothes and she had spoken to him previously. In terms of timeframe she felt it was a few days after the killing. When pressed by Mr Coll on the issue of whether or not she had met the detective who had indicated that her evidence was unreliable before she agreed that she simply did not know.

[164] When asked about why she referred to the issue of the alibi in her letter to the coroner she replied:

> "*Because I didn't think that I would have to come here, that's why. I have health issues of my own.*
>
> *Q. Yes I understand that?*
>
> *A. And that's why. I was concerned for my family as well.*"

[165] The theme of her evidence was that it was the conversation with the detective about an alibi that put the "*first seeds of doubt*" into her mind about whether she had made a correct identification.

[166] She further suggested that this was reinforced when "*the gentleman had come out to see me in my home now a few years back said the same that he had gone over things and he said 'Ah yeah, you're unreliable because it couldn't have happened'*".

[167] In relation to her 2007 statement to the HET she accepted it was hers but again she seemed very unsure about the circumstances in which it was made. She did however recall the incident she described when she was approached by someone she felt was the uncle of S1 and that she felt he was making a threat.

[168] In general terms concerning the visit from Detective Constable Graham of SCRT and the two officers from HET the witness again was extremely vague and unsure about these visits. She could only recall one occasion when she was visited by "*two*

gentlemen" but she could not remember whether this was 2004 or 2007. She was adamant that she was only spoken to on one occasion.

[169] It is not clear if the occasion on which she says the gentleman said "*you're unreliable because it couldn't have happened*" occurred in 2004 or 2007. She indicated that whoever made that comment did not make any reference to an alibi statement. She alleged that she had not seen her statement until the commencement of the inquest and none of the police officers who spoke to her previously in either 2004 or 2007 showed her the statement.

[170] Ms Quinlivan questioned Witness A sensitively but pressed her on the issue of when she first doubted her identification. The witness continued to resort to suggestions that she could not remember much of what took place. She accepted that because of what she had been allegedly told by a detective after the shooting she had misidentified S1 and accepted that from then onwards.

[171] Mr Coll asked Witness A about any concerns she might have had about her safety having made the statement. He asked:

> "*Q. In the days following that, do you recall having any feelings or concerns that having given this information to the police you may have put yourself at risk?*
>
> *A. Yes I did.*"

He referred to the situation in Northern Ireland in 1973 and asked:

> "*Q. So would it be fair to say that you had been aware that providing information to the police relating to the identification of a person involved but must have already seemed at the time to simply mean a senseless sectarian brutal murder, that that would be something that would put you in a position of some discomfort?*
>
> *A. Yes, I did think that. But I also felt because they told me it was unreliable statement that the boy that I said didn't do it.*
>
> *Q. Yes but that was at a slightly later stage I think you have said?*
>
> *A. Yes.*
>
> *Q. I am going to come back to that in due course So at the time you gave the statement you can't remember now what your exact feelings were, but looking back at it you do recall that thereafter you had feelings of concern, could I put it as strongly as feelings of fear?*

A. Yes, probably yes."

[172] She confirmed that she could not remember Sergeant Major Ebbens coming to speak to her on the evening of the murder. It will be recalled that the Sergeant Major described speaking to Witness A's father outside the home and advising him to contact the police should Witness A be able to help. Echoing her response to the suggestion that her father had attended at the police station she said this could not have been possible because her father was in bed arising from his stroke.

[173] She obviously could not remember the Sergeant Major's account that when she was asked if the name S1 meant anything to her, she replied very simply "no".

[174] When pressed by Mr Coll, she maintained her position that she did not go to police to retract her statement. She was asked whether someone might have done so on her behalf and she said:

> *"Well I can't recall it unless my mother or somebody did. I didn't. I can't remember.*
>
> *Q. Is it possible that somebody else might have taken that step?*
>
> *A. Maybe, I don't know."*

[175] In re-examination Mr Doran referred to a HET record in relation to the visit of the officers on 4 September 2007 with Witness A. On that occasion there is a note to the effect that Witness A was shown a typed copy of her original statement. When this was pointed out to her she denied it and said that the first time she had seen it was the morning of the inquest.

[176] The record to which Mr Doran referred however goes on to note "*She agreed that it was an accurate record except that she had not been brought up in the Shankill Road area*". This was the very point she had made when she was asked whether her initial statement was accurate at the inquest which tends to suggest that she was in fact shown the statement.

O. The arrest and detention of S1 – further discussion

[177] S1 was arrested from his home on the morning of 5 November 1973. He was brought to Tennant Street RUC Station where he was interviewed by DI Nesbitt and DS McKinn. A handwritten note of that interview was taken by a DC Elliott who gave evidence in the inquest. While some of the notes are difficult to decipher the record of the interview is as follows:

> *"Q. What time?*
> *A. 5pm.*
> *Q. Into house?*

A. *5.10pm.*
Q. *What did you do?*
A. *Lay down on settee and slept.*
Q. *(Some words are scored out). Does your sister come home?*
A. *About 5.50pm.*
Q. *Did you listen to the news?*
A. *That's when I heard about it.*
Q. *Did the army call?*
A. *Making inquiry.*
Q. *What did they ask you?*
A. *The same making enqs (this is followed by a space).*
Q. *Reason to believe?*
A. *No sir I shot nobody.*
Q. *Did you know him?*
A. *No.*
Q. *Did you know from where he worked?*
A. *(At this point there is a no which has been scored out and then a space).*
Q. *How long did your brother get you a radio?*
A. *10 months.*
Q. *Who did he get it off?*
A. *I don't know.*
Q. *Do you know any in Batty's?*
A. *Yes.*
Q. *Does your brother know?*
A. *I don't know sir.*
Q. *Well work on Thursday.*
A. *Sure.*
Q. *To where.*
A. *Waveney.*
Q. *What were you doing?*
A. *Water pipes.*
Q. *Who with?*
A. *(A name which has been redacted).*
Q. *What were you doing?*
A. *(Nothing written here).*
Q. *What time?*
A. *About 9am.*
Q. *What time leave?*
A. *(The space is blank).*
Q. *How many houses?*
A. *Four in Waveney Grove.*
Q. *What time?*
A. *In morning.*
Q. *What did you do?*
A. *Looked at sink basins and pipes.*
Q. *And afternoon?*
A. *Other jobs. Forgot other place.*

Q. *Last job?*
A. *Where two jobs where.*
Q. *Where?*
A. *I don't know.*
Q. *People in them?*
A. *No.*
Q. *Time finished?*
A. *4.50pm.*
Q. *Who with?*
A. *(Redacted name).*
Q. *Where then?*
A. *Left home in his car.*
Q. *What time?*
A. *About 5.15pm I think.*
Q. *Do then?*
A. *Slept in my own room.*
Q. *Did you go to bed?*
A. *I got into bed and took all my clothes off.*
Q. *Fall asleep?*
A. *Yes.*
Q. *Sister?*
A. *5.45pm.*
Q. *Asleep?*
A. *Yes.*
Q. *What then?*
A. *Watched news.*
Q. *Which?*
A. *UTV reports.*
Q. *What you hear?*
A. *Man shot in Dayton Street and car ran into wall.*
Q. *Did you go out?*
A. *No sir.*
Q. *Say who the man was?*
A. *I don't think so.*
Q. *Did it say if he was dead?*
A. *I can't remember.*
Q. *At then?*
A. *Sat in house.*
Q. *Soldiers?*
A. *Yes two of them.*
Q. *What time?*
A. *Just after I got up.*
Q. *Before news?*
A. *When news was on.*
Q. *Before the news?*
A. *Just when news was on.*
Q. *"Not xxx" has been scored out and "what tell them has been written above"?*

A. (Difficult to read but it appears to say "didn't know anything about it".)
Q. Did they ask you about it?
A. Yes. I told them I was at work.
Q. Did you tell them in bed?
A. Yes.
Q. Know his name?
A. Carson or something.
Q. Did you know where he worked?
A. No.
Q. Why did you mention your brother got you a radio in Batty Brothers?
A. (Name redacted) My brother works in McIhagga's.
Q. Did you hear shots being fired?
A. No I was in bed.
Q. Time shots were fired?
A. I don't know.
Q. How do you know?
A. I was in bed since I left work.
Q. Did the army tell you what time?
A. No.
Q. Did it give out in news time.
A. I don't think so.
Q. Overhear shots?
A. No I heard shots on Tuesday night.
Q. Have you discussed this shooting.
A. No sir.
Q. How did you know you were in bed time shots were fired?
A. When I came in I went to bed."

This is followed by a Q and A after which the text is blank. The notes then say at the right hand side "7.20am" and then "T", "Detective Constable Starrett to 7.45am DS McKimm and DC Elliott."

[178] S1 subsequently made a statement which was taken by DI Nesbitt on 6 November 1973 at Tennant Street RUC Station at 10.15am.

[179] The statement is in the normal form with the usual preamble and is signed by S1. The body of the statement is as follows:

> "*Last Thursday, that would have been 1 November, started work at 25 past 8 at the [redacted] where I work as an [redacted]. I was sent out to do a job at Waveney on the Shore Road with [redacted]. We had to repair some sink waste at houses in this estate. We worked on this job until between 12 noon and 1.00 pm. [Redacted] work colleague had his car with him and he said he would run me over for my dinner. When we got to Ainsworth Avenue there was a*

bomb scare and my work colleague couldn't get through and he dropped me off at Ainsworth Avenue. I walked on down towards home. I had got my pay cheque that morning at the works yard and I called into the bank at Springville Street and cashed it. When my work colleague left me he told me to go that afternoon to Morrison's house [Morrison's address redacted] to repair a toilet there. [Further redacted reference to work colleague]. He was sneaking off for the rest of the afternoon and not going back to work. I got home to my own house at lunchtime at about a quarter past to half one. My sister [redacted name] who I lived with was in. My other sister [redacted name] and her two children were there as well. I had my lunch with them. Sometime after 2 o'clock, I am not sure of the time, I went out of the house again and I went to [redacted address of premises at which he went] to do a job that [redacted name of work colleague] had told me to do. When I got there I couldn't get in as there was nobody in the house. I went to a woman across the street and she told me Mr Morrison was out. I told her I would call back later to do the job. I went on back down home again. When I got home my sister (redacted name) was in bed as she wasn't well. I went back up to the premises (redacted address) between 3 pm and 3.30 pm and I couldn't get in again. I went back again to this house at or about 4 pm and I got in. Mr Morrison was in and he told me the overflow was broken. I stood up on the toilet bowl to look at the overflow and a piece broke off the toilet bowl under my weight. I was very annoyed about breaking the toilet and I told Richard Morrison I would find out about a new one. I went down to Jebbs in Peter's Hill and asked the price of a toilet basin. It was £3.86. I went back to Richard Morrison's house and told him I would buy a new bowl and fit it the next day. He told me not to be daft but to put him on the docket as a new tenant and I would get it for nothing through the Housing Executive. I agreed to do this the next day and I then left Morrison's house. As far as I know it was about 5 pm. I'm not too sure because I am not very good at knowing the time. I went straight home. I got there a couple minutes after I left Morrison's house. My sister (redacted name) was still in bed when I got home. I lay down on the settee in the kitchen and turned on the TV. I lay on the settee for a while and I was lying there about 15 or 20 minutes. I heard two bangs that sounded like shots. I went out to the front door and looked down the street. I saw Mrs (redacted name) who lives at number (redacted number) (and a redacted name of a person who lives at another address on the street) standing at their front doors. I heard one of them say to the other 'that looks like two shots'. I don't know whether they saw me or not. I didn't know where the noises had come from and I didn't see

anybody else about the street. There was nobody or no cars about the street. It was all quiet. I went back in again and lay on settee. My sister (redacted name) got up and heated my dinner. I got potatoes and soup. After I got my dinner and the news was on the TV, two soldiers came to the door and my sister brought them into the house. One of them was big and the other was a wee small man. They asked us if we had heard any shots. I told him I hadn't heard any. This was not the truth really. I said this to them because I am afraid of getting involved in any way with the Troubles. I thought if I said I heard the shots I would have been asked other questions and got involved in some case and I was scared. About a year ago a young fellow (name blanked out) was standing talking to (further redaction). There was three shots in the Divis direction. One of them went into his throat and he fell dead at my feet. I had to give evidence about this and ever since then I have been bad with my nerves. This is maybe why I said I didn't hear the shots to the soldiers. The soldiers left her house. A wee while later my uncle (redacted name) who lives (redacted address) came into the house. He told me a man had been shot in Dayton Street and that somebody had mentioned by name. I told him I was in the house and wasn't involved in any shooting and he believed me. I couldn't shoot anybody. A while after that my uncle (redacted name of different uncle) who lives at (redacted address) came down to our house. He told me some man had told him that my name was mentioned about the shooting. I told him I knew nothing about it and he knew it wouldn't have been me as I have never been involved in any trouble and have never fired a gun in my life. My uncles did not tell me to go to the police to clear myself and I never thought of doing this because I had never done nothing wrong in my life. I was worried when I heard that my name been mentioned because I couldn't understand why but I didn't know what to do about it. The night after my uncles left I went over to my cousin (redacted name) at my cousin's house and I sat with him and his wife until about after 10 and then I went home. I always go to (redacted name) house on Thursday and Friday night. Sometimes we sit and sometimes we go to the West End Blues Supporters Club in Crumlin Road. The West End Supporters Club in Galls Pub in Dover Street and play darts. That is the only two nights I go out in the week. I know nothing about the shooting of the man in Dayton Street. I saw the man who was shot one time when I went into Batty's with my brother (redacted name of brother) and he bought me a radio. It was this fellow who served us. I did not know this until after the man was shot when (redacted brother's name) told me it was the man who had given us the radio. I didn't know the man's name but (redacted brother's name) told me

at the time we got the radio that he was a Catholic but that he played football with him and he was a decent fellow. I don't like the IRA men but I have nothing against ordinary Catholics. I work with him in my job and I get on with him. I wouldn't interfere with any working man and I could never shoot anybody. I was brought up to believe in God and I just wouldn't do anything like that. I am in the Orange and Black but apart from that I am not in any organisations. I wouldn't join anything or get involved in any trouble. Before my mother died she always told me never to get into trouble or to bother with any people involved in the Troubles and I wouldn't break her word. Last Thursday I was wearing my blue jeans, brown shoes, red shirt and my black and white spotted jacket. I swear before God I had nothing to do with any shooting with any man. If I knew or heard who did it, I would tell the police. I always try to lead to a good life."

P. The Evidence of S1

[180] There was a question mark about whether or not in fact S1 would give evidence at the inquest.

[181] I received a report from Dr Meenagh who is an associate specialist to Dr Tareen, consultant psychiatrist. He reviewed S1's medical notes and records and confirmed that he had last seen him on 8 November 2016. S1 has a working diagnosis of schizophrenia and diabetes. He was first referred to the Community Mental Health Team in June 2000. He has a history of depression and extreme anxiety. It was Dr Meenagh's opinion that:

"Due to his extreme anxiety S1 would be a very unreliable witness. He is likely to begin stammering due to his severe anxiety especially when answering questions and under pressure. He would find it difficult to keep his response concise and clear and relevant to the questions being asked. He would struggle to adhere to the line of questioning. I would expect he would agree to anything to get away from being questioned further. His concentration and memory are normally poor.

A CT brain scan showed mild generalised cerebral atrophy in 2011.

S1's anxiety is normally at a level which would be intolerable to most people. For him to be questioned at a Coroner's Court I would be doubtful if he could complete this to everyone's satisfaction."

[182] I directed nonetheless that S1 should give evidence but that I would bear his medical condition fully in mind. In addition he would of course be reminded about

his right against self-incrimination and his lawyers could ensure that his interests were protected in the course of any questioning.

[183] At the outset of his evidence the privilege against self-incrimination was explained to him. His counsel formally indicated that S1 wished to exercise his privilege against self-incrimination under common law and Rule 9 of the Coroners' Rules.

[184] Although S1 had been granted anonymity and gave his evidence screened from the public gallery, he was visible to the Coroner, the next of kin and the lawyers involved in the case. In the course of preliminary questions Mr Doran referred to the fact that the inquest was into the death of Daniel Carson to which S1 replied "*yes, but I did not shoot this man, I didn't shoot him*".

[185] The contents of the interview notes and witness statement were read to S1. He said he had very vague memories of being in the police station and did not remember making any statement. When it was explained to him that he had signed the statement he accepted that he must have made it but that he had no memory of it. When he was asked to say whether he was prepared to adopt the statement as his evidence Mr Lavery objected on the basis that if he did so it might open the door to him being cross-examined and might also lead to suggestions that he made other statements which were inconsistent with that statement in which case the question might tend to incriminate him. I took the view that if he adopted the statement as evidence then there was a risk that this might result in answers which tended to incriminate him. However, since he had admitted that he had made the statement it was open to counsel to ask questions about the contents of the statement rather than simply ask him to adopt it as a whole. On the basis of legal advice he declined to answer questions. When asked about the interview notes he said he couldn't remember any of the police officers and couldn't remember anything about it. He did recall vaguely being asked questions and providing answers. He was asked whether he accepted that the record of the interviews was accurate to which he replied "*I was there, it must have took place, it must have took place but I can't remember making a statement 43 years on, I can't remember doing it*".

[186] The witness accepted that he did remember being arrested at about 5.30am. He could not remember how many police were involved other than that outside the street was "*packed with police*". He thought he was taken very quickly from his house into a motor vehicle before being driven to the police station. He could not remember much about what took place in the house. His sister was there at the time. He does not know if the police conducted a search of the house.

[187] The contents of the police note to the effect that he was released from the police station with DI Nesbitt at 11.50am on 6 November was put to him to which he replied:

> "*No, don't remember walking out. I don't remember walking out with DI Nesbitt although Johnny McQuade was there, Johnny McQuade came round to talk to me. Johnny, he came round.*"

[188] Johnny McQuade was a local Unionist politician. S1 said that his brother had done work for him. He said that he had spoken to Johnny whilst he was in the police station. All he could remember was that Johnny asked him how he was. He was asked whether it was before or after he had made a statement and he initially said:

> "*No, it must have been after because Johnny left then and shortly afterwards let me go. When Johnny left and my brother, they released me after that there in the station. I don't know how many days I was there. I can't remember how many days I was there, 2 or 3.*"

He said he was released shortly after the visit. His brother came to the station along with Johnny McQuade. He recalls that Johnny and his brother visited him in a room in the police station. When pressed about when this happened he went on to say:

> "*Well it may have been a lot of hours after. I don't know how many hours it was after that but they released me. I don't know whether it was night or day I got out but they released me after that, sir*".

[189] He did not provide much clarity as to the timing of this visit other than to repeat the denial that he shot Mr Carson. He later thought that the police asked him questions after Johnny McQuade and his brother had visited or at least he said he thought so. He could not remember who he left the police station with but Johnny McQuade had left by the time he was released. He cannot remember how he got home. He was not spoken to again by the police about the murder.

[190] When questioned by Ms Quinlivan the witness again had great difficulty in remembering what happened or in answering questions with any degree of precision.

[191] In any event when asked about the visit from Mr McQuade he felt that he was released relatively shortly after that. He could not remember if any police officer was present when McQuade and his brother spoke to him. He said he could not remember any soldiers coming to his house.

[192] He confirmed his recollection was that when he returned from custody he did not notice that any of his clothes were missing nor were any clothes returned to him.

[193] He confirmed that the brother who visited him in Tennent Street was the same brother who worked in McIlhaggas.

[194] On the grounds of privilege against self-incrimination he did not answer questions concerning what it is alleged he said to Witness A about Taigs working in Batty's before the murder of Mr Carson.

[195] Overall the evidence of S1 was very unproductive. It may well be that a combination of his medical condition and the passage of time explain the vagueness of his answers. My view is that it is very difficult to place reliance on S1's evidence.

Q. The Investigation

(i) The involvement of the military at the scene

[196] Detective Sergeant Walker of the RUC prepared a report dated 17 December 1973 for the Detective Chief Inspector at Tennent Street in which he stated that the scene of Mr Carson's shooting was visited almost immediately by an Army mobile patrol consisting of two land rovers under the command of Major Moneypenny and Sergeant Major Ebbens of the 1st Queen's Regiment based at Brown Square, Belfast.

[197] Sergeant Major Ebbens made a statement to the police on 2 November 1973.

[198] Major Moneypenny provided a witness statement to the police dated 18 January 1974. He did give evidence at the inquest but indicated that he did not remember making a statement. He was prepared to accept that its content was accurate but he made it clear that he did not remember the events of the evening. The opportunity to read his statement had only partially refreshed his memory to the extent that he had a vague recollection of being at S1's house.

[199] Lance Corporal Hendry provided a witness statement to police on 18 January 1974. On his account, he arrived at the scene with a mobile patrol consisting of two land rovers. He had detailed soldiers to search the locus, to assist him with house to house enquiries and to cordon off the scene. He said that no useful information was received and that Major Moneypenny then arrived and took charge.

[200] I have discussed the contents of the statements of Sergeant Major Ebbens and Major Moneypenny in paragraphs [36] to [49] above. In the absence of any subsequent material from the soldiers either in the course of the HET inquiry or this inquest I can only assess their conduct on the basis of those statements.

[201] In my view there was inadequate cooperation and liaison between the military and the RUC at the scene. At the time the RUC would have had pre-eminence in the conduct of this murder investigation. Whilst the military did have extensive powers of search and arrest their role essentially was to support the civil authority, namely the RUC, as needed.

[202] It does not appear that there was any liaison between the police who had a special scenes of crime officer at the scene or the soldiers when they arrived. The soldiers appear to have initiated their own actions in relation to searching the area, conducting interviews and house to house enquiries. There appears to have been no sharing of information at the scene, not least the identification of S1 as a suspect.

[203] It appears that Major Moneypenny, on hearing the information provided by Sergeant Major Ebbens, decided to unilaterally visit S1's home.

[204] Before doing so the military should have liaised with the RUC who were present at the scene of the murder simultaneously with the soldiers.

[205] Having decided to visit S1's home steps should have been taken to search the route from the scene of the murder to that address, either by the RUC or the soldiers who were present at the scene.

[206] Having attended S1's home I consider that further steps should have been taken in relation to the investigation at that stage.

[207] It is clear that S1 gave a significantly different account of his recent movements than that of his sister. Both the statements from the soldiers indicate that S1's sister initially said that S1 had not been home at the time of the shooting. When S1 did come to the attention of the soldiers shortly thereafter in his sister's presence he gave an account of having been lying asleep on the settee at the time of the shooting.

[208] The statement of Major Moneypenny suggests that in fact S1 actually arrived at the house after they had spoken to his sister rather than emerging from within the house. If this is so then this would lead to further suspicion about the veracity of S1's account.

[209] The soldiers' visit was in the immediate aftermath of the murder when evidential opportunities were at their height. S1 had been named as the murderer. Sergeant Major Ebbens noted that he presented as nervous.

[210] The soldiers had the power to arrest S1 on suspicion of murder and to search his person and the premises. A search at this time was the best opportunity to establish whether or not there was a gun in the premises. It would also have provided an opportunity to seize any clothing S1 had been wearing at the time. Had S1 been arrested it would have been possible to carry out forensic tests on his person at the police station or his place of detention.

[211] If the soldiers were not minded to do this it should have been a straightforward matter to liaise with the RUC and arrange for the police to attend immediately at the premises.

[212] By failing to take any further steps at the time of having spoken to S1 evidential opportunities were lost to those investigating the murder. In addition S1 was on notice that he was a potential suspect which meant that if he was involved he had both the incentive and the opportunity to dispose of any evidential material, be it the gun or other forensic evidence that would have assisted in the investigation.

(ii) Military involvement after 1 November 1972

[213] After speaking to S1, according to his statement, Sergeant Major Ebbens went to an address connected to Witness A. His statement records that he encountered an elderly man, Ms Ross, Witness A and two other women. Witness A was asked if she could assist and she abruptly replied "No". She was asked if the name "S1" meant anything to her and she again abruptly replied "No". The Sergeant Major then records speaking to a man he identifies as Witness A's father (with the same surname as Witness A) outside the house and advising him to contact police if Witness A could help. The Sergeant Major reported this to his Company Commander and TAC HQ North Queen Street and also to a police officer who came to Brown Square prior to him attending at Tennent Street on 2 November 1973, when he made his written statement.

[214] The communication from Sergeant Major Ebbens appears to be the only contemporaneous communication between the military and the RUC after the visit to S1.

[215] In his report Detective Sergeant Walker records the following:

(i) Firstly, that upon a police report that Major Moneypenny and Sergeant Major Ebbons had interviewed S1 they were invited to Tennant Street RUC Station on 2 November 1973. The report records that while Sergeant Major Ebbons agreed to make a statement, Major Moneypenny would not. (As already explained Major Moneypenny subsequently made a statement in January 1974.)

(ii) Thereafter, Detective Sergeant McKimm sought to interview all the other members of the military patrol who visited the scene of the shooting. The report records that he made a number of requests to have the military personnel available for interview but was informed that due to the nature of their present duties it would be some considerable time before they would be at their base so that they could be seen by police in relation to this matter.

[216] The only other soldier to make a statement was Lance Corporal Hendry, on 18 January 1974.

[217] In his evidence Major Moneypenny was unable to recall why there was a delay in making his witness statement. He did not recall being asked to make soldiers who attended at the scene available for interview. Whilst Major Moneypenny found it difficult to accept that he would have refused any request from the police he simply had no memory of these events.

[218] Major Moneypenny indicated that he generally had no dealings with police. He did not tend to communicate with them directly. Instead he passed information he obtained relevant to a police investigation to the military chain of command on the assumption that it would make its way to the police.

[219] I consider that the military can be properly criticised for their failure to engage fully and cooperate with the subsequent police investigation into this murder. However, it is doubtful whether this would have resulted in any different outcome.

R. The police investigation

[220] The police attended the scene shortly after the shooting. Their actions have been discussed at paragraphs [24] to [35] of this ruling.

[221] It appears that the RUC were made aware of the fact that S1 had been named by a witness as the gunman. There is no evidence as to what, if anything, the RUC did with this information. It does not appear that any attempt was made to identify S1's address or take steps to find him on the night in question. It does not appear that the RUC were involved or consulted about the decision of Major Moneypenny and Sergeant Major Ebbens to seek out S1 and attend at his house. Later that evening after Sergeant Major Ebbens had attended at S1's house, spoken to Witness A and her father and returned to base, he says in his statement that he gave the information to a police officer who came to Brown Square. There is no note or record of the passing of this information.

[222] The inquest heard evidence from Thomas Starrett who was a detective constable at the time of the murder and had recently joined CID in Tennent Street at that time.

[223] He made a statement to the coroner on 27 January 2017.

[224] Whilst his memory of the events was vague he confirmed that he did attend at the scene and recalls that Police, SOCO and the Army were present.

[225] He confirmed that the police became aware that the Army had interviewed S1 and that "*it was pointless us trying to do anything as they were a law onto themselves*".

[226] He had a particular memory of DCI George Houston's reaction at hearing of the Army's involvement. He recalls that the DCI "*nearly hit the roof with regards to Army actions with the suspect.*" His evidence was that this probably occurred on the night of the murder when the investigation team assembled back at the police station. DCI Houston would have been the overall senior member of the team and was senior to Detective Inspector Nesbitt who was in charge of the investigation. He felt it likely that he would have completed a "*duty statement*" on the night in question – but none has been traced for the purposes of this inquest.

[227] He said he was on the periphery of this investigation and unfortunately his recollection of detail was limited.

[228] Mr Starrett could not recall who had told DCI Houston about the Army involvement or recall where that information came from. He could not recall who was present at the time, but felt that it would be normal for Detective Inspector Nesbitt to be present. He had no recollection as to whether there was any discussion about S1's

address and said that he would not have thought that they had the address at that time.

[229] Constable Stanley Preator gave similar evidence. When asked about the police having primacy in the course of the investigation, the coroner's investigator noted when she spoke to Mr Preator on 9 September 2016 that "*he said that he recalls the army just doing what they wanted when they wanted to and that they did have precedence over everything around that time.*"

[230] In the statement he made on 17 November 2016 he said of this investigation:

> "*I can't recall any specifics other than querying why the army went to the suspect's house. I am not sure what they did at the house but recall thinking they shouldn't have went (sic)*".

[231] The totality of the evidence tends to suggest that the RUC was aware of the fact that S1 had been identified by a witness on the night of 1 November.

[232] What is beyond doubt is that on 2 November 1973 the RUC was plainly aware of the identity of S1 because of the statement from Sergeant Major Ebbens of that date and also of Witness A's statement.

[233] Despite having that knowledge S1 was not arrested until the morning of 5 November 1973.

[234] This delay compounded the difficulties created by the actions of the military on the night of the shooting. At the time of his arrest S1 would have been aware he was a person of interest to those investigating the murder. Potential evidential opportunities were lost at that point and the investigation was therefore compromised.

[235] I can see no justification for the delay between the receipt of the statements from Sergeant Major Ebbens and Witness A on 2 November and the arrest of S1 on 5 November. Nor was any provided in the course of the inquest.

[236] When he was spoken to by the HET Detective Superintendent Nesbitt indicated that it was his recollection that S1 was arrested the day after the RUC became aware of S1's contact with the Army and Witness A's statement. This was clearly incorrect. It is not clear that Detective Superintendent Nesbitt was pressed on this. It is not clear if he was relying on his memory or whether he had the records of the investigation available to him at that time.

[237] An issue that arose in the course of the hearing was whether or not the police searched S1's home when he was arrested on 5 November 1973. A superintendent's search order was obtained on 5 November 1973 authorising a search of S1's premises.

[238] It is not clear from the evidence whether in fact such a search took place. Apart from the authorisation there is no note or record relating to the seizure of any items.

There is no record from Forensic Science NI that any item had been submitted to it or its predecessor for examination.

[239] In his evidence S1 said that he did not recall a search nor did he recall any items being returned to him following his release from custody.

[240] The investigation carried out by the HET records Detective Superintendent Nesbitt as having said that a search order was obtained and that S1's house was entered and searched on the day after the murder. Clearly the search, if it did take place, did not take place the day after the murder.

[241] At this stage it is difficult to come to any conclusion as to whether a search was conducted. It is difficult to place any reliance on the evidence of S1. The obtaining of the order and what Detective Superintendent Nesbitt told the HET points towards a search but the absence of any subsequent records suggest that in fact nothing was removed from the house. It may be that there was a search but that nothing was actually seized. Given the delay in the arrest of S1 it is doubtful whether anything of value would in fact have been found in the course of a search.

[242] When S1 was arrested it does not appear that his clothing was seized nor were any forensic tests carried out, although it would be extremely doubtful whether there would be any merit in this given that he was being arrested some 4 days after the murder.

[243] In terms of the interview of S1 the court can only rely on the cursory notes of the interview. It does not appear from those notes that Witness A's account was actually put to S1, nor was it put to him that he had actually been identified by a witness as the scene. It may be that this was influenced by the police's desire to protect Witness A who, according to them, had attended at Tennent Street with her father and other family members to express fear that should it be known that she named S1 she would be murdered to prevent her giving evidence.

[244] Whether Witness A or members of her family had indicated this to the police was a matter of substantial dispute in the course of this inquest.

[245] No record or note appears to have been made on this issue. There is no statement from Witness A withdrawing her previous statement. There is no note to record her attendance at the police station or that she had in fact retracted her statement.

[246] S1 ultimately did make a statement denying any involvement in the murder on 6 November 1973. However, that statement contradicted earlier accounts that he had given when questioned about the matter. Despite this he was not questioned further about these contradictions.

[247] Other than interviewing Mr Morrison, no steps were taken by the police to interview other persons who may have shed light on the truthfulness or otherwise of S1's statements. In particular no attempt was made to interview his sister about the

circumstances in which he returned home and what was said to the military witnesses who spoke to them on the night in question. No attempt was made to interview neighbours who allegedly were present when S1 came out of his home when he heard the shots and who may have corroborated his account. S1's brother was not interviewed.

[248] An unexpected feature of the evidence in this case was the disclosure by S1 in the course of his evidence that he was visited by his brother and a local Unionist politician Johnny McQuade whilst he was in police custody.

[249] It must be said that he was extremely vague about the circumstances of this visit and in particular when the visit took place. There is no record of any such visit in the limited documents relating to S1's time in custody. The next of kin are critical of those investigating the murder for permitting such a visit which they say was highly unusual and inappropriate.

[250] Of particular significance, given that this is an inquest, there is no record of the RUC having provided the original coroner who conducted the inquest with any of the material from Witness A or indeed other witnesses who mentioned Witness A's identification of S1. It thus appears that the original inquest was deprived of any information in relation to the existence of S1. Indeed, it is this failure which prompted the Attorney General to direct a further inquest.

[251] In addition to withholding this information from the coroner it appears that no advice was sought from the DPP as to what steps might be taken in relation to the potential prosecution of S1 given the original unqualified identification of S1 by Witness A.

[252] The court heard evidence from DC Elliott who clearly had been involved in this investigation and took the notes of the interview which had been conducted by DI Nesbitt.

[253] Unfortunately, like most of the witnesses in this case Mr Elliott had no express recollection of the murder or the investigation. He was a very careful witness and attempted to give precise answers to the questions he was asked.

[254] However, he simply could not give direct evidence about his recollection of the relevant events.

[255] He did express some annoyance with himself that he could not remember the incident but bridled at any attack on his colleagues, particularly DI Nesbitt. In some emotional evidence he reminded the court of the circumstances pertaining in Northern Ireland at that time and the sheer scale of terrorist activity. He recalled 10 close colleagues who had been shot dead in the course of the Troubles and the tremendous pressure everyone working in the RUC experienced.

[256] He was particularly keen to point to the considerable reputation of Mr Nesbitt and endorsed the comments in the Belfast Telegraph which were published in 2014 on

the death of Mr Nesbitt. It referred to his role in C Division, described as being *"the fulcrum of the Troubles"* and pointed out that it had the greatest concentration of sectarian killings. It was reported that in the course of his career Mr Nesbitt had investigated 311 killings and solved 250.

[257] In general terms when pressed about the circumstances of the investigation he felt it entirely plausible that Nesbitt and Chesney would have taken the decision that the threat to Witness A's life was very real if she decided to give evidence against S1. In the course of questioning by Ms Quinlivan he took the view that it was not unusual for someone such as Mr McQuade to have visited the suspect whilst in custody. He said that he remembered Johnny McQuade who was a councillor or local MP for the area at that time. He was someone respected in the local community and he recalled one occasion when Mr McQuade was able to visit a suspect and perform a useful function in liaising between the police and the local community. Whilst he did not consider that such a visit was prohibited by the Judges' Rules (which governed the interviewing of suspects at that time), he could not remember if in fact Mr McQuade had visited S1. He rejected any suggestion that the permission to grant such a visit would be motivated by any sectarian factors.

[258] In relation to the investigation generally he could not think of any reason for the delay in arresting S1 in the circumstances of this case, although this would not have been his decision.

[259] Mr Elliott confirmed that the note containing three names referred to at paragraph 51(ii) of this ruling was prepared by him. He had no recollection of the circumstances in which the note was made. Subsequent investigations did not lead to any productive evidence or material in relation to this issue.

S. Assessment of Witness A and S1

[260] A resolution of the central issues in this case depend to a large measure on the court's assessment of the evidence of witnesses A and S1.

[261] There were obvious difficulties about their evidence. Both were reluctant witnesses. In recognition of the difficulties faced by each of the witnesses the court did grant anonymity and some special measures to facilitate them giving evidence at this inquest. They were giving evidence about an incident which occurred over 40 years ago. They were both vague about important matters relevant to the inquest. S1's situation was exacerbated by his medical condition which threatened his ability to give evidence in the inquest at all.

[262] Turning firstly to Witness A. Her conduct at the time of Mr Carson's murder was truly courageous. Her instinctive reactions are an example of the best of human nature. Her only concern was for the welfare of Mr Carson of whom she was clearly very fond. She was fearless in confronting the gunman and going to the assistance of Mr Carson in truly frightening and dangerous circumstances.

[263] As to her identification of S1 I have already indicated that it was compelling. The courts are well aware of the potential frailties in purported identification, particularly in traumatic circumstances such as the shooting of Mr Carson. Whilst recognising this, the circumstances of the identification and the detailed statement made by Witness A the day after the murder is a paradigm of a reliable identification. She knew S1. She was able to refer to specific and recent conversations with him which related to Mr Carson. She called his name out at the scene and confirmed the identification to others who were there at the time. The detail of what she describes is consistent with what other witnesses observed. The final paragraph of her written statement at the time is compelling:

> "*There is no question that he is the man who shot Danny Carson. When he fired the second two shots I was only 3 to 4 yards away from him. Although it was dusk at the time I saw the side of his face clearly and I immediately recognised him. He was wearing a bottle green coloured suit jacket, but did not notice his other clothing. S1 is aged 18/19 years about 5/7 inches/8 inches. He has auburn gingery hair and straight round the back and long at the front and brushed to the side. He lives in (street only address given correctly) going from the Shankill Road.*"

[264] That she was convinced of her identification is confirmed by the evidence of Mrs Carson and Sheila Martin which I accept.

[265] When she gave evidence before the inquest Witness A presented a very different picture. She sought to distance herself from her original statement and was clear that she is no longer sure about her identification. Why the change of heart?

[266] I have come to the conclusion that Witness A became fearful for her safety shortly after she made her statement to the police and that fear has persisted to the present day. That she would be fearful is entirely understandable in my view. One has to bear in mind the circumstances of the time. She was the sole and decisive witness in relation to any prosecution against S1. She lived nearby. It was clearly widely known that she was the person who had identified S1, even at the time before any statements or evidence would have been disclosed to S1. I accept her evidence that she was indeed approached by a relative of S1 shortly after she made her statement to the police. The brutal and callous way in which Mr Carson was murdered is illustrative of the brazen and casual manner in which sectarian killers operated in Belfast at that time. The murderer acted with apparent indifference to the fact that there were many people in the vicinity at the time of shooting, confident that no one would be brave enough to point the finger at him.

[267] That Witness A's doubts were based solely on fear was very much an issue at the hearing.

[268] The starting point for the suggestion that Witness A was indeed in fear comes from the statements made by the investigating officer, DI Nesbitt to firstly the SCRT and subsequently the HET.

[269] In September 2004 DI Nesbitt is recorded as saying that:

> "*While S1 was in custody, Witness A attended in Tennent Street with her father and other family members to express their fear that should it be known she named S1 she would be murdered to prevent her giving evidence. At that time that outcome was a real possibility. There was no real witness protection scheme. After discussion with the then Divisional Commander CH Superintendent Chesney they were satisfied she would have been killed and on that basis S1 was not charged*."

[270] In her evidence Witness A denied that she attended with her father and other family members as described by DI Nesbitt. She says that this would not have been possible because her father had a stroke at that time and would not have been able to attend.

[271] The effect of her evidence was that the seeds of doubt about the identification arose because she was visited by a police officer sometime after the shooting when she was told that in fact S1 had an alibi. She was unable to say who that officer was and was vague about the circumstances in which this occurred.

[272] It is clear from the papers that S1 did not have an alibi. The police did interview the man at whose house he was working on the day in question, Mr Morrison, who gave evidence at the inquest. Whilst he did confirm that S1 did carry out work at his house in the manner described it would still have been possible for S1 to have committed the murder after completing the work and before being interviewed by the Army at his home.

[273] There is no record from the SCRT or HET inquiry of Witness A raising the issue of a potential alibi as the basis for any doubt in her mind about the identification. There are undoubtedly valid criticisms of the manner in which Detective Constable Graham approached Witness A.

[274] Nonetheless, if in fact Witness A believed that there had been an alibi for S1 I consider it likely that this is something she would have raised and would have been recorded, particularly by the HET. Nowhere in her statement to the HET does she raise this as an issue. In her statement to the HET she simply says that:

> "*I think now that I may have been mistaken that it was S1. The man was the same build as S1 but I couldn't now say 100% that it was him*."

[275] Interestingly, she did query the account in her original statement that she had known S1 for about five years. She also took issue with this when she gave evidence at the inquest. As I have said earlier this tends to contradict her assertion that she was not shown her statement.

[276] In that statement she also refers to S1 as "*being a little slow … as being a little bit slow. It would surprise me if he would be capable of the shooting*". This mirrors the suggestion by the man who approached her in the aftermath of the shooting that "*S1 is like a big child, he wouldn't have it in him to hurt anybody.*" In my view this tends to support the suggestion that it was fear for herself and her family, exemplified by the approach of S1's relative, that was the dominant feature in her change of heart.

[277] The first record of any suggestion that Witness A was under the impression that S1 had an alibi was in the letter received by the Coroners' Office on 19 December 2016. In that letter she wrote:

> "*After the police had completed their enquiries they informed me that my statement was unreliable as the person I had implicated had established an alibi which confirmed that he could not possibly have been on the Shankill Road on the date of this incident.*"

[278] In the letter she does go on to say that a short time after making her statement she was approached by a relative of S1 who told her that he knew her and all her family and that she was wrong in her statement. Unsurprisingly, she says that she was extremely concerned for her safety and the safety of her family. She went on to request anonymity because she was concerned about her safety and the safety of her children if she gave evidence at the inquest.

[279] When she gave her evidence at the inquest she indicated for the first time that the murderer was wearing a mask which was another reason for her inability to identify the gunman.

[280] Overall I formed the impression that Witness A was in fear for herself and her family after she made the statement. My impression is that since that time she has sought to distance herself from the certainty of her identification and has sought to justify this in her own mind.

[281] I am satisfied that contrary to the evidence that she gave at the inquest that she did in fact make the comments attributed to her by Mrs Carson and Ms Martin in the aftermath of the murder. Equally I am satisfied that Sergeant Major Ebbens did indeed speak to Witness A's father when he visited an address after he had spoken to S1 to see if she would be willing to identify S1 at that time. Her unwillingness to do so at that time is an indicator of the understandable concern felt by Witness A about identifying S1. These factors suggest to me that Witness A has great difficulty in facing up to the very firm identification she made at the time. The reference to the mask/balaclava being worn by the gunman at the time is I think another example of this.

[282] The next of kin challenged whether DI Nesbitt was correct in his assertion that Witness A and her family came to the police station when S1 was being interviewed expressing fear and concern about her safety. There is no note or record of this important development. Is it likely that Witness A would express these fears to the police on either 5 or 6 November in circumstances where she had attended Mr Carson's funeral on 5 November and had given the assurance to Ann Carson in the days before the funeral? The court has not had the opportunity to hear from DI Nesbitt on this fundamental point. Records relating to the investigation are scant and fall well short of what one would expect in an investigation today. This must have been a very difficult time for Witness A. She would have undoubtedly faced conflicting emotions about her desire to hold the murderer of her friend to account and the concern for her safety and the safety of her family. There was clearly much discussion about the murder in the community in which she lived in the immediate aftermath. Overall I am satisfied that Witness A and her family did express their fears to the investigating officer and that this coloured everything that was done thereafter in terms of the investigation.

[283] In this regard an analysis of what DI Nesbitt told those investigating the matter subsequently is important. His first account simply was that Witness A attended with her father and other family members to express their fear that should it be made known she named S1 she would be murdered to prevent her giving evidence.

[284] He does not say that she formally withdrew her statement. By March 2009 almost five years later he refers to a witness "retracting" her statement. It is not clear that in fact Detective Superintendent Nesbitt was saying that a withdrawal statement was made.

[285] It is clear from the outset that there was a concern about identifying Witness A. Thus she was given a cypher from the outset. Unfortunately DI Nesbitt's assertion that *"in the circumstances that existed at the time that outcome was a real possibility (ie her murder to prevent her giving evidence)"* is entirely credible.

[286] Nowhere in the papers is there any record to suggest that anyone in the RUC took the view that S1 had an alibi. Indeed it is significant that the Carson family were told by the RUC shortly after the murder that Witness A was unwilling to give evidence.

[287] In relation to the suggestion that Witness A was under the impression that S1 had an alibi it may well be that this suggestion was made to Witness A. I have no doubt that there was much conversation about the murder in the days and weeks that followed. The suggestion that S1 had an alibi may well have gained currency in the area and it may even have been reinforced by a police officer to provide some sort of comfort to Witness A.

[288] However, I could not be satisfied on the basis of her evidence that this is something that was expressly communicated to her against the background where she was willing to maintain her statement and give evidence against S1.

[289] Having heard all the evidence in the case and considered the papers I have come to the conclusion that DI Nesbitt was in fact correct when he said that the identification was never in doubt.

[290] As for S1, for obvious reasons his evidence was not particularly reliable. There are clear issues about his memory and his health. He was unwilling to answer questions which might have incriminated him.

[291] However, one matter that did arise in his evidence was the issue relating to the visit of a Unionist politician Johnny McQuade and his brother whilst he was in custody. He was extremely vague about the circumstances surrounding this visit. It was not at all clear at what point the visit took place, in particular whether it was before or after his interview, what took place at any such meeting and what was the purpose of any such meeting. On balance I accept that he did receive such a visit. However the preponderance of his evidence seems to point to that visit taking place either shortly before or at the time of his release.

T. Conclusions

[292] It should not be necessary to say so but for the record it must be stated that Daniel Carson was murdered solely because of his religion. He was a decent hardworking young man working to support his wife and growing family. He did so as the sole Catholic in a workplace where he was valued and had many friends, not least Witness A. He was not involved in anything which would warrant adverse attention by anybody. His senseless murder is a reminder of how sectarianism has disfigured our history. His family and friends have had to carry a grievous personal loss as a result, like far too many others in this jurisdiction.

[293] I turn now to the issues identified for investigation in the agreed scope of this inquest.

[294] I am satisfied that at the time of the investigation into Daniel Carson's murder there was credible and compelling evidence pointing to S1 as the person who shot the deceased, on the basis of the statement made by Witness A on 2 November 1973.

[295] I am satisfied that Witness A became unwilling to give evidence against S1 because of fear for herself and her family and that this was conveyed to the RUC in the course of the investigation. I am satisfied that she remains in fear and this is why she has resiled from her initial convincing and credible identification.

[296] There is no evidence whatsoever to suggest that S1 had any relationship with the military and/or police either prior to or subsequent to the death of the deceased. After a protracted investigation of all available intelligence, which resulted in a delay to the inquest's final conclusions, there is simply no evidence whatsoever of any relationship between S1 or anyone involved in this murder and the police or military. There was nothing relevant known by police or the military in advance of the murder in relation to S1. There is nothing known subsequently about S1 after this murder that

would be illustrative or point towards any relationship between him and said agencies. Similar inquiries were made in relation to S1's brother with similar results.

[297] It is clear from my discussion of the evidence that I am critical of both the actions of the military and the RUC in relation to the investigation of Mr Carson's death.

[298] I have been urged by the next of kin to find that the actions of which I am critical were informed by bias which was in part at least informed by sectarianism.

[299] In this regard Ms Quinlivan specifically focussed on the way in which S1 was treated in custody. She says that the conduct of the RUC in permitting a visit from Johnny McQuade and S1's brother whilst he was in custody is in marked contrast to how RUC interrogators treated Catholics who were arrested for paramilitary offences. In particular she referred me to cases such as *R v Mulholland* [2006] NICA 32(4) which involved the interrogation of a 16 year old Catholic who was detained for 2 days before making statements of admission in October 1976, to *R v Fitzpatrick* and *R v Shiels* [2004] NI 77 who were juveniles arrested and interrogated in March 1977 and April 1978, *R v Brown & Ors* [2012] NICA 14(1) which involved 4 young persons arrested between 1976 and 1979 in relation to alleged terrorist offences. In none of these cases were the young men permitted access to a solicitor, parents or other appropriate adult. She also referred me to the well-known Bennett Report in February 1979 which was critical of the failure to permit access to solicitors and relatives in "*terrorist*" type cases.

[300] She drew my attention to the recent decision by Mr Justice Maguire in the case of *McQuillan* [2017] NIQB 28 which related to an investigation by the RUC into the shooting of a young Catholic woman in Belfast in June 1972. That case involved an alleged failure to properly investigate her shooting because of the possibility that the military had been involved. In that case Maguire J was critical of the lack of rigour in the investigation and he considered whether this might be a case where, for one reason or another, there was no appetite on the part of those charged with the task to investigate. He posed the question "*might it be that it suited the authorities to project the case as simply amounting to another terrorist atrocity? Might it be that common interests between different branches of the security forces dictated that it might have been unwise to scrutinise the events of that night/morning too closely or critically?"*

[301] The circumstances of Mr Carson's death differ significantly from that of Ms McQuillan in that there is no question of "*common interests between different branches of the security forces"* dictating a less than thorough investigation.

[302] In addition to the fact that S1 was permitted a visit whilst in custody she also points to the alleged subsequent conduct of the police in informing Witness A that S1 had an alibi which was a deliberate attempt to convince her that she was an unreliable witness who had implicated an innocent man in murder. The fact that her evidence was withheld from the original inquest and from the DPP ensured that their decision-making was not scrutinised at the time.

[303] In relation to the factual matters that arise in relation to these submissions I have already indicated that I am not satisfied with Witness A's account of the alleged conversation with a detective to the effect that S1 had an alibi. As to the McQuade visit, notwithstanding the clear unreliability of S1's evidence whilst I was satisfied that Mr Quade did in fact visit S1 when he was in custody there was simply insufficient evidence to support a suggestion that this frustrated the investigation. Indeed I have concluded that it is probable that any such visit took place at or about the time S1 was being released.

[304] It is a great regret that DI Nesbitt was unable to give evidence in this inquest as he is the person uniquely placed to deal with these submissions. DC Elliott and Mr Coll on behalf of the PSNI pointed to the evidence supporting the track record of DI Nesbitt in relation to his investigations of sectarian murders in his district.

[305] I consider that there simply is an insufficient evidential basis for coming to the conclusion that DI Nesbitt's actions and those of his investigators was in some way motivated by sectarian bias.

[306] In fact the evidence available supports the contention that those involved in the investigation, including in particular DI Nesbitt, were entirely motivated by their view that Witness A was unwilling to give evidence and that in fact if she did her life and that of her family would be in danger. Sadly that was all too credible a scenario at that time. As I have already said the claims made by DI Nesbitt when he was alive to the effect that *"In the circumstances that existed at the time that outcome was a real possibility"* are entirely credible.

[307] I conclude that it was this assessment that led to S1 not being charged with Mr Carson's murder. Equally, I conclude that it is probable the reason why Witness A was apparently not identified to the coroner was to protect her identity.

[308] As is clear from what I have said I am critical of the conduct of both the MOD and the RUC for the way in which the investigation into Mr Carson's murder was conducted. I recognise that this has left a very strong sense of grievance with the next of kin of Mr Carson. In making these criticisms it must be understood that this does not mean that a conviction of S1 would necessarily have been achieved had the matter been investigated more thoroughly or properly. There is no guarantee that any forensic material would have been obtained or that S1 would have acted any differently in denying his involvement in the offence.

[309] Ultimately, it is probable that a successful prosecution in this case depended on the willingness of Witness A to give evidence at any trial.

[310] The entire approach of the RUC was clearly coloured by the assessment that Witness A would not give evidence even though *"the recognition/identification was never in doubt"*.

U. Article 2 of the ECHR

[311] Before turning to the final verdict in the matter I return to the issue that arose between the interested parties as to the extent to which Article 2 is engaged in this inquest and the impact it should have on the court's verdict.

[312] Mr Coll submits that since this is not a *"State killing"* case the inquest does not attract the obligation to carry out a *"Middleton"* inquest. He says this is so because it has not been established that there has been a breach of the State's substantive duty under Article 2 and in those circumstances it would be wrong of the court to express a finding critical of the RUC or MOD. In the context of a verdict that looks to *"how"* the deceased met his death if the wider definition of *"by what means and in what circumstances"* were to be adopted as the template for the verdict it could not be said that commentary upon the nature of the RUC and army investigation could on the evidence in this case be properly seen to go to the circumstances in which the deceased came by his death. He suggested to do so would be to enter into territory more akin to a Police Ombudsman's investigation. In the absence of any breach of the substantive Article 2 duties imposed on the RUC or the MOD he argues that comment in the verdict upon post shooting acts/omissions by them will not assist in addressing the question of *by what means* or even alternatively and more widely, *by what means and in what circumstances, did the deceased come by his death*.

[313] In response Ms Quinlivan points out that the scope of the inquest and the inquest in fact clearly looked at alleged collusive activity by the RUC and MOD. Whilst the evidence did not suggest any prior involvement by the State in Mr Carson's death she argues that the subsequent investigative failings, influenced as she submits by sectarian bias, are sufficient to require a "*Middleton"* type inquest to comply with the State's obligations under Article 2. She pithily observes that the RUC/MOD cannot *"have their cake and eat it"* in the sense that having investigated the matter they ask the court to exonerate the RUC/MOD from any criticism but then seek to preclude an examination of any scenario argued on behalf of the next of kin. In order to exonerate the RUC/MOD the coroner must investigate the allegations and as such Article 2 is fully engaged.

[314] In particular she points to the decision of the European Court of Human Rights in *Menson v United Kingdom* [2003] Inquest LR 146. That case involved an alleged failure to properly investigate a racist attack on a black male, Michael Menson.

[315] On the issue of whether Article 2 was engaged the court said that *"the absence of any direct State responsibility for the death of Michael Menson does not exclude the applicability of Article 2"*. The judgment included the following paragraphs:

> *"With reference to the facts of the instant case, the court considers that this obligation requires by implication that there should be some form of effective official investigation when there is reason to believe that an individual sustained life threatening injuries in suspicious circumstances. The investigation must be capable of establishing the cause of the injuries and the identification of those responsible with a view to their punishment. Where death results, as in Michael Menson's case,*

> *the investigation should receive even greater importance, having regard to the fact that the essential purposes of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life."*

The judgment goes on to say:

> *"Although there was no State involvement in the death of Michael Menson, the court considers that the above-mentioned basic procedural requirements apply with equal force to the conduct of an investigation into a life threatening attack on an individual regardless of whether or not death results. The court could add that, where that attack is racially motivated, it is particularly important that the investigation is pursued with vigour and impartiality, having regard to the need to assert continuously society's condemnation of racism and to maintain the confidence of minorities and the ability of the authorities to protect them from the threat of racist violence."*

[316] In this context I note the parallels between a racist attack and a sectarian murder.

[317] I have already indicated that Article 2 is engaged to the extent that the State is obliged to provide a mechanism whereby sudden/suspicious deaths can be investigated and that Rule 16 does not preclude establishing facts which point towards criminal liability. (See paragraph [100]).

[318] As to the criticisms of the RUC/MOD the court has conducted an inquiry as to whether that conduct pointed towards collusive activity on their part.

[319] Ultimately, Mr Coll QC draws a distinction between the extent of the inquiry which may range more widely than the verdict or findings of an inquest.

[320] However, it seems to me that in the circumstances of this case this is a somewhat artificial argument. If the inquest was sitting with a jury as part of the verdict the jury would have to answer questions in relation to the allegations of collusive activity which form part of the scope of the inquest. It would be entitled to do so in a narrative form but it could not avoid answering questions relating to the issues raised in the course of the evidence. In addressing this issue the jury would be making findings of fact and drawing inferences of fact which is its traditional function.

[321] Having conducted the inquest in accordance with the scope and having been invited by both parties to rule on allegations of collusive activity it seems to me that my findings on the issue should form part of the verdict.

V. The Verdict

[322] (a) The deceased was Daniel Carson of 122 Brooke Drive, Belfast.

(b) He was certified dead at 5.45pm on 1 November 1973 at the Royal Victoria Hospital, Belfast.

(c) His death was caused by a laceration of the brain due to a gunshot wound to the head.

(d) There was compelling and credible evidence that the injury sustained by the deceased was as a result of a bullet fired by a person identified as S1.

(e) There is no evidence of any State involvement in the murder of Daniel Carson or evidence of any collusive activity between State Agents and the murderer prior to or subsequent to Mr Carson's death.

(f) The investigation into the death of Daniel Carson was flawed and inadequate.

W. Particulars required by the Births and Deaths Registration (Northern Ireland) Order 1976

[323]

Name and Surname:	Daniel Joseph Carson
Sex:	Male
Date of Death:	1/11/73
Place of Death:	Royal Victoria Hospital, Grosvenor Road, Belfast
Usual Address:	122 Brooke Drive, Dunmurry
Marital Status:	Married
Date and Place of Birth:	30/1/45 at 32 Ford Street, Belfast
Occupation:	Salesman

Inquest touching the death of Daniel Carson on 1st November 1973

Provisional Rulings on Anonymity and Screening Applications

Colton J

A. Introduction

1. The inquest into the death of Daniel Carson will commence on 20th February 2017. Mr. Carson was shot dead by a lone gunman on 1st November 1973. Following the shooting, a person who witnessed the incident made a statement to police on 2nd November 1973 in which she said she recognised the gunman. She named that person in her statement. The person was arrested on 5th November 1973. He made an after caution statement in respect of the matter on 6th November 1973 and was released without charge on that day. No further action was taken against him. No one has been charged with the murder of Mr. Carson.

2. To my knowledge, the witness has never been named publicly as having made a statement identifying an individual as responsible for the shooting. Similarly, to my knowledge, the person arrested has never been named publicly in connection with the death of Mr. Carson. There was an inquest into the death in June 1974. Neither the identifying witness nor the person arrested was summoned to attend that inquest.

3. In the papers disclosed to properly interested persons for the purpose of these inquest proceedings, the identifying witness is frequently referred to as "Witness A". Where the witness's name appears, the name has been redacted and the cipher "Witness A" inserted. All references to the name of the person arrested have been redacted and he has been allocated the cipher "S1".

4. Both Witness A and S1 have applied for anonymity and screening in these inquest proceedings. S1 has been granted properly interested person status and he is represented by solicitor and counsel. They have submitted an application on his behalf. Witness A is not represented. She has set out her wish for anonymity and screening in correspondence to the Solicitor to the Coroners for Northern Ireland.

5. It will be appreciated from the brief summary above that this is an unusual case. The applications too are unusual in the context of legacy cases. The Coroner's Court has become accustomed to dealing with applications for anonymity and screening by police and military witnesses who have been involved in or associated with controversial incidents.

6. Much of the jurisprudence on the subject has developed from applications of that nature. The backdrop to such applications is the continued threat to members of the security forces in Northern Ireland. In this case, however, the applications are made on behalf of two civilians. While the same governing principles will apply to the determination of whether they are to be granted anonymity, the risk to them is likely to be qualitatively different. Unlike in the case of police or military witnesses, any risk arising to these two witnesses is likely to be entirely contingent on the evidence given at the inquest.

7. All interested parties have been issued with the material on which the applications are grounded, in suitably redacted form. They have been invited to make written submissions in response to the applications if they so wish. I

have received written submissions on behalf of the next of kin: on the application by Witness A dated 7th February 2017 and on the application by S1 dated 8th February 2017. No other submissions have been received in response to the applications.

8. When applications for anonymity and screening are made by the Crown Solicitor's Office on behalf of police and military witnesses, they are usually accompanied by a request for other measures that will ensure protection of the identity of the individuals concerned, namely: (a) the redaction of the names of the applicants from the statements and all other documents disclosed or used in the inquest and the use of ciphers; and (b) arrangements to ensure that the witnesses can enter and leave the inquest venue privately. While those additional measures are not specified in the applications, I will proceed on the basis that those measures are sought, as the grant of anonymity and/or screening would be undermined without them.

9. There are also three military witnesses whose names have been redacted in the papers. The ciphers M1, M2 and M3 have been allocated to them. M1 is a Major Moneypenny. He does not seek anonymity or screening and will attend to give evidence. M2 is deceased. M3 lives abroad. At a preliminary hearing on 31st January 2017, I invited the Crown Solicitor's Office to indicate whether any application would be advanced to protect the identity of M2. The Crown Solicitor's Office, in an email message of 9th February 2017, has said that efforts remain ongoing to seek the views of M2's family on the issue of anonymity and in the meantime request that anonymity remain in place. I will not make a provisional ruling in respect of M2 at this point in time. I have requested a comprehensive update on this matter by close of business on Tuesday 14th February 2017.

10. As regards M3, his contact details were only very recently obtained by the Coroners Service. Correspondence was issued to him on 24th January 2017. He has not yet replied to indicate his position regarding anonymity and/or screening. I do not propose to make a provisional ruling at this stage in relation to M3. I have asked the Solicitor to the Coroners to make direct contact with him by telephone or email, if possible, to ascertain his views on the matter. I will keep interested parties updated on the position and will issue a provisional ruling (if necessary) at a later juncture. For the present, the anonymity of M2 and M3 will be maintained.

11. I will deal first with the application by Witness A and then with the application by S1. I will also address the submissions that have been made in response to those applications. I do not intend to rehearse every point that has been made in the applications and in the responses. I can, however, assure the applicants and the next of kin that I have fully considered all of the material furnished to me, including the authorities cited therein.

12. I will deliver a ruling in each case. These are provisional rulings. All parties will be given the opportunity to make written submissions in response to the provisional rulings by close of business on Wednesday 15th February 2017. If

necessary, an oral hearing will be convened on Friday 17th February 2017. I will then issue final rulings. If I grant anonymity and/ or screening, I will of course keep the necessity for such measures under review in the course of the hearing.

13. The submissions of the next of kin emphasise that the starting point for consideration of these applications is the principle of open justice. They say that any departure from that principle must be clearly justified. I agree with those observations. In the submission relating to S1's application, they say that the Coroner should be alive to the question as to whether the grant of protective measures amounts to a breach of Article 10 ECHR. I confirm that I have been alive to that question when considering both applications.

14. In arriving at the rulings, I have considered the relevant authorities, with particular regard to the principles as set out by the House of Lords in *In re Officer L and others* [2007] UKHL 36 and, more recently, the observations on the notion of a "real and immediate risk" by the Northern Ireland Court of Appeal in *In the matter of an Application by C, D, H and R and others for Leave to Apply for Judicial Review* [2012] NICA 47.

B. The Application of Witness A

a. Basis of application

15. The following materials have been provided in support of Witness A's application:

    i. Letter from Witness A to the Solicitor to the Coroners dated 19th December 2016.

    ii. Medical certificate dated 14th December 2016.

    iii. Threat assessment.

    iv. PSNI Security Branch Report dated 26th January 2017.

16. Witness A states in the letter that a short time after making her statement to police in 1973 she was approached by a relative of the person she named. The relative told her that they knew her and all her family and that she was wrong in her statement. She says that she was extremely concerned for her own safety and the safety of her family. She expresses her present concerns about her own safety and the safety of her children if she is called to give evidence at the inquest.

17. The medical certificate records that she has been suffering from palpitations and high blood pressure since she was notified that she would be called to give evidence at the inquest. She has suffered from high blood pressure for many years. On the day of examination by her GP, her blood pressure was

raised and the GP regarded that as a likely result of her anxiety about having to attend court.

18. The threat assessment is as follows: "We assess that there is no NIRT [presumably, Northern Ireland related terrorist] threat to Witness A, however, we cannot rule out the possibility that if she testifies at the inquest without screening and anonymity, individuals linked to the suspect or loyalist paramilitaries could look to target her."

19. The Security Branch Report records that Local District hold no record of any past or present threats to the subject at her present home address. There is no intelligence to indicate a specific threat at this time.

20. I have also considered the contents of a statement made by Witness A to the Historical Enquiries Team in 2007. In that statement, she says that she may have been mistaken in her identification. She also refers to an incident on the Shankill Road a few weeks after the shooting. It was the first time she had been out on her own since the death of Mr. Carson. She was approached by a man whom she did not know but whom she described as the uncle of S1. The man spoke to her about S1. She got the impression that he had been watching her and waiting for a chance to speak to her. She was nervous as the man kept staring in her face as he spoke to her.

21. There is no contemporaneous record of the circumstances in which a decision was taken by police not to pursue the matter against S1. In the disclosure papers, however, there is a note of a conversation that took place on 22nd September 2004 between DI McErlane (deceased) of the PSNI Serious Crime Review Team with the then retired Detective Superintendent Nesbitt (also deceased), who was in charge of the investigation into Mr. Carson's death. The note says:

> "While S1 was in custody, Witness A attended at Tennent Street with her father and other family members to express their fear that should it be known she named S1 she would be murdered to prevent her giving evidence. In the circumstances that existed at the time that outcome

was a real possibility. There was no real witness protection scheme. After discussion with the then Divisional Commander, Ch Supt Chesney [McChesney] they were satisfied she would have been killed and on that basis S1 was not charged."

b. Submissions in response

22. The next of kin do not oppose Witness A's application. They acknowledge that Witness A will inevitably have genuine concerns about her personal safety, given the history and context of the case, if she is required to give evidence without the benefit of protective measures. They recognise that her fear may be accentuated if S1 or members of his family were to be in attendance at court. They observe that Witness A may be inhibited from giving her best evidence if she does not retain anonymity and if she is not screened, thereby impeding the inquiry into the circumstances of the death. They emphasise that it is for that reason only that they do not oppose the application.

23. They express the following caveats. First, regarding anonymity, they refer to a recent statement made by Mrs. Anne Carson, the Deceased's widow, on 3rd February 2017. In that statement, Mrs. Carson identifies a person as having confirmed to her before her husband's funeral that she had witnessed the shooting. The next of kin say that it should be confirmed that the person named is Witness A and that Witness A's cipher should be inserted. Secondly, they say that, if necessary, witnesses who know Witness A should be provided with her name by counsel for the next of kin in a manner that will not compromise Witness A's identity more widely. Thirdly, regarding screening, they say that Witness A should not be screened from the next of kin. They say that it is not necessary, as the next of kin pose no risk to the witness, and would be redundant given the next of kin's knowledge of her identity. They add that seeing the witness enables the next of kin to participate more fully in the inquest process in a manner that is consonant with their Article 2 rights.

c. Provisional ruling

24. The question of whether Article 2 is engaged in respect of Witness A is not easily resolved. The assessment reveals that there is no threat. If she testifies, the *possibility* that individuals associated with S1 or loyalist paramilitaries *could* look to target her *cannot be ruled out*. In *C, D, H and R and others*, Girvan LJ observed at paragraph [43] that the authorities "lend support to the view that a real and immediate risk points to a risk which is neither fanciful nor trivial and which is present (or in a case such as the present will be present if a particular course of action is or is not taken)". The evidence of risk in this case cannot readily be described in those terms.

25. Having said that, I am reluctant to find that Article 2 is *not* engaged solely on the basis of the anodyne terms of the risk assessment. It would be premature to make a positive ruling one way or the other. It seems to me that, in the particular context of Northern Ireland, the prospect of a witness giving evidence relating to her purported recognition of a gunman in a fatal shooting - believed to have been perpetrated on behalf of a paramilitary organisation – may conceivably give rise to a real risk to the witness's life.

26. Further, I do not believe that it is necessary for me to rule at this stage on the engagement of Article 2 in respect of Witness A. I am entirely satisfied that she is entitled to the benefit of anonymity and screening on the basis of common law fairness. In arriving at this conclusion, I would draw attention in particular to the following:

    i. The possible risks to her arising from the nature of her evidence, even it were determined that there is not a real and immediate risk to life such as to engage Article 2.

    ii. Her subjective fears for her safety, as expressed in the correspondence from her solicitor. Having regard to the nature of the case and her account of the incident in which she felt intimidated shortly after the shooting, I have no reason to doubt that her fears are genuine.

    iii. I am satisfied that the grant of anonymity and screening will help alleviate that fear and enable her to give her evidence more effectively. Conversely, I am satisfied that the refusal of either or both of those measures would heighten her fear and could impact adversely on her ability to give her best evidence.

    iv. Witness A has a documented medical condition and I accept her GP's view that attendance to give evidence without the benefit of anonymity and screening would be detrimental to her health.

    v. I am satisfied that the grant of anonymity and screening will not have an adverse impact on the effectiveness of the inquiry, on the ability of properly interested persons to participate effectively in the proceedings, or on the ability of the public to follow the evidence.

27. I confirm that I have given consideration as to whether anonymity alone would be sufficient to protect Witness A's interests. I am satisfied that screening is also necessary, particularly in view of the witness's fear, her state of health and the risk that the grant of anonymity would be deprived of its effectiveness in her case without the additional protection of screening.

28. Turning to address the caveats entered on behalf of the next of kin, first, I confirm that the statement of Anne Carson will be redacted and cipher numbers inserted in a manner that is consistent with the approach that has been adopted to all other documentation that has been disclosed for inquest

purposes. Secondly, the matter of providing Witness A's name to witnesses who already know her is a practical one that can be addressed as the hearing proceeds. I will be mindful of protecting anonymity while at the same time ensuring that witness accounts are not inhibited or artificially curtailed.

29. Finally, the Solicitor to the Coroners has contacted Witness A to clarify whether her application extends to a request for screening from the next of kin. She has indicated that she has no issue with the widow of the Deceased Anne Carson and the sister of the Deceased Sile Carson being able to see her as she gives her evidence. The order for screening will not therefore extend to screening from them.

C. The Application of S1

a. Basis of application

30. The material in support of S1's application comprises the following:

i. Letter from S1's solicitor dated 3rd February 2017 and enclosed skeleton argument for retention of anonymity.

ii. Threat assessment.

iii. PSNI Security Branch Report dated 26th January 2017.

31. In the course of preparation for the present inquest, the Coroner formerly with carriage of the case directed that a general intelligence search be conducted in respect of S1. That search produced nothing of relevance to the issues to be addressed at this inquest. In papers relating to a caution that S1 received for theft in 2010, there was a medical certificate dated 26th August 2009 indicating that S1 had mental health issues at that time.

32. In correspondence of 21st December 2016, the Solicitor to the Coroners wrote as follows to all interested parties: "The Coroner will keep under review the question of whether that certificate should be disclosed (suitably redacted), with reference to S1's application for anonymity and screening and/ or the substantive issues to be considered in the inquest." S1's application did not include medical evidence. I directed that the certificate should be disclosed to his representatives in the first instance on 8th February 2016. S1's representatives then indicated that they would place reliance on the certificate for the purpose of the application and that, while conscious of the pressure of time, they would seek an updated report. In fairness to them, they had not had sight of the certificate prior to 8th February 2017. I have directed that, if at all possible, that report should be furnished to the Solicitor to the Coroners by close of business on Wednesday 15th February 2017.

33. The threat assessment states: "We assess that there is no NIRT threat to S1, however, if he testifies in open court without screening and anonymity, and is subsequently implicated in the murder of Daniel Carson, a threat of reprisals from dissident republican (DR) groupings could develop."

34. The Security Branch Report records that Local District hold no record of any past or present threats to the subject at his present home address. There is no specific intelligence to indicate a specific threat to him at this time.

35. The skeleton argument advances three grounds in support of the application. First, while acknowledging the absence of specific intelligence to indicate a specific threat, S1's representatives submit that Article 2 is engaged. They point in particular to the terms of the threat assessment, which they argue demonstrates that the threat of Dissident Republicans is a present and continuing one. Secondly, even if Article 2 is not engaged, the common law duty of fairness requires S1 to be protected. Thirdly, reliance is placed on Article 6 ECHR. The submission refers to the possibility of the Coroner referring the matter to the Director of Public Prosecutions under section 35(3) of the Justice (Northern Ireland) Act 2002 and the possibility of an ensuing prosecution for murder. It is argued that the loss of anonymity could potentially compromise future criminal proceedings or undermine the right to a fair trial.

b. Submissions in response

36. The next of kin oppose the grant of anonymity and screening to S1. Their submissions may be summarised as follows:

i. To grant anonymity would: (a) be contrary to the requirements of open justice, (b) deprive the inquest of the element of public scrutiny that is required by Article 2 ECHR; (c) curtail the next of kin's ability to participate to the extent necessary to protect their legitimate interests.

ii. Anonymity may shield a witness from effective criticism and the witness may be more prone to giving untruthful evidence with the benefit of anonymity.

iii. Without knowing the name of S1, the next of kin are unable to make out of court investigations that might yield relevant evidence.

iv. The additional measure of screening would deprive the next of kin and the general public from evaluating the evidence.

v. Even if Article 2 were engaged (which is contested), it is questionable whether screening can be justified as a proportionate response.

vi. Article 6 ECHR is not engaged in inquest proceedings, as civil and/or criminal liability is not at issue. The mere possibility of future criminal proceedings would not justify anonymity. In any event, anonymity would only very exceptionally be granted to a defendant in a criminal trial.

vii. Article 2 is not engaged: the threat assessment identifies no existing risk and, as practice in the criminal courts demonstrates, mere identification of someone who may have been involved in a terrorist act does not *per se* engage Article 2.

viii. Even if Article 2 were engaged, an entitlement to anonymity should not automatically follow. The Coroner ought to receive evidence of other measures, such as individualised security measures, before determining what is the appropriate and proportionate response to the risk.

ix. Even if Article 2 is engaged, screening would not be a justifiable or proportionate response. The threat assessment does not address the extent to which any threat would increase where anonymity was granted but not screening.

x. In any event, there is no need to withhold S1's identity from the next of kin or to screen S1 from the next of kin.

xi. Given the disadvantages that would otherwise accrue to the next of kin, common law fairness requires S1 to give evidence without anonymity and screening.

xii. The medical evidence is of an historical nature, there is no detail concerning the nature or severity of the condition and there is no indication that giving evidence without anonymity and screening will have an adverse impact on S1's health.

xiii. Article 10 ECHR raises further issues that justify a refusal of the application.

c. Provisional ruling

37. I am not persuaded by the argument that S1 can derive an entitlement to anonymity and/ or screening in these proceedings from Article 6 ECHR. The findings of the inquest will entail no determination of civil rights or obligations or of a criminal charge. Further, I do not accept that a failure to grant anonymity in the inquest has the potential to jeopardise the fairness of any possible future criminal proceedings.

38. I am also cautious of the analogy drawn in the submission of the next of kin with a defendant facing a serious criminal charge for acts of terrorism or sectarian violence. These are *not* criminal proceedings. S1 is not and has not been charged with an offence arising from the circumstances of Mr. Carson's death. He was identified in the original statement of Witness A as the person who shot Mr. Carson. He was arrested, he made a statement denying involvement in the death and he was subsequently released without charge. He has never been named publicly in connection with the death. In a later statement in 2007, Witness A cast some doubt on the confidence of her original recognition of S1. Witness A has not given evidence. We do not know what the nature of her evidence will be. S1 is also a witness in the inquest. The public interest in revealing the identity of S1 in these inquest proceedings is clearly less compelling than in the case of a person who is charged with and is facing trial for a serious criminal offence.

39. The threat assessment does not point convincingly towards the existence of a real and immediate risk: there is no current threat, but if S1 gives evidence *and is subsequently implicated in the murder*, a threat of reprisals from dissident republicans *could* develop. As in the case of Witness A, however, it would be premature to rule that Article 2 is not engaged. I note the following observations of Girvan LJ in *C, D, H and R and others* at paragraph [46]:

> "In the context of the officers refused anonymity and screening the coroner proceeded on the basis that the risk was not at a sufficient level to engage the need for positive action under article 2. However, in each case it was recognised that there was a real possibility of the officer's personal security being undermined. This would depend on the nature of the evidence, how this would be examined in the course of the inquest and whether or not it was considered controversial. Those are all matters which would emerge over a period of time. The officers were already within the level of moderate threat. If they gave evidence without the benefit of anonymity / screening there was a possibility of a rise within the moderate band or beyond. Against that fluid and unpredictable background and in the context of an on-going terrorist campaign in which police officers very much remain as higher risk targets compared to the general population, the evidence points, in the words of Soering, to substantial grounds for believing that they faced real risks of a murderous attack. The risk could not be dismissed as fanciful, trivial or the product of a fevered imagination. What the evidence before the coroner showed is that the relevant officers were at real risk of terrorist attack. The state authorities know that the evidence, if given openly, could expose the witnesses to an increased risk, that that increase in risk could be significant and that the incalculable extent of that increase depended on what the witness might say in the course of the evidence, how controversial his evidence might be perceived to be and how he might be questioned in the course of the investigation. Arrangements for anonymity and screening will reduce and may well remove the risk of the increased

chances of a terrorist attack. These factors point to the conclusion that the coroner was in error in concluding that the need for action under article 2 did not arise. Since the need for operational action under article 2 was in play the coroner in acting as a public authority is required to address the issue of what proportionate response is required in the circumstances."

40. Those observations were of course made in respect of applications by police officers, who were by virtue of their role "higher risk targets" than the general public. That is not the case with S1. Nonetheless, the possibility of a threat to S1 developing, dependent on the evidence that may unfold at the inquest, would cause me some unease in ruling out the possible engagement of Article 2 even before any evidence has been heard in the case. The "fluid and unpredictable background" to which Girvan LJ alluded has not entirely dissipated. I am not therefore going to make a ruling at this stage on whether Article 2 is engaged.

41. My provisional ruling is that S1 should be granted anonymity and screening at common law, for the following reasons:

i. There is a clear distinction between the position of S1 and the position of a defendant facing serious criminal charges, as outlined at paragraph 38 above.

ii. The possible risk that may develop, dependent on the nature of the evidence in the case.

iii. S1's subjective fear that, should he be identified in the inquest, he would be perceived as a loyalist paramilitary gunman and that he would be at risk from republican paramilitaries. It should be noted that there is a risk that S1 will be so perceived, irrespective of the nature of any evidence that Witness A may give in these proceedings, having regard to Witness A's original statement.

iv. S1's history of mental health issues. I take this matter into account, but do not accord it significant weight in arriving at this provisional ruling given the date of the certificate. I shall revisit this matter if further medical evidence is submitted on S1's behalf.

v. I am satisfied that the grant of anonymity and screening will not have an adverse impact on the effectiveness of the inquiry, on the ability of properly interested persons to participate effectively in the proceedings, or on the ability of the public to follow the evidence. As in the case of Witness A, given the very particular circumstances of this case (see paragraph 38 above), it may be that the grant of anonymity and screening will have a positive rather than a negative impact on the witness's ability to give evidence at the inquest.

42. I would also observe that, whilst not raised in the submission on his behalf, consideration ought arguably to be given to S1's Article 8 rights. The revelation of his identity is likely to have a devastating impact on his private life. The countervailing public interest in his being named is, as I have indicated, not as compelling as in the criminal context of a person charged with and facing trial for a serious offence. I have not made the provisional ruling on this basis, but if neither Article 2 nor the common law were found to be in play, Article 8 may provide an arguable basis for protection of the identity of S1 in this case.

43. For the purpose of the provisional ruling, I grant anonymity and screening without qualification. I have, however, directed that the views of S1 be obtained regarding the next of kin being able to see him give his evidence. This matter can be revisited and can be the subject of further submissions if necessary on receipt of his response. I have considered whether the grant of anonymity without screening would suffice to protect S1's interests, but I am satisfied that there is too great a risk of him being identified from within the community. The grant of anonymity would be therefore undermined without screening. Should a final order for anonymity be made, I find it difficult to envisage circumstances in which it would be justifiable to reveal the identity of the applicant to the next of kin, unless the applicant were agreeable to that course.

44. Finally, I do not accept that the grant of anonymity will impede investigations by the next of kin that might unearth relevant evidence. The Coroners have directed extensive document searches and witness searches in preparation for this inquest, including a search of all material in possession of the police that relates to S1. Disclosure has been made of all potentially relevant material and statements obtained in the course of those exercises.

D. Summary of Provisional Rulings

45. The provisional rulings are as follows:

Witness A:	Ruling on Article 2 deferred. Anonymity and screening granted at common law. Screening ruling does not extend to Anne Carson or Sile Carson.
S1:	Ruling on Article 2 deferred. Anonymity and screening granted at common law. Extent of screening ruling to be revisited.
M2:	Ruling deferred.
M3:	Ruling deferred.

46. The rulings are provisional only. As I have noted above, written submissions are invited by close of business on Wednesday 15th February 2017. If an oral hearing is required, it will be held on Friday 17th February 2017. The Coroner will make final rulings on or before 20th February 2017. The grant of anonymity and screening will remain subject to review throughout the inquest.

10th February 2017

IN THE MATTER OF AN INQUEST INTO THE DEATH OF DANIEL CARSON

Ruling on anonymity in respect of Witness S1

[1] The court delivered its findings in this inquest on 5 day of June 2019.

[2] The verdict is set out in paragraph [322] of the written findings as follows:

> *"[322](a) The deceased was Daniel Carson of 122 Brooke Drive, Belfast.*
>
> *(b) He was certified dead at 5.45 pm on 1 November 1973 at the Royal Victoria Hospital Belfast.*
>
> *(c) His death was caused by a laceration of the brain due to a gunshot wound to the head.*
>
> *(d) There was compelling and credible evidence that the injuries sustained by the deceased was as a result of a bullet fired by a person identified as S1.*
>
> *(e) There is no evidence of any State involvement in the murder of Daniel Carson or evidence of any collusive activity between State agents and the murderer prior to or subsequent to Mr Carson's death.*
>
> *(f) The investigation into the death of Daniel Carson was flawed and inadequate."*

[3] As is apparent from the findings Mr Carson was shot dead by a lone gunman on 1 November 1973. Following the shooting, a person who witnessed the incident

made a statement to police on 2 November 1973 in which she said she recognised the gunman she named in the statement. The witness has been referred to as Witness A in the course of the inquest proceedings. The person she identified as the gunman has been referred to as S1 throughout the inquest proceedings. S1 was arrested on 5 November 1973. He made an after caution statement in respect of the matter on 6 November 1973 and was released without charge on that day. No further action was taken against him.

[4] Neither Witness A nor S1 has ever been named publicly in connection with the death of Mr Carson.

[5] Both Witness A and S1 applied for anonymity and screening in the inquest proceedings. S1 has been granted properly interested person status and was represented by a solicitor and counsel.

[6] On 10 February 2017 I delivered a written provisional ruling on the anonymity and screening applications. At Section C of the ruling I dealt with the application of S1 in the following way.

> *"C. The Application of S1*
>
> *a. Basis of application*
>
> *30. The material in support of S1's application comprises the following:*
>
> *i. Letter from S1's solicitor dated 3rd February 2017 and enclosed skeleton argument for retention of anonymity.*
>
> *ii. Threat assessment.*
>
> *iii. PSNI Security Branch Report dated 26th January 2017.*
>
> *31. In the course of preparation for the present inquest, the Coroner formerly with carriage of the case directed that a general intelligence search be conducted in respect of S1. That search produced nothing of relevance to the issues to be addressed at this inquest. In papers relating to a caution that S1 received for theft in 2010, there was a medical certificate dated 26th August 2009 indicating that S1 had mental health issues at that time.*
>
> *32. In correspondence of 21st December 2016, the Solicitor to the Coroners wrote as follows to all interested parties: "The Coroner will keep under review the question*

. *of whether that certificate should be disclosed (suitably redacted), with reference to S1's application for anonymity and screening and/or the substantive issues to be considered in the inquest." S1's application did not include medical evidence. I directed that the certificate should be disclosed to his representatives in the first instance on 8th February 2016. S1's representatives then indicated that they would place reliance on the certificate for the purpose of the application and that, while conscious of the pressure of time, they would seek an updated report. In fairness to them, they had not had sight of the certificate prior to 8th February 2017. I have directed that, if at all possible, that report should be furnished to the Solicitor to the Coroners by close of business on Wednesday 15th February 2017.*

33. The threat assessment states: "We assess that there is no NIRT threat to S1, however, if he testifies in open court without screening and anonymity, and is subsequently implicated in the murder of Daniel Carson, a threat of reprisals from dissident republican (DR) groupings could develop."

34. The Security Branch Report records that Local District hold no record of any past or present threats to the subject at his present home address. There is no specific intelligence to indicate a specific threat to him at this time.

35. The skeleton argument advances three grounds in support of the application. First, while acknowledging the absence of specific intelligence to indicate a specific threat, S1's representatives submit that Article 2 is engaged. They point in particular to the terms of the threat assessment, which they argue demonstrates that the threat of Dissident Republicans is a present and continuing one. Secondly, even if Article 2 is not engaged, the common law duty of fairness requires S1 to be protected. Thirdly, reliance is placed on Article 6 ECHR. The submission refers to the possibility of the Coroner referring the matter to the Director of Public Prosecutions under section 35(3) of the Justice (Northern Ireland) Act 2002 and the possibility of an ensuing prosecution for murder. It is argued that the loss of anonymity could potentially compromise future criminal proceedings or undermine the right to a fair trial.

b. Submissions in response

. *36. The next of kin oppose the grant of anonymity and screening to S1. Their submissions may be summarised as follows:*

i. To grant anonymity would: (a) be contrary to the requirements of open justice, (b) deprive the inquest of the element of public scrutiny that is required by Article 2 ECHR; (c) curtail the next of kin's ability to participate to the extent necessary to protect their legitimate interests.

ii. Anonymity may shield a witness from effective criticism and the witness may be more prone to giving untruthful evidence with the benefit of anonymity.

iii. Without knowing the name of S1, the next of kin are unable to make out of court investigations that might yield relevant evidence.

iv. The additional measure of screening would deprive the next of kin and the general public from evaluating the evidence.

v. Even if Article 2 were engaged (which is contested), it is questionable whether screening can be justified as a proportionate response.

vi. Article 6 ECHR is not engaged in inquest proceedings, as civil and/or criminal liability is not at issue. The mere possibility of future criminal proceedings would not justify anonymity. In any event, anonymity would only very exceptionally be granted to a defendant in a criminal trial.

vii. Article 2 is not engaged: the threat assessment identifies no existing risk and, as practice in the criminal courts demonstrates, mere identification of someone who may have been involved in a terrorist act does not per se engage Article 2.

viii. Even if Article 2 were engaged, an entitlement to anonymity should not automatically follow. The Coroner ought to receive evidence of other measures, such as individualised security measures, before determining what is the appropriate and proportionate response to the risk.

. *ix. Even if Article 2 is engaged, screening would not be a justifiable or proportionate response. The threat assessment does not address the extent to which any threat would increase where anonymity was granted but not screening.*

x. In any event, there is no need to withhold S1's identity from the next of kin or to screen S1 from the next of kin.

xi. Given the disadvantages that would otherwise accrue to the next of kin, common law fairness requires S1 to give evidence without anonymity and screening.

xii. The medical evidence is of an historical nature, there is no detail concerning the nature or severity of the condition and there is no indication that giving evidence without anonymity and screening will have an adverse impact on S1's health.

xiii. Article 10 ECHR raises further issues that justify a refusal of the application.

c. Provisional ruling

37. I am not persuaded by the argument that S1 can derive an entitlement to anonymity and/or screening in these proceedings from Article 6 ECHR. The findings of the inquest will entail no determination of civil rights or obligations or of a criminal charge. Further, I do not accept that a failure to grant anonymity in the inquest has the potential to jeopardise the fairness of any possible future criminal proceedings.

38. I am also cautious of the analogy drawn in the submission of the next of kin with a defendant facing a serious criminal charge for acts of terrorism or sectarian violence. These are not criminal proceedings. S1 is not and has not been charged with an offence arising from the circumstances of Mr. Carson's death. He was identified in the original statement of Witness A as the person who shot Mr. Carson. He was arrested, he made a statement denying involvement in the death and he was subsequently released without charge. He has never been named publicly in connection with the death. In a later statement in 2007, Witness A cast some doubt on the confidence of her original recognition of S1. Witness A has not given evidence. We do

. *not know what the nature of her evidence will be. S1 is also a witness in the inquest. The public interest in revealing the identity of S1 in these inquest proceedings is clearly less compelling than in the case of a person who is charged with and is facing trial for a serious criminal offence.*

39. The threat assessment does not point convincingly towards the existence of a real and immediate risk: there is no current threat, but if S1 gives evidence and is subsequently implicated in the murder, a threat of reprisals from dissident republicans could develop. As in the case of Witness A, however, it would be premature to rule that Article 2 is not engaged. I note the following observations of Girvan U in C, D, H and R and others at paragraph [46]:

> *'In the context of the officers refused anonymity and screening the coroner proceeded on the basis that the risk was not at a sufficient level to engage the need for positive action under article 2. However, in each case it was recognised that there was a real possibility of the officer's personal security being undermined. This would depend on the nature of the evidence, how this would be examined in the course of the inquest and whether or not it was considered controversial. Those are all matters which would emerge over a period of time. The officers were already within the level of moderate threat. If they gave evidence without the benefit of anonymity/ screening there was a possibility of a rise within the moderate band or beyond. Against that fluid and unpredictable background and in the context of an on-going terrorist campaign in which police officers very much remain as higher risk targets compared to the general population, the evidence points, in the words of Soering, to substantial grounds for believing that they faced real risks of a murderous attack. The risk could not be dismissed as fanciful, trivial or the product of a fevered imagination. What the evidence before the coroner showed is that the relevant officers were at real risk of terrorist attack. The state authorities know that the evidence, if given*

. *openly, could expose the witnesses to an increased risk, that that increase in risk could be significant and that the incalculable extent of that increase depended on what the witness might say in the course of the evidence, how controversial his evidence might be perceived to be and how he might be questioned in the course of the investigation. Arrangements for anonymity and screening will reduce and may well remove the risk of the increased chances of a terrorist attack. These factors point to the conclusion that the coroner was in error in concluding that the need for action under article 2 did not arise. Since the need for operational action under article 2 was in play the coroner in acting as a public authority is required to address the issue of what proportionate response is required in the circumstances.'*

40. Those observations were of course made in respect of applications by police officers, who were by virtue of their role "higher risk targets" than the general public. That is not the case with S1. Nonetheless, the possibility of a threat to S1 developing, dependent on the evidence that may unfold at the inquest, would cause me some unease in ruling out the possible engagement of Article 2 even before any evidence has been heard in the case. The "fluid and unpredictable background" to which Girvan LJ alluded has not entirely dissipated. I am not therefore going to make a ruling at this stage on whether Article 2 is engaged.

41. My provisional ruling is that S1 should be granted anonymity and screening at common law, for the following reasons:

i. There is a clear distinction between the position of S1 and the position of a defendant facing serious criminal charges, as outlined at paragraph 38 above.

ii. The possible risk that may develop, dependent on the nature of the evidence in the case.

iii. S1's subjective fear that, should he be identified in the inquest, he would be perceived as a loyalist paramilitary gunman and that he would be at risk from republican paramilitaries. It should be noted

. *that there is a risk that S1 will be so perceived, irrespective of the nature of any evidence that Witness A may give in these proceedings, having regard to Witness A's original statement*

iv. S1's history of mental health issues. I take this matter into account, but do not accord it significant weight in arriving at this provisional ruling given the date of the certificate. I shall revisit this matter if further medical evidence is submitted on S1's behalf.

v. I am satisfied that the grant of anonymity and screening will not have an adverse impact on the effectiveness of the inquiry, on the ability of properly interested persons to participate effectively in the proceedings, or on the ability of the public to follow the evidence. As in the case of Witness A, given the very particular circumstances of this case (see paragraph 38 above), it may be that the grant of anonymity and screening will have a positive rather than a negative impact on the witness's ability to give evidence at the inquest

42. I would also observe that, whilst not raised in the submission on his behalf, consideration ought arguably to be given to S1's Article 8 rights. The revelation of his identity is likely to have a devastating impact on his private life. The countervailing public interest in his being named is, as I have indicated, not as compelling as in the criminal context of a person charged with and facing trial for a serious offence. I have not made the provisional ruling on this basis, but if neither Article 2 nor the common law were found to be in play, Article 8 may provide an arguable basis for protection of the identity of S1 in this case.

43. For the purpose of the provisional ruling, I grant anonymity and screening without qualification. I have, however, directed that the views of S1 be obtained regarding the next of kin being able to see him give his evidence. This matter can be revisited and can be the subject of further submissions if necessary on receipt of his response. I have considered whether the grant of anonymity without screening would suffice to protect S1's interests, but I am satisfied that there is too great a risk of him being identified from within the community. The grant of anonymity would be therefore undermined without screening. Should a final order for anonymity be made, I

. *find it difficult to envisage circumstances in which it would be justifiable to reveal the identity of the applicant to the next of kin, unless the applicant were agreeable to that course.*

44. Finally, I do not accept that the grant of anonymity will impede investigations by the next of kin that might unearth relevant evidence. The Coroners have directed extensive document searches and witness searches in preparation for this inquest, including a search of all material in possession of the police that relates to S1. Disclosure has been made of all potentially relevant material and statements obtained in the course of those exercises."

[7] Subsequent to this preliminary ruling I invited written submissions on the question of anonymity and I received a further written response dated 19 February 2017 on behalf of the next of kin.

[8] In that response the representatives of the next of kin adopted and reiterated their earlier submissions, dated 7 February 2017, in respect of S1. It was submitted that, contrary to my observations at paragraph [38] of the provisional ruling, "*the analogy of the criminal proceedings is appropriate*". While accepting that the public interest in revealing S1's identify may not be as compelling as in the criminal context, it was argued that there was nonetheless a significant public interest in an open and transparent inquest process and that inquest proceedings should not be subjected to "*lesser degrees of transparency*" than in other forms of legal proceedings. It was emphasised that anonymity is not routinely granted to defendants in serious criminal cases.

[9] Prior to S1 giving his evidence I indicated that I was not persuaded to depart from my observations in paragraph [38] of the provisional rulings which drew an important and valid distinction between criminal proceedings and an inquest and also highlighted the peculiar circumstances of the witness in this inquest. I indicated that the oral evidence given by Witness A had not, in my view, rendered the case for publicly identifying S1 more compelling.

[10] Accordingly I granted anonymity to S1 and also permitted him to give his evidence screened from the public gallery. He was however visible to me, the next of kin and all the legal representatives involved in the case.

[11] On delivering the oral ruling I indicated that I would issue a final written ruling along with my findings.

[12] After delivering my findings and verdict I invited submissions from the properly interested persons on whether I should send a written report of the

circumstances of Mr Carson's death to the Director of Public Prosecutions under Section 35(3) of the Justice (Northern Ireland) Act 2002.

[13] I made a written ruling on this issue on 2 July 2019 which included the following:

> *"[4] Section 35(3) of the Justice (Northern Ireland) Act 2002 provides that:*
>
> > *'(3) Where the circumstances of any death which has been, or is being, investigated by a coroner appear to the coroner to disclose that an offence may have been committed against the law of Northern Ireland or the law of any other country or territory, the coroner must as soon as practicable send to the Director a written report of the circumstances.''*
>
> *[5] Applying the statute to the circumstances of this case, it seems to me that the circumstances of the death clearly disclose that an offence may have been committed against the law of Northern Ireland. In those circumstances the Coroner must as soon as practicable send to the Director a written report of the circumstances.*
>
> *[6] It is correct to say that this matter has been investigated by the RUC and subsequently the SCRT and the HET. As is clear from my ruling I am critical of the RUC investigation into Mr Carson's death. I am critical of the apparent failure of any of the investigating authorities in this investigation to send a report to the Director of Public Prosecutions to date. Taking all of these matters into account it seems to me that I am compelled to send to the Director a written report of the circumstances of Mr Carson's death."*

[14] Accordingly I sent to the Director the available transcript of the proceedings in the inquest together with my findings and verdicts by way of written report.

[15] In relation to the question of anonymity for S1, I invited submissions from the properly interested parties and received written submissions on behalf of the next of kin dated 16 June 2019 and 25 June 2019 and from the legal representatives of S1 on 17 June 2019.

[16] On behalf of the next of kin it was submitted that the verdict of the inquest, and in particular its conclusion at [332](d) together with the decision to make a written report to the DPP, justify a review of the decision to grant anonymity to S1 and that I should now rule that S1 is not entitled to anonymity and the order granting him anonymity should be discharged.

Final written ruling on the issue of anonymity

[17] Before coming to a final conclusion on this matter I have considered the granting of anonymity to both Witness A and S1 in the context of the overall effectiveness of the inquest itself. Both Witness A and S1 were seen and heard by me, the next of kin, the lawyers instructed in the case and were subject to questioning on behalf of properly interested persons. Anonymity in respect of military witnesses was removed.

[18] Having heard all the evidence in this inquest, including that of Witness A and S1, I am satisfied that the granting of anonymity to those witnesses did not have an adverse impact on the effectiveness or fairness of the inquest or on the ability of the properly interested persons to participate effectively in the proceedings, or on the ability of the public to follow the evidence. Indeed I consider that the granting of anonymity and screening to Witness A and S1 had a positive impact and helped these witnesses to give their best evidence at the inquest.

[19] Subsequent to my provisional rulings in relation to anonymity in respect of S1 I received expert evidence in relation to S1's health. A report from Dr Meenagh, who is an associate specialist to Dr Tareen, consultant psychiatrist, reviewed S1's medical notes and records and confirmed that he had last seen him on 8 November 2016. S1 has a working diagnosis of schizophrenia and diabetes. He was referred to the Community Mental Health Team in June 2000. He has a history of depression and extreme anxiety. A CT brain scan showed mild generalised cerebral atrophy in 2011. It was Dr Meenagh's opinion that "*S1's anxiety is normally at a level which would be intolerable to most people*". He further opined that any loss of anonymity "*will certainly shorten his life and worsen his mental state which is poor at present*".

[20] I do not propose to repeat the arguments in relation to my original ruling. I take into account the submissions that were made at that time by all the properly interested persons.

[21] The next of kin reiterate their reliance on the principle of open justice. In the context of an Article 2 inquest such as this they say accountability under Article 2 requires the identification of the person responsible for the death of Daniel Carson. In light of the verdict that there was compelling and credible evidence that the injury sustained by the deceased was as a result of a bullet fired by a person identified as S1, a review of the decision to grant S1 anonymity is justified.

[22] Before coming to the final conclusion I sought an up-to-date threat assessment in relation to S1.

[23] On 6 December 2019 I received an updated assessment from the security services and confirmation from PSNI that the threat assessment they conducted in 2017 remains valid. The updated review carried out by the security services relating to a threat level existing to S1 states:

> "S1 is currently assessed to be at LOW threat from NIRT in NI, which reflects the assessment of the threat from dissident Republican terrorist groups. The definition of LOW is 'an attack is highly unlikely'. Should anonymity be removed from S1, the threat to him, whilst in NI from dissident Republicans could potentially rise above the LOW threat band."

[24] I received further written submissions from the representatives of the next of kin in response to the updated assessment on 9 January 2020. The submissions repeated the views previously expressed and focussing on the question of Article 2 submitted that the updated documents do not assist S1 in advancing the case that his Article 2 rights are engaged in the instant case. It was argued that the evidence from the threat assessment and the PSNI amounts to no more than a statement that there is no existing risk or threat and thereafter does no more than speculate as to the possibility of such a threat in the future.

Conclusion

[25] I have come to the following conclusions in relation to the issue of anonymity for S1.

[26] There is no basis for granting anonymity under either Article 6 or Article 8 of the ECHR.

[27] In my initial ruling I indicated that it would be premature to rule that Article 2 was not engaged in respect of S1. At that stage the court had not heard evidence from Witness A nor had I reached a verdict. Whilst an inquest verdict does not establish civil or criminal liability the verdict records that "there was compelling and credible evidence that the injury sustained by the deceased was as a result of a bullet fired by a person identified as S1".

[28] In light of that finding I am satisfied, having regard to the threat assessment from the security services, that should anonymity be removed from S1 the threat to him whilst in Northern Ireland from dissident Republicans could potentially rise above the low threat band, which I interpret to mean to moderate.

[29] In those circumstances and having regard to the naked sectarian murder of Mr Carson I consider that the potential threat against S1 has been increased as a result of the findings. The assessment supports the contention that if S1 were publicly identified he could be at real risk of a terrorist attack. The threat against him in the words of Soering referred to by Girvan LJ in C, D, H and R and Others could not be dismissed as fanciful, trivial or the product of a fevered imagination.

[30] That being so, I am satisfied that the threshold for the engagement of S1's Article 2 rights is met. In the circumstances I must address the issue of what proportionate response is required.

[31] In coming to that decision I bear in mind the importance of open justice, public scrutiny to ensure accountability and the rights of the next of kin to participate meaningfully in the inquest proceedings. I consider that the granting of anonymity has not prevented an effective public inquest into Mr Carson's death in which the next of kin were able to fully participate. I consider that the granting of anonymity to S1 is a proportionate response to the threat faced by him.

[32] Even if I am wrong about this I consider that S1 is entitled to anonymity at common law. Indeed given the medical evidence that I have obtained since my original ruling the case for anonymity at common law has increased. S1 clearly suffers from significant mental health issues.

[33] I therefore consider that an anonymity order in respect of S1 is justified on common law grounds.

[34] In coming to this conclusion I consider that there is a distinction between the position of S1 and the position of a defendant facing criminal charges, for the reasons I set out in paragraph [38] of my provisional ruling. This matter has been referred to the DPP under Section 35(3) of the Justice (Northern Ireland) Act 2002. Should S1 be charged with an offence in relation to Mr Carson's murder then the context may change but that would be a matter for the criminal court seized with any prosecution.

[35] I am satisfied for the reasons given that the grant of anonymity to S1 remains justified and I make a final order that he is granted anonymity in relation to these proceedings.