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**IN THE CORONERS COURT FOR NORTHERN IRELAND**

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**IN THE MATTER OF AN INQUEST INTO THE DEATH OF  
KATHLEEN THOMPSON**

**BEFORE HER HONOUR JUDGE CRAWFORD  
SITTING AS CORONER**

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**FINDINGS**

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## **Introduction**

1. This inquest concerns the death of Kathleen Thompson who died at around midnight on the night of 5/6 November 1971 in the rear garden of her home at 129 Rathlin Drive, Derry.
2. An inquest into her death was conducted on 2 November 1972 which recorded an open verdict. On 30 August 2013 the Attorney General for Northern Ireland directed that a new inquest be held.

## **The law relating to the holding of inquests**

3. The inquest was heard by me sitting as a coroner without a jury. Having had regard to section 18 of the Coroners Act (Northern Ireland) 1959 and without objection from the parties, it was decided not to summon a jury.

### *Coroners (Practice and Procedure) Rules (Northern Ireland) 1963*

4. All inquests are limited to answering the questions mandated in Rules 15, 16 and 22 (1) of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 which provide as follows:
  - “15. The proceedings and evidence of an inquest shall be directed solely to ascertaining the following matters, namely:
    - (a) Who the deceased was;
    - (b) How, when and where the deceased came by his death;
    - (c) The particulars for the time being required by the Births and Deaths Registration (Northern Ireland) Order 1976 to be registered concerning the death.

16. Neither the coroner nor the jury shall express any opinion on questions of civil or criminal liability or on any matter other than those referred to in the last foregoing rule provided that nothing in this rule shall preclude the coroner or the jury from making a recommendation designed to prevent the recurrence of the fatalities similar to that in respect of which the inquest is being held.
  
22. (1) After hearing the evidence the coroner, or, where the inquest is held by a coroner with a jury, the jury, after hearing the summing up of the coroner shall give a verdict in writing, which verdict shall, so far as such particulars have been proved, be confined to a statement of who the deceased was, and how, when and where he died."

#### *Rule 15 Particulars*

5. The details relating to the findings required by Rule 15 can be simply stated. Kathleen Thompson was born on 28 October 1924 at Quarry Street, Derry and died on 5/6 November 1971. She was a housewife, married to Patrick Thompson and together they had six children who at the time of her death were aged between 18 and 7 years of age. Mrs Thompson was shot and fatally wounded at around midnight on 5/6 November 1971 whilst in the garden of her home at 129 Rathlin Drive, Derry. Death was due to a bullet wound to her chest.

#### **Article 2**

6. The main issue for this inquest relates to the circumstances in which the fatal shot came to be discharged.

7. An army patrol was in the vicinity of Rathlin Drive on the night of 5/6 November 1971 and a member of that patrol, Soldier D, discharged two bullets into the garden of Kathleen Thomson's home.
8. Soldier D was one of a number of soldiers from a Junior NCO ("JNCO") cadre formed within Second Royal Green Jackets who on that night were engaged in a search and arrest operation at number 58 Rathlin Drive, a property opposite to the front of Mrs Thompson's home.
9. As it is apparent that a soldier, an agent of the State, may have been responsible for firing the bullets that caused Kathleen Thompson's death Article 2 of the European Convention on Human Rights as enshrined into UK law by the Human Rights Act 1998, ('1998 Act') applies to the inquest. Whilst this death long predated the 1998 Act the timing of this inquest means that the provisions of Article 2 must be observed. Article 2 of the Convention provides:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- a . in defence of any person from unlawful violence;
- b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- c. in action lawfully taken for the purpose of quelling a riot or insurrection."

10. Article 2 has been interpreted as providing two protections. Firstly, the substantive obligation on the State to refrain from taking a person's life and secondly, the procedural obligation to establish a framework of laws, precautions, procedures and means of enforcement which will to the greatest extent practicable protect life and support the substantive obligation.
11. Consistent with the extensive authorities on this issue, it is incumbent on me as a coroner to consider the broad circumstances in which this death occurred. The "how, when and where" in Rule 15(b) has to include a broader analysis of the circumstances of the death.
12. The law and procedure under which coroners consider matters relating to these types of inquests is well established. In *Re Deery* [2017] NI Coroner 1 Colton J summarised the law in relation to the requirements of an inquiry into the broad circumstances of death at [8] and [9] in the following terms:

"[8] However as Stephens J made clear in *Re Jordan* [2014] NIQB 11 at paragraph [121]:

"An inquest which does not have the capacity to reach a verdict leading to a determination of whether the force used... was or was not justified 'would not comply with the requirement of Article 2."

[9] The abundance of case law on this point makes it clear that in considering the 'broad circumstances in which the death occurred' an inquest must be capable of leading to a determination of whether the use of lethal force was justified. This should also lead to the further consideration of whether the use of such force and the operation in which it was used were regulated, planned or controlled in such a way as to minimise to the greatest extent possible any risk to life."

## Onus and standard of proof

13. An inquest is an inquisitorial fact-finding exercise and as such there is generally no onus of proof to be discharged. However, when Article 2 is engaged there is an onus on the State to establish that the use of any lethal force is justified. In *Re Deery* Colton J detailed the approach to the burden and standard of proof at paragraph 11 when he stated:

“[11] In relation to the onus of proof in circumstances where Manus Deery was killed by an agent of the State, it is for the State to justify the force used. In relation to the standard in an inquest context any fact has to be proved to the civil standard, that is the balance of probabilities.”

14. This standard of proof was considered by the Supreme Court in the recent case of *R ( Maughan ) v Oxfordshire Senior Coroner* [2021] AC 454 in which the court cited with approval the approach in *Re H (minor) (sexual abuse: standard of proof)* [1996] AC 563 and *Re B (children) (children proceedings: standard of proof)* [2008] UK HL 35. At paragraph [99], Lord Carnwath relied on the dicta of Lady Hale in *Braganza v BP Shipping Ltd* [2015] 1 WLR 1661 at para 34, where she stated:

“Those cases make it clear that there is not a sliding scale of probability to be applied, commensurate with the seriousness of the subject matter or the consequences of the decision. The only question is whether something is more likely than not to have happened.”

15. This approach was applied by Keegan, J in *In The Matter of a Series of Deaths That Occurred in August 1971 at Ballymurphy, Belfast* [2021] NI Coroner 6.



16. The balance of probabilities simply means that upon a consideration of the evidence the court must be satisfied that it is more likely than not the event or matter in question occurred.

### **Self-defence/the use of force**

17. Section 3 of the Criminal Law Act (Northern Ireland) 1967 provides: “A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.”

18. The use of force is also governed by the common law defence of self-defence. In *Beckford v The Queen* [1988] AC 130 Lord Griffith said:

“...the test to be applied for self-defence is that a person may use such force as is reasonable in the circumstances as he honestly believes them to be in defence of himself or others.”

19. McFarland J, when he was the Recorder of Belfast, detailed the approach that must be adopted in any consideration of this issue in *Re Brown* [2018] NI Coroner 3. At paragraphs [143] to [147] he stated:

“[143] Article 2 of the European Convention on Human Rights has been considered on a number of occasions by the domestic and European courts in the context of self-defence or defence of another. A number of those authorities were concerned with agents of the State employing lethal force, using weapons.

[144] The law permits an individual to use force, including the use of a weapon, when they honestly believe that it is necessary to do so to defend

himself or herself or another. The level of force used in such circumstances must be no more than is absolutely necessary.

[145] One of the most recent considerations of this issue in the European Court of Human Rights was in *Da Silva v UK* (2016) ECHR 314. At [248] it stated: “It can therefore be elicited from the court’s case law that... the principal question to be addressed is whether the person had an honest and genuine belief that the use of force was necessary.”

[146] The first question I must ask myself is whether the soldier who fired the fatal shot held an honest belief that it was necessary to use force. The second question I must ask myself is whether the level of force used by that soldier was no more than was absolutely necessary for the achievement of one or more of the purposes set out in Article 2 (2) (a) – in defence of any person from unlawful violence.

[147] When considering these questions, I must take into account the fact that the individual involved was a trained soldier, rather than, for example, an untrained civilian (see *Bennett v UK* [2010] EHRR at (57)).”

McFarland HHJ continued at paragraph [149]:

[149]The jurisprudence makes it clear that the focus is on the subjective belief of the individual, in this case a soldier. Whilst the reasonableness of their actions can inform the decision maker’s judgement on whether or not they held the honest belief that the use of force was necessary, it does not determine the answer. It is clear from the relevant jurisprudence that it is not an objective test.”

20. In *Re Jordan* [2016] NI Coroner 1 the test to be applied, including the officer’s training and experience and the proportionality of the force employed, was

considered by Horner J in the context of a shooting by a police officer Sergeant A:

“[187] Accordingly, the task for this inquest in conducting an Article 2 compliant inquest must be to ask whether Sergeant A had an honest and genuine belief that it was necessary for him to open fire. Whether that belief was subjectively reasonable, having regard to the circumstances pertaining at the time, is relevant to the question of whether it was honestly held. I should not examine A’s belief from the position of a detached observer but from a subjective position consistent with the circumstances in which he found himself and which will necessarily also involve taking into account his training, experience and his knowledge and awareness of the RUC Code of Conduct. I have to consider whether his decision to open fire was “absolutely necessary.” To put it another way, whether in all the circumstances it was proportionate, that is “reasonable, having regard to what the person honestly and genuinely believed”.”

21. Both McFarland J and Horner J cited *Da Silva* in which the Grand Chamber considered the UK law on self-defence and its consistency with the Article 2 threshold of absolute necessity. At paragraph 258 the court observed:

“Once that question [i.e. The subjective belief in force] has been addressed, the domestic authorities have to ask whether the force used was “absolutely necessary”. This question is essentially one of proportionality, which requires the authority to again address the question of reasonableness: that is, whether the degree of force used was reasonable, having regard to what the person honestly and genuinely believed.”

22. In short, the test of reasonable force was assessed to be consistent with the test of force being absolutely necessary.

23. An honest and genuine belief includes a mistaken belief: *R (Duggan) v North London Assistant Deputy Coroner* [2017] EWCA Civ 142.
24. I will follow the approach of Horner J and McFarland J set out above and discern no material difference between them. It follows that that I must first assess the subjective belief of the person using the fatal force. That is an entirely subjective assessment. Whether the belief was reasonable is relevant to whether it was honestly held. I then have to assess whether the use of force was objectively reasonable in the circumstances as the person honestly believed them to be.

### **Organisational requirements**

25. In *Manus Deery's Inquest* [2017] NI Coroner 1 Colton J summarised requirements of an inquiry into the broad circumstances of a death:

“[9] The abundance of case law on this point makes it clear that in considering “the broad circumstances in which the death occurred” an inquest must be capable of leading to a determination of whether the use of lethal force was justified. **This should also lead to the further consideration of whether the use of such force and the operation in which it was used were regulated, planned or controlled in such a way as to minimise to the greatest extent possible any risk to life.**”

[emphasis added]

### **Rules of engagement: The Yellow Card**

26. Army personnel in Northern Ireland were issued with a set of instructions on the circumstances in which it would be appropriate to open fire entitled “Instructions by the Director of Operations for Opening Fire in Northern Ireland”. These instructions are commonly referred to as the “Yellow Card”

and were for the guidance of soldiers operating collectively and individually. The terms of the guidance changed over the years. The version that applied at the material time included the following:

*“General Rules 2 “Never use more force than the minimum necessary to enable you to carry out your duties.”*

*3 Always first try to handle a situation by other means than opening fire. If you have to fire*

*(a) Fire only aimed shots.*

*(b) Do not fire more rounds than are absolutely necessary to achieve your aim.*

*(6) A warning should be given before you open fire. The only circumstances in which you may open fire without giving warning are described in paragraphs 13 and 14 below.*

*You may fire without warning*

*(13) either when hostile fire is taking place in your area, and a warning is impracticable, or when any delay could lead to death or serious injury to people whom it is your duty to protect or to yourself; and then only:*

*Against a person using a firearm against members of the security forces or people whom it is your duty to protect or*

*Against a person carrying a firearm if you have reason to think he is about to use it for offensive purposes.”*

27. It must be remembered that the Yellow Card contained guidance which was general in nature and was not prescriptive. Any consideration of the use of force is an intensely fact specific exercise. Nonetheless, the issue as to whether

there was adherence to the guidance is germane to the question of justification. Firing otherwise than in accordance with the Yellow Card may tend to suggest that the use of force was not justified. Similarly, firing in accordance with the Yellow Card may tend to suggest that the use of force was justified. Again, the final analysis is fact specific.

### **Effect of the passage of time**

28. Fifty years have elapsed since the events occurred which form the subject of this inquisitorial process. The effects of the passage of time on memory were addressed in detail by Horner J in *Re Jordan* [2016] NI Coroner 1. At paragraphs [76]- [79] he stated:

“[76] It is well recognised that delay of itself can cause injustice. This is because human recollection is fallible and it becomes, in general, more unreliable with the passage of time. This has been remarked upon in countless judgements. Any reasonable person knows that the separate recollections given today of an incident 25 years ago by two observers, no matter how vivid the happening, are likely to be very different. Further, these recollections are likely to be very different from any recorded at the time. It is a universal truth recognised by many authors from Proust to Friel. I commented upon this in *McKee (Michael) v The Sisters of Nazareth* [2015] NI QB 93 at paragraph [8].

[77] In *R v John Robinson* [1984] 4 NIJB MacDermott J said at paragraph 15:

“In this respect the accused’s evidence is clearly wrong and I ask why this is so. Is he lying or his recall faulty? The shooting incident occupied a time space that could better be measured in seconds rather than minutes and events were occurring much more quickly than it takes to describe them. It was a period of high tension and, he believed, high danger for the accused. Some people have

the gift of total recall of events lasting long periods – others can get mixed up as to the events which were over in seconds. This is not a personal reflection – it was confirmed by the evidence of Mr Patton, consultant psychologist. Having observed the accused and sought to assess his credibility quite objectively I am satisfied that his recall in relation to this part of the incident is and will remain distorted and that he is not lying or seeking to conceal something from me.”

[78] The problems with memory are compounded by delay. The law has long recognised this. Girvan LJ discussed the problem in *R v JW* [2013] NICA 6 in the context of historical sexual abuse. He said:

“[14] What has been said in the context of the prejudice created by delay in the context of civil litigation applies with even greater force in the context of criminal proceedings for the outcome of criminal proceedings may subject the defendant to potentially severe penal consequences and to extensive damage to his private life and reputation. In *Birkett v James* [1978] AC 297 in the context of a civil case of alleged want of prosecution Lord Salmon said:

‘When cases (as they often do) depend predominantly on the recollection of witnesses, delay can be most prejudicial to defendants and to the plaintiff also. Witness’ recollections grow dim with the passage of time and the evidence of honest men differs sharply on the relevant facts. In some cases it is impossible for justice to be done because of the extreme difficulty in deciding which version of the facts is to be preferred...Delay of its very nature increases the risk of injustice occurring. This is a point which any summing up should bring home to the jury so that they sufficiently appreciate the point....’

[79] In this inquest nearly 25 years have passed since the events which are under detailed consideration took place. The passage of such a period of time

is bound to have affected the recollections of those who witnessed and participated in the events of that fateful day 25 November 1992. Some witnesses may have deliberately tried to erase these terrible events from their memory. Some may, whether consciously or subconsciously, be simply remembering the statements they gave after the event and/or their testimony to the original inquest in 1995 and/or the 2012 inquest. It is important that I recognise the weaknesses and difficulties that face any witness trying to recall accurately what happened a quarter of a century ago, a length of time greater than the period between the ending of the First World War and the commencement of the Second World War. It is not possible to over-estimate the difficulty in relying on sworn testimony in a search for the truth at a remove of 25 years from the event to which it relates.”

29. The vagaries of human memory affected by the passage of time were summarised by McFarland HHJ in *Re Brown* at paragraph [18] and I respectfully adopt what he says:

“I appreciate the difficulty the witnesses would have had trying to remember details about what had happened about 45 years ago. Some may have put it out of their mind, others may have been constantly reminded of the event and find it difficult to put out of their mind. For those who have relived the event, memories could have become distorted to fit into a perception of what they believe happened or should have happened or what others have told them had happened or should have happened. Crown Court judges are required to warn juries when assessing circumstantial evidence to be alert to the tendency of the human mind to look for (and often to slightly distort) facts in order to establish a proposition, so also should a tribunal of fact be alert to genuine witnesses having distorted memories (whether remembering or forgetting things) that fit into their perception of what they believe happened. The gap of 45 years in no way assist the witnesses or anyone attempting to assess their



evidence.”

30. In conducting the process of evaluating the evidence in this case from all factual witnesses I have applied the observations above.

### **Conduct of the Inquest**

31. I heard evidence on 5, 6, 7, 8, 9 March 2018 and 7 June 2018. On the latter date evidence was given by Matthew Lewsley, Head of Inquest, Judicial Reviews and Public Inquiries in the Ministry of Defence (MoD). It became apparent that avenues of investigation had not been explored in order to identify potential witnesses including three ciphered soldiers known as A, B and C who alongside Soldier D made statements to the Royal Military Police in the aftermath of Kathleen Thompson’s death. The inquest was adjourned to facilitate such further enquiries which proved to be extremely time consuming due to the discovery of voluminous MoD records together with the disclosure in February 2020 of a “promotions letter” of 29 December 1971. This letter provided information relevant to the potential identification of the JNCO cadre involved in the search and arrest operation on 5/6 November 1971. I am grateful to all who were involved in this arduous process.
32. The inquest reconvened on 15 February 2021 and evidence was heard on that date and on 16 and 17 and the 24-26 February. A further three days of evidence was heard on 21-23 June 2021. The hearings convened in the course of last year were hybrid in nature with the use of a live TV link to safeguard against the ongoing coronavirus pandemic. With considerable effort on the part of the Coroner’s Service and legal representatives each witness giving evidence remotely was able to access court documents. The witnesses and others attending by this remote means were able to participate fully in the proceedings.

33. In the course of the inquest, I issued rulings which granted anonymity to many of the former military witnesses, and which permitted evidence to be given remotely as outlined. I do not propose to rehearse these rulings.
34. In September 2021 I received written submissions from the properly interested persons, the next of kin, the Ministry of Defence and a soldier, KTM 72. I had the benefit of oral submissions on 15 September 2021. I will not rehearse these but have taken all of the written and oral submissions into account.
35. It is important to acknowledge and thank all witnesses who gave evidence and to acknowledge the difficulties inherent in the process of seeking to recall an event that occurred nearly 50 years ago, and the painful memories involved. I am very grateful to Angela Lloyd-Stevens solicitor, Ian Skelt QC, his predecessor Gerry McAlinden QC<sup>1</sup> and Ms Laura McMahon of counsel who assisted me so very ably in this matter. Similarly, Ms Karen Quinlivan QC and Andrew Moriarty instructed by Madden and Finucane solicitors on behalf of the next of kin, Mr Donal Lunny QC and his predecessor Mr Kevin Rooney QC<sup>2</sup> and Mr Andrew McGuinness who appeared for the Ministry of Defence instructed by the Crown Solicitor's office and Mr Joseph Aiken QC instructed by Devonshire solicitors who appeared for KTM 72.

### **The Location**

36. The location was inspected, photographed and reported upon by Brian Murphy of TBM consulting engineers in 2017 on the instructions of the Coroner's Office. Mr Murphy's detailed and helpful description of the area is not the subject of dispute. 129 Rathlin Drive forms part of an estate of houses

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<sup>1</sup> Now Mr Justice McAlinden.

<sup>2</sup> Now Mr Justice Rooney.

within the Creggan area of Derry. It is an end of terrace house located at the corner of Rathlin Drive and Southway. Southway descends in a north to south direction between High Park to the north and the Letterkenny Road to the south. Rathlin Drive is one of a network of residential streets which adjoin Southway including Rathowen Park and High Park. Directly opposite to the side of 129 Rathlin Drive, on the western side of Southway, there is a large open area of grass (the grass area) which extends north/south between the Letterkenny Road and High Park. The former children's home, Termonbacca, is located at the southern end of this area.

37. The road layout, the houses on Rathlin Drive, Southway and High Park and the grass area have not significantly altered since 1971, although some planting has changed on the latter.
38. The front of the property at 129 Rathlin Drive faces towards and is almost opposite to number 58 Rathlin Drive, the property which was the subject of the search and arrest operation conducted by the Second Royal Green Jackets on 5/6 November 1971. There is a garden to the rear and to the side of number 129 Rathlin Drive which is bounded by a retaining wall on top of which is erected a close boarded wooden fence. The garden is adjacent to Southway and is substantially above the height of the footpath on Southway which runs alongside the outside of the garden retaining wall. There is a rear gate from the garden to a pedestrian alleyway which leads in one direction towards Southway and in the other along the rear of the properties on Rathlin Drive from which access can be gained at various points to Rathlin Drive and to other streets in the area.
39. Photographs and maps prepared in the course of the original inquest investigation by the RUC were produced. I also received a photograph of the rear of the property taken by an unknown photographer for the Derry Journal which reported on the death in 1971. The photograph appeared in an edition

of the Derry Journal dated 9 November 1971. These photographs show that there was an extension on the side of the house which had a door facing onto Southway. In 1971 this was the front door of 129 Rathlin Drive.

40. The photograph taken by the Derry Journal shows part of the garden, the surface of which was concrete, there was a dust bin located within this area as well as a moped type scooter positioned against the fence. The RUC photographs show a wider view of the garden including an area of lawn that extended from the concrete area to the rear gate. These photographs also show a view of the gable wall and in particular what might be bullet strike marks in this exterior wall of the house as well as a view of the side of the house and the fence from the opposite or Western side of Southway.
41. The deposition to the original inquest of Mrs Thompson's husband, Patrick Thompson, described the layout of his garden:

"The soil in my garden is filled up inside nearly level with the wall the whole way. A wooden fence starts on top of the wall starting about opposite my front door and running down Southway. It is about 6 (ft) to 8 (ft) high. The fence is of 6 (inches) wide by  $\frac{3}{4}$  (inches) thick of vertical boards screwed to cement posts and wooden runners. There is a gap of about 1 (inch) to  $1\frac{1}{2}$  (inches) wide between each board. There is no break in the fence. It would not be possible for a normal person to see over this fence without standing on something."

42. Various alterations have taken place at 129 Rathlin Drive, which I will return to at a later point. Surprisingly, however, given the substantial passage of time relatively little has changed.

## **Prevailing events and circumstances in Northern Ireland in 1971**

43. Many areas in Derry and elsewhere in Northern Ireland were so called “no-go” areas for soldiers. The Creggan Estate was one of the most contentious areas of Derry.
44. The authors of the well-known and respected publication “Lost Lives” say that 1971 “saw a major escalation of violence, with the death rate rising steeply following the introduction of internment in August,” something they described as a “desperate measure which, far from reducing violence, created a huge rise in both deaths and general unrest”. There were some 180 people killed in 1971 detailed in Lost Lives as including 94 civilians, 44 soldiers and 26 paramilitaries.

## **Contemporaneous Investigations into the death of Kathleen Thompson**

### *Post Mortem examination*

45. The opinion of Dr Leslie Press Assistant State Pathologist who performed the post mortem reads:

“Death was due to a bullet wound of the chest. The bullet had entered the top of the left shoulder, had fractured the left collar bone and grazed the left shoulder blade before entering the top of the left chest cavity. It had then passed through the upper part of the left lung, lacerated the air passages and the oesophagus and passed through the lower part of the right lung before leaving the body through the right side of the chest. Its target through the body was from left to right with an inclination downwards of about 45 (degrees) to the horizontal plane but no deviation forwards or backwards. The injuries to the lungs and air passages would have caused her rapid death. The character of the entrance wound and the degree of penetration are

consistent with a bullet of high velocity fired at greater than close range. If she were erect when the shot was fired then the bullet must have come from above and to her left. The report of the forensic science laboratory shows that at the time of her death there was no alcohol in the body.”

The report details the clothing removed from Mrs Thompson’s body at the post mortem examination. She was dressed in indoor clothes, a skirt, sweater, cardigan and slippers; “1. Brown cardigan with a hole, 9 mm diameter, on top of the left shoulder, and another, 13mm in diameter in the right side. 2. Pink polo-necked sweater with a hole in the left shoulder and another in the right. 3. White slip with a hole in the right side. 4. Cotton vest with a hole in the right side. 5. Bluish tweed skirt. 6. Pair of tights. 7. Pair of blue cotton pants. 8. Black rubber roll on. 9. Bedroom slippers.”

46. There are no reports of any tests being carried out on the clothes or evidence of gunshot residue being found.

#### *RUC investigation*

47. The police report on the investigation into the death of Mrs Thompson prepared by Detective Sergeant Robert Ruddell is dated 10 November 1971. Detective Sgt Ruddell’s statement and report, which was admitted under Rule 17, was largely based on the pathology findings and statements taken by an investigator in the Royal Military Police (“RMP”) on 6 November 1971 from soldiers who formed part of the army operation at Rathlin Drive. The soldiers were given the ciphers A, B, C and D. The police report relates information which appears to have been obtained from the statement of Soldier B as to the actual deployment of soldiers during the operation. A map which accompanies the report is marked with the letter B to denote the location from which Soldier D fired shots into the deceased’s garden. The statement taken from Soldier D does not append this or any other map on which his location

was marked. Soldier D told this inquest that no map was produced in the course of his RMP interview.

48. There is no evidence that Soldier D's gun was seized and tested following the shooting into Mrs Thompson's back garden. There is no evidence of any other forensic investigations having been undertaken.

#### *RMP*

49. The circumstances in which Soldiers A to D made their statements and the content of those statements were the subject of considerable scrutiny in the course of this inquest. In 1971, on foot of an agreement between the RUC and the army, all responsibility for statement taking from military witnesses involved in events the subject of a police investigation was transferred to the RMP. This RUC/RMP agreement was abolished by the Director of Public Prosecutions, ("DPP"), in 1972. It was the subject of criticism by the Lord Chief Justice, Lord Lowry in 1970. In 2003 in the course of consideration of an application for judicial review, (*Re Marie-Louise Thompson's application for judicial review* [2003] NIQB 80) Kerr J, in levelling criticism as to the deficiencies of the investigation conducted into Kathleen Thompson's death stated in relation to the interview of Soldier D by the RMP:

"I do not consider that this satisfied the duty imposed on the police at the time to properly investigate this fatal shooting. In my view it was not open to them to delegate that critical responsibility to another agency such as the Royal military police".

50. This RUC/RMP agreement has been the subject of repeated judicial censure including that of Girvan J in a second application for judicial review brought by the family of the deceased ([2004] NIQB 62). Not only was this

arrangement deprecated, but both Kerr J and Girvan J were highly critical of the investigations which were undertaken by the RMP with Kerr J stating:

“...the fact that each of the interviews cannot have lasted any more than half an hour; the fact that clear discrepancies appear in the statements made, discrepancies which have not been the subject of further challenge or investigation, are sufficient to demonstrate the inadequacy of the investigation into the death of the deceased. I am satisfied that in 1971 one of the procedural safeguards which was necessary to vindicate, and which underpinned the substantive right under article 2 of the European Convention on Human Rights was that there be an effective investigation. By any standard it is clear that the investigation into the death of Mrs Thompson was not effective. Even allowing for the constraints that might have obtained at the time and the difficulty in visiting the locus where the shooting happened, I am satisfied that a more rigorous examination than in fact took place ought to have occurred. It is therefore clearly demonstrated by the applicant that this investigation was not adequate.”

#### **Military involvement in Rathlin Drive area on 5/6 November 1971 and contemporaneous records**

51. It is not in dispute that there was an army patrol in the vicinity of Rathlin Drive as detailed above and that two shots were discharged by Soldier D into the rear garden of 129 Rathlin Drive.
52. The log entries in respect of this operation are very limited. The headquarters Northern Ireland log contains an entry at 0030 hours on 6 November 1971 of a report that the arrest operation in Creggan was unsuccessful - “fire exchanged, details to follow.” A further entry at 0110 hours contains a report “at 0025 as a result of the operation in the Creggan area 6/10 shots from area of Rathlin DR. 8 X 7.62 rds returned. At 0030 4



shots at Mex garage from Rathlin Drive area. 3 x 7.62 returned”.

53. The SITREP (situation report) for the 24 hour period from 4am on 5 November 1971 to 4am on 6 November 1971 states, “After arrest op in South Creggan there was much activity in Creggan and Bogside which continued until 0330 hours... There were several shooting incidents. At 0115 an ambulance went to Kildrum Gardens and collected a woman who was taken to Altnagelvin Hospital and was dead on arrival from GSW. She was Mrs Kathleen Thompson of 159 [sic] Rathlin Drive... Shooting incidents...Shots were fired at the TPS withdrawing from the arrest op. 8 rounds were returned...”
54. The MoD submit that this contemporaneous documentation indicates that troops withdrawing from the operation were fired upon and that fire was returned. Further, that gun men were present and active in the immediate and more general area.
55. The source of the information recorded in the SITREP is unknown, however, it is noteworthy that the only other record of soldiers having been fired upon in the course of this operation are the statements taken from the ciphered soldiers to which I will turn shortly.

### **Evidence: Introduction**

56. I heard evidence from Mrs Thompson’s daughter, Marie-Louise (Minty) Thompson and her son David Thompson as well as two neighbours, William Beales and Eamon McGlinchey. A substantial number of military witnesses gave evidence, the majority of whom were members of the JNCO cadre involved in the operation including Soldier D. Soldier D was recalled on the 23 June 2021 and was the last witness to the inquest. I permitted his recall within certain confined parameters given he had previously provided

evidence over three days on the 6, 7 and 8 March 2018. I considered that his recall was warranted given the considerable number of soldiers who had been traced subsequent to him giving evidence, some of whom raised issues regarding him and his evidence.

57. As outlined, I heard from Matthew Lewsley of the MoD regarding the tracing of former soldiers. I had the benefit of expert pathology evidence from Professor Jack Crane and Dr Russell James Delaney, expert ballistics evidence from Ann Kiernan, instructed by the Coroner's Service, Philip Boyce on behalf of the MoD and Mark Mastaglio instructed by the next of kin as well as evidence from Brian Murphy, engineer, of TBM consulting.
58. In addition to the file from the original inquest I received various records from the Historical Enquiries Team regarding their investigation into Mrs Thompson's death in the course of which they interviewed Soldier D in 2010 and photographed the scene in October 2009.
59. I received evidence under Rule 17 and the common law in respect of witnesses now deceased.

## **Civilian evidence**

### *Evidence of the Thompson family*

#### *Deposition of Patrick Thompson*

60. Mrs Thompson's husband, Patrick Thompson gave evidence to the original inquest. I will address this evidence before turning to the oral evidence I heard from two of his children. He provided a detailed account of his last evening with his wife. He returned home at around 11.15pm and joined his wife and their children David, aged 18 and Minty aged 11 to watch a film.

Around midnight Minty looked out of the living room window that overlooks Rathlin Drive towards the McGlinchey house and saw soldiers at that house. On hearing that the army was present Mrs Thompson went out through the kitchen towards the back garden. He heard her shout "Myra, Myra", calling a neighbour who lived nearby at number 53 Southway. Minty then ran to the front porch which faced on to Southway and switched on a wall light on the porch. Mr Thompson ran out and told her to put out the light and to get down on the ground. At this time, he saw soldiers running down the middle of Southway. The soldiers were in two groups of about ten in each group. He heard a whistle being sounded. There were no other people, apart from the soldiers, on Southway. He could not see very far across Rathlin Drive. He heard no commotion there. He took Minty back into the house as the soldiers were passing. He then ran out through the back door but "the garden was saturated with CS gas". He returned to the house and told Minty to close the doors and windows. He heard no shooting at this time. He looked out through a glass panel at his front door. The streetlight outside the house was off but a streetlight was on near to McGlinchey's house and with the aid of this light and other lights further away up near High Park he saw a crowd of about 20 to 30 people on the street opposite the junction of Rathlin Drive and Southway. They were just standing about. He saw CS gas fired from Southway. He could hear "the odd bang" from down near the barricade at Southway that he didn't pay attention to.

61. He walked down Southway about ten yards and spoke to a Mrs Houston, a neighbour, to ask if she had seen his wife. He sent his daughter Minty to ask if Eamon McGlinchey had seen her. He described "quite a large crowd in the street" around him at this stage. There was also a crowd further down Southway near the barricade. He heard four or five shots being fired, which were not rubber bullets or CS gas being fired but "sounded sharper".
62. On hearing these sharper sounding shots, he got Minty to go back into the

porch. He stood up on his garden wall and when he happened to look over his fence, he saw his wife lying on the ground just inside the fence and close to the moped cycle. He described her position as follows:

“My wife was lying on her back with her head towards Rathlin Drive and her feet down Southway direction. Her hands were up about level with her shoulders. I could see blood about her eyes and face. I called to her but she didn’t answer ...I have an old moped lying in the garden against the fence in a corner. If a person stood on this they could see over the fence and be exposed from the other side from the chest up. My wife was not tall could have been exposed from just below the shoulders if she stood on it” (sic).

63. Mr Thompson described that there is a refuge bin in the garden near where “she was shot”. He was doubtful if there was a lid for the bin. There was a garden rake in this area too.

*Marie-Louise “Minty” Thompson*

64. At just 11 years of age Minty Thompson did not give evidence to the 1971 inquest. She described that on the night of 5 November 1971, after 11pm on hearing a noise outside she opened the living room curtains and saw four or five soldiers moving towards the McGlinchey family’s house. She had a good view as the soldiers were lit by a streetlamp outside the McGlinchey House.
65. She believed her mother and David went out the back door within minutes of her seeing the soldiers. She was with her father at the front porch looking onto Southway. She saw the soldiers retreat down Southway on the opposite side of the road between the footpath and the grass. The soldiers were walking rapidly, but not running. She thought that some of the soldiers were facing back up towards Southway as they retreated. A crowd had gathered by the time that the soldiers retreated.

66. There was a commotion and other people started to come into the area. She did not hear shots fired. She stated that the place was saturated with gas.
67. She went in search of her mother at the McGlinchey's home. Her father found her in the garden at the top of the backyard.
68. Ms Thompson believes her mother went into the backyard that night to alert others that the Army was raiding a family home, perhaps by banging a dustbin lid although she had never heard her mother do this before. She does not remember hearing bin lids being banged.
69. Having seen pictures of the garden at the time of the death, she remembered there being a moped in the back garden.
70. There was no outside light at the back of the house to illuminate the garden. Nor was there any streetlight that shone into the back garden. Any light in the garden would have been from the house. There was a light inside the porch which had a window facing Southway. Ms Thompson stated that this porch light was on and confirmed that this was the light that her father told her to switch off.
71. She stated that the army had no dealings with her family prior to this night. Her mother was a well-respected lady and a member of the Women's Action Committee. She was a devoted mother. She described how their lives were changed forever saying "although life went on nothing was the same."

*David Thompson*

72. Mr David Alan Thompson aged 18 at the time did not give evidence to the original inquest. He was spoken to by investigators in the HET, but his first statement was to this inquest. He recalled that he was in the living room of

his home when the presence of the soldiers became known. He left the house by the back door as he did not wish to run into the soldiers. His intention was to throw stones at the soldiers with a view to driving them out of the area. He met his mother at the back door as she was returning to the house and asked her to go and bang the bin lid. He said that this was something she would have done when there was a raid in the area. The bin and bin lid were usually located on the right as you exit the back door. Whilst he did not recollect seeing the bin lid and it is not shown in the photograph from the Derry Journal, he thought that it was there. He noted that there were other items of garden equipment his mother could have used. He assumed that his mother went to sound an alert because she turned and went outside into the rear garden.

73. He left by the back gate, which is down several steps. The gate was easily opened. He was not carrying anything and did not throw anything over the fence while he was in the garden. He turned left at the gate and ran past about ten houses before entering Rathlin Drive via an alleyway. He did not see anyone on this short journey.
74. When he came out onto Rathlin Drive there was a group of around 20-30 people on the street. He proceeded to throw stones at the Army. The soldiers were heading down Southway; he could not remember how many there were. He noticed that some of them were facing back up towards Rathlin Drive. He and the rest of the crowd followed them to the entrance of Termonbacca. He assumed they were the last soldiers to leave as he would not have wanted soldiers to be behind him. It is possible that they were not. He did not see any soldiers firing live rounds. He was unable to recall the deployment of rubber bullets or CS gas.
75. He went to Brandywell and from there to his cousin's home where he was told that his mother had been shot. He returned home and was present when

the ambulance arrived. He did not see his mother when he came back to the house.

76. He described the layout of the back garden and although he was not present when his mother was found he understands that she was in the concrete covered area which contains the manhole cover shown in the photograph from the Derry Journal. He remembers the moped in that area. He could not imagine his mother standing on the moped to look over the fence.
77. He explained that to see in and out of the garden from Southway you have to look through the fence slats. The fence was quite high and he felt you would see more looking out of the garden than in.
78. There was no garden light and the only light in that area would have been from the kitchen window and to a lesser extent from the back door which was half glass. If the kitchen light was on it would have been shining out into the back in the area to the left of the back door. To the right was a small living room. The light was not on in that room and the area outside this small room, which is close to where the moped and bin were positioned, would have been quite dark.
79. He did not see anyone in the garden as he left. The only part of the garden that was not within his view was the area where the bin was located. This was the area where he believed his mother would have gone to bang the bin lid. He did not see or hear her do so as he left. Mr Thompson accepted the suggestion made on behalf of the MoD that he would not have seen a gunman in that area. However, he did not accept that there was a gunman present, stating that in those circumstances his mother would not have remained in the garden.

80. There were street lights on in the alleyway, one about two houses up and another further up which he thought were working.
81. He stated that several hours after his mother's death a man who described himself as "Press" asked where his mother had been shot. He pointed to the back right corner of the garden which was where he mistakenly assumed his mother had been shot. However, the man walked to where he now knows his mother was shot. Mr Thompson assumed that he had removed a bullet from the wall but did not see him or anyone else remove anything from the gable wall. He suspects that this man was Special Branch or army intelligence.
82. The next morning, he lifted about three CS canisters from the garden and threw them in the bin. This was when he noticed a bullet hole in the gable wall above the manhole cover. This had not been there previously. He does not recall there being any firearm damage to the fence.

### *Other Civilian Witnesses*

#### *William Beales*

83. William Beales did not give evidence to the original inquest. He stated that on 6 November 1971 he was 12 years old and lived at number 62 Rathlin Drive, opposite to the Thompson home. On that night at around 11.30pm/12am he heard a commotion and the sound of bin lids. Night raids occurred frequently, and this was not unusual.
84. From his bedroom window he saw a soldier walking backwards along the footpath outside his house towards Southway. A drunk man was verbally abusing the soldier and looked like he was about to throw something, the soldier held his rifle in an aimed position towards the man's head, but he did not shoot.



85. Mr Beales put his head down. He did not see any other soldiers but heard other English accents.
86. He did not hear the shot that killed Mrs Thompson and stated that there was no gun battle or crossfire in which Mrs Thompson may have been killed. He did not see any tear gas.
87. He had a view of the Thompson house and garden from his bedroom window. He stated that because of the slatted fence he could only see a limited amount of the garden. He thought that in daylight you could probably see if somebody was in the garden from Southway, but at night-time it was very difficult.
88. He did not see anything occur in the Thompson garden on the night of Mrs Thompson's death.
89. He could not recall if there was a streetlamp at the Thompson's garden. Although at that time there was a lamppost outside his house, he could not be sure that it was working.
90. He surmised Mrs Thompson was shot to keep her quiet and to avoid raising awareness of the soldier's presence. He advised that other people from the area also made this assumption in the aftermath of Mrs Thompson's death.
91. The day following Mrs Thompson's death he helped a journalist through the barricade at Southway. He believed him to be Martin Bell. He heard from several people that someone from the army or government took a bullet from the wall of the Thompson's house. Mr Beales did not enter the back garden at any stage and did not see any marks or holes in the wall.

92. Mr McGlinchey did not give evidence to the original inquest. On 6 November 1971 he was aged 11 and resided at 58 Rathlin Drive which is opposite the Thompsons' house. His father was interned at this time. He recalled that at around 11.50pm he was in the living room with his mother when soldiers "smashed in" knocking his mother back. Two soldiers held him and his mother at gunpoint. He estimated that around eight to ten soldiers with blackened faces entered the house and garden to carry out a search that lasted probably around five to seven minutes.
93. He only began to hear a commotion outside including bin lids and bottles breaking about three to five minutes after the soldiers entered his house. He did not hear shots being fired while the soldiers were in the house, but it would have been hard to hear with the TV on and noise blaring. As the soldiers were leaving, he heard shouting and bottles breaking and people coming down from the direction of Rathkeel. He did not hear any shots fired as the soldiers left.
94. About two or three minutes after the last soldier left his house he went outside. There were no soldiers in the vicinity of 129 Rathlin Drive at this time. There was a large crowd of about 50 or 60 people. He did not see any gas discharged.
95. Two or three cars went onto the grass area and shone their headlights to illuminate the soldiers who were departing north-easterly straight across this field towards Termonbacca boys' home. He watched but he did not go more than 40 yards in that direction.
96. He believed it was about 10 to 15 minutes after the soldiers left that it became known that Mrs Thompson had been shot dead. He surmised that the soldiers

took cover at her fence to watch his house and believes a soldier shot her when she banged the bin lid. He accepted that he did not see any soldiers providing cover in the vicinity of 129 Rathlin Drive and he did not see any soldiers on Southway.

97. He did not see or hear anything in relation to removal of a bullet from the gable wall.

*Rule 17 statements*

98. In addition to Mr Patrick Thompson's deposition, I received evidence under Rule 17 and the common law from Michael Canavan, James Delaney, Dr Donal McDermott, Daniel Houston, and Detective Sergeant Ruddell all of whom gave evidence to the original inquest and are now deceased.

*Daniel Houston*

99. Daniel Houston stated that he lived at 55 Southway. He was awakened "about midnight" by the sound of a bin lid being beaten. On looking out of his window he saw a group of around eight to ten soldiers in the field opposite and a group of about twenty soldiers running down Southway from Rathlin Drive. He stated:

"The last three soldiers of this second group turned round, crouched down and each fired what I took to be CS gas towards Rathlin drive. They would have been level with the bottom end of Mrs Thompson's fence at this time... At the time the three soldiers fired the gas, I heard a bin lid falling on a footpath. The sound seemed near where the three soldiers were crouching. I then saw one flash from the group of persons I saw in the field opposite. This was the same time as the gas was being fired and the bin lid dropped... I don't think it was the flash of a gas gun." He described how further gas

canisters were fired towards his home and that on going outside he saw a crowd of people, saying "there was confusion with people running here and there... I am definite that no shots were fired from our direction at the soldiers when I was there".

*James Delaney*

100. James Delaney stated that he lived at 57 Southway. At around 12:10 am approximately on the 6 November 1971 he looked out of his bedroom window which fronts onto Southway and saw soldiers on both the footpath on his side of the road and on the opposite side. There were also soldiers in the field across Southway from his house. He saw the soldiers running down Southway and saw flashes of CS gas guns fired in his direction. This was being fired from the direction of the entrance of the Termonbacca Home. When he opened his front door, he was almost overcome by the gas. He joined a group of local men and heard a voice calling from the direction of the soldiers saying, "Come on Paddy, we are down here." They ran towards the voice and there was a volley "of about five shots from the soldiers near the entrance to the Home ... I knew these were rifle shots...". These were the only shots he heard being fired by soldiers. He stated that there were no shots fired from the Rathlin Drive or Creggan side of the barricade.

101. At around 12.30 a.m. all was quiet and he returned home. He then heard a commotion, and someone shouted that Mrs Thompson had been shot and he went to the house where he saw her in the kitchen.

*Dr Donal MacDermott*

102. Dr Donal MacDermott stated that he received a telephone message shortly after 1am in the 6 November 1971 to inform him that a woman had been shot in Rathlin Drive. Mrs Thompson was already dead upon his arrival. On

examination he found a small wound, which he took to be the entrance wound of a bullet on her left shoulder. He could find no exit wound. The body was taken by ambulance to Altnagelvin hospital.

*Detective Sergeant Ruddell*

103. Detective Sergeant Ruddell's report recorded that Patrick Thompson told him there were no bullet holes in the garden fence but that there was a bullet hole high up on the gable wall. As outlined, photographs of this wall and the rear garden were taken by the police and available to the inquest.

**Commentary on civilian evidence**

104. The civilian evidence relates mainly to the events which unfolded in and around Rathlin Drive once it became known that the army was in the area. There was considerable noise and general commotion which included the banging of bin lids with a crowd of upwards of 20 to 30 people gathered at the corner of Rathlin Drive and Southway. Bottles and stones were thrown at the soldiers. CS gas was deployed by the army. There was some street lighting in the area of the house that was being searched and further up Southway in the High Park area. It was dark at the time.
105. None of the civilians witnessed any shots fired from the garden of 129 Rathlin Drive. Nor did anyone witness gunshots being fired into the garden. In this regard Daniel Houston described three soldiers kneeling down, level with the bottom of Mrs Thompson's fence and firing CS gas in the direction of Rathlin Drive. He saw a flash from the group of soldiers assembled in the grass area. He said he did not think it was the flash of a gas gun. The question arises as to whether he witnessed a gunshot. This does not appear to be likely. He did not describe hearing gunshot although he was able to hear a bin lid falling. Further, it is unlikely that a gunshot would be fired by a

soldier positioned in the grass area when there were soldiers deployed on Southway between that area and the rear garden of 129 Rathlin Drive.

106. The evidence from the next of kin points to the possibility of limited lighting in the rear garden from the kitchen if the light was on in that room. The light was switched off in the small sitting room to the rear which overlooks the bin area.
  
107. Mrs Thompson left the house to alert others to the presence of the army. Although Mr Patrick Thompson thought it unlikely that she would have done so, David and Minty Thompson believe that their mother was engaged in striking the ground with a bin lid or other object. Patrick Thompson was the only person to provide evidence about the location where Mrs Thompson was found, namely in the area of the garden just inside the fence and close to the moped which is shown in the Derry Journal photograph to be near to the bin. There was a mark noted by Patrick Thompson on the gable wall which may have been a bullet strike. A helpful and detailed description of the fence was provided by Patrick Thompson who also confirmed in his account to the RUC that there was no damage caused to the fence as a result of the shots fired into the garden.

## **Military evidence**

### *Soldier D*

108. In the course of his evidence Soldier D was questioned about his previous accounts of events on 5/6 November 1971, namely his RMP statement and evidence to the HET and also the RMP statements of Soldiers A, B and C. Before I turn to the oral evidence of Soldier D it is convenient to summarise the statements made to the RMP and D's account to the HET.

*RMP statements*

109. The cipher list containing the names of Soldiers A, B and C has never been located.
110. The next of kin submit that having heard the evidence it remains the case that Soldier A cannot be identified. In paragraphs 500 to 503 of the next of kin's submissions they assert that Soldier B is Lieutenant Carter and Soldier C is KTM 368. The MoD make contrary submissions at page 96, paragraph 10 *et seq.*
111. I have considered those submissions with care but do not consider it necessary to set out the competing positions in this ruling. In summary, it is accepted that Soldier A cannot be identified. I am not satisfied that the evidence is sufficiently clear to identify any particular persons as Soldier B and Soldier C. Accordingly, I proceed on the basis that Soldiers A, B and C have not been identified on the evidence.

*Soldier A*

112. Soldier A's statement is dated 6 November 1971 and timed at 03:30. It appears that he was the first soldier to be interviewed by Corporal Mills of the RMP. He was serving with 2RGJ and was a member of the platoon of about 30 men commanded by Soldier B. Soldier A was in command of eight men and his section was to provide cover at the rear of the house during the search and arrest operation. He heard the banging of bin lids and the blowing of whistles in Rathlin Drive. Once the operation at the house was completed, they were ordered to withdraw down Southway as fast as possible. He stopped at the corner of Rathlin Drive and Southway to "check all (his) squad were clear of the house". He stated that Soldier D and Soldier C were the last

two to pass and he followed them down Southway. As he was opposite to a row of houses on his left, situated on the east side of Rathlin Drive,

“I heard a bang and saw a flicker of light from the rear of 129 Rathlin Drive. I then saw what appeared to be a dustbin lid and piece of wood appearing from over the fence of 129 Rathlin Drive. D then brought his SLR to the aim position and fired two single shots. I did not see anything that would indicate a strike by D. As there was a large crowd on the corner of Rathlin Drive and Southway, I told D and C to keep moving.”

113. Soldier A then describes the firing of CS gas and further shots:

“When D and C were about 30 yards further down Southway, I saw what I knew to be a section of B Coy RGJ who were firing CS gas grenades from the high ground to my right. They were firing CS gas towards Rathlin Drive. I then saw D fire two groups of three shots each towards the high ground where the section were. I ordered D to ceasefire and keep moving on down Southway. I later informed D what he had been firing at...”

114. Soldier A stated that at the time of the shooting the weather was overcast, it was dark, the visibility was good. The streetlights were not operating on Southway and Rathlin Drive. He described that as they were withdrawing from the area, he heard a number of shots being fired, but could not say where they were from.

#### *Soldier C*

115. Soldier C provided an RMP statement at 04:30 on 6 November 1971. He stated that he was serving with the 2RGJ and was a member of a platoon commanded by Soldier B in respect of the search and arrest operation. Soldier C was “in a squad commanded by A which was to cover the rear of



the house on arrival." He described that during the search a number of people "I do not know how many, were banging dustbin lids and blowing whistles" in Rathlin Drive. On completion of the search, they were told to withdraw as fast as possible. As they were running down Southway "past a row of houses on my left which were situated on the east side of Rathlin Drive" he saw:

"an object which I believed to be a piece of wood from the fence of 129 Rathlin Drive; this was followed by a flash. I then heard something pass to the left of my head. On looking towards the fence at the rear of 129 Rathlin Drive, I saw a male person holding what appeared to be a .22 rifle. Behind this man were two - three other people, one of which was a female. I took aim at the gunman with my SLR but I then heard D fire two shots and saw the gunman slump towards the fence. I then heard a woman scream. I did not fire any shots. We were then told to keep moving by A."

116. He estimated the distance between himself and the gunman as about ten yards and said he could see him quite clearly due to the lighting in the house at 129 Rathlin Drive. He described the gunman as "heavily built and about six foot tall wearing dark clothes."
117. He stated that on moving about 15 yards further down Southway he saw what he thought to be some kind of bomb being thrown from the high ground to his right. This landed at the corner of 129 Rathlin Drive and "exploded with the puff of smoke". He saw Soldier D fire three shots towards the high ground. A further object appeared shortly after from the same area and at this point, he realised that it was CS gas being fired and he was not sure who was firing it. He described that Soldier D then fired further shots towards the high ground. Soldier A then told Soldier D to cease fire and to keep moving.

118. Soldier C described the weather as overcast; "it was dark, but visibility was fair at the time of the shooting". He described that as they were withdrawing from the area he heard a number of shots fired. Some of these shots sounded as if they were coming from the direction of the Mex garage in Foyle Road.

*Soldier B*

119. Soldier B in his RMP statement dated 05:00 on 6 November 1971 stated that he was serving with 2RGJ and was the platoon commander tasked to carry out a search of 58 Rathlin Drive.
120. He described that at about 0015 hours the platoon arrived at the house and together with two sections a search of the house was made. They found a woman and three children in the house. He then ordered one section to withdraw down Southway; "this was followed by a 2 section which was commanded by A and included D and C. I then with the remainder of the platoon withdrew from the house."
121. He stated that he found out "about the incident involving D" on arrival at the rendezvous point. During the search there were a number of people in Rathlin Drive who were banging dustbin lids and throwing stones. During the withdrawal a number of CS gas cartridges were used to disperse the crowd at the junction of Rathlin Drive and Southway.
122. In an addendum to his statement Soldier B set out the grid references at which the platoons of soldiers involved in the operation were deployed. He stated that no rounds were fired by any member of the platoon except by Soldier D. "I had briefed the platoon before the operation as per the yellow card and that anyone seen carrying a gun could be fired upon without warning."

*Soldier D*

123. Soldier D in his RMP statement dated 0400 on 6 November 1971 stated that he was serving with the Second RGJ in Ballykelly. On arrival at the house at about 0015 hours on 6 November 1971 he was deployed outside the house as rear cover. He described the banging of dustbin lids and the blowing of whistles during the search. On completion the platoon was ordered to withdraw as quickly as possible. He stated:

“We began to run down Southway towards Letterkenny Road. As I was opposite a row of houses situated in the east of Rathlin Drive, I heard one single shot, possibly fired from a .22 rifle. This shot appeared to come from the rear of 129 Rathlin Drive which I was opposite. I turned around and saw a flickering light and the figure of a person behind the fence of 129 Rathlin Drive. I also heard some voices coming from the area to the rear of 129 Rathlin Drive. An object was then thrown in my direction. I did not see where it landed or what it was.

I then took aim with my SLR at the figure behind the fence and fired 2 x 7 .62 rounds. I could not confirm a hit, but the figure disappeared as soon as I had fired which could indicate that I did hit it. The distance between myself and the figure was about 20 yards.”

124. Soldier D stated that he was standing in the road when he fired the shots at the figure. He stated that he believed that he did hit the figure when he fired.
125. He then goes on to describe seeing “what appeared to be a hand appear over the skyline to my right. In the hand was a black object with a lighted fuse. This was thrown and exploded close to me in a puff of smoke. I took aim with my SLR and fired 3 x 7.62 rounds... The distance between myself and the target was about 130 yards.”

126. Soldier D described seeing another black object thrown which again exploded whereupon he took aim with his SLR and fired a further 3 x 7.62 rounds. He stated that his line of fire was up a very steep gradient.
127. He described the conditions as dark, the weather was overcast but visibility was fair.

### *HET*

128. The statement prepared by Soldier D in advance of his HET interview and the transcript of this interview were admitted in evidence and explored in the course of Soldier D's oral evidence.

### *Pre prepared Statement to HET*

129. Soldier D stated that army writing is such that statements are written in a clear and precise manner limited to what the statement taker considers to be the nuts and bolts. His statement was said to be provided to the HET as a way of adding further detail that he can remember to the army statement made in 1971.
130. At this time his permanent platoon was a reconnaissance platoon. However, the army was looking for soldiers to be the next generation of non-commissioned officers and he together with the best people selected from across the Battalion formed a junior non-commissioned officers, (JNCO) scheme. This was unusual for Northern Ireland as it meant that training was being conducted in the operational theatre.

131. The operation involved about 30 soldiers with 10 soldiers per section and they were backed up by company strength drawn from one of the other companies.
132. His section was described by Soldier D as having been on the "right flank" of the platoon with another section conducting the arrest operation and a further section on the left flank.
133. There was a lot of noise when they arrived and he described the conditions as "a pretty dark night, a winter's night. There was no ambient light from the housing nor were there any of the normal activities you'd expect such as cars going by, the streetlights being on lights coming from houses".
134. After the search and as they were withdrawing, he was the last soldier in his section. He was facing the area that he was withdrawing from when he heard "the crack of a low velocity bullet going by my head." He stated "I was facing the general direction of where I believed the shot came from, and out of the corner of my eye, and as I was turning my head in that direction, I remember seeing the appearance of a flash from the area of the garden of 129 Rathlin Drive and some movement in a very dark part of the garden...I was aware of how high the fence was at 129. I cannot recall my exact distance from the garden. I think it was 50 yards but I would not deny that it was 20 yards. Believing I was under fire I fired two rounds in quick succession."
135. He stated that he had no recollection of an object being thrown in his direction. Nor did he recall firing the further six shots nor of gas being fired at him. In this regard he stated that as almost 40 years have elapsed he had forgotten these latter events which he described as "obviously less significant than the original firing."

136. He stated that he believed that 12 hours after the incident everyone in close proximity had been interviewed. He could not say who had been interviewed as the platoon was a temporary platoon and he therefore did not know who most of the other soldiers were.

*HET Interview*

137. Soldier D attended the interview with the HET in the company of his solicitor. HET officers had been to the scene, and it was suggested to Soldier D that it would be virtually impossible for anyone to identify any individuals behind the fence with a gun due to the lack of lighting in the area and the small gaps in the fence. When asked about the view which he had into the garden of number 129 Rathlin Drive he described the fence as “quite close” and said there was not a lot of space between the planks of the fence. When asked whether he had any view at all through the fence he answered “only a silhouette”. He confirmed that he had never seen anyone with a firearm. He accepted that it would have been difficult to differentiate between the noise coming from Rathlin Drive where the crowd was accumulating and any noise that came from the rear of the garden at 129 Rathlin Drive.
138. When he was asked how he had come to the opinion that the shot had come from the rear of 129 Rathlin Drive. He responded that he “heard the crack of a .22 it was a low velocity and at the same time I noticed that simultaneously really like a flash directly in front of me. It was only out the corner of my eye. It (sic) was actually facing backwards towards Rathlin Drive because if you’re the last person you back away obviously to cover the rear of you”. He maintained that he had made the right decision to fire shots saying that “I didn’t see a weapon but I believed I was being fired at by the flash.”

139. He said that he could not remember whether there were any lights on at 129 Rathlin Drive nor could he remember if he heard voices coming from the garden. He stated that the maximum amount of noise for the whole night occurred when they were withdrawing.
140. In the course of the interview Soldier D was asked about correspondence he had sent to the PSNI in 2002. He confirmed that he had written regarding reports in the Derry Journal of 20 September 2002 and the Derry News of 19 September 2002 that Mark Durkan of the SDLP had met with Chief Constable Hugh Orde and had apparently been promised the file covering the death of Kathleen Thompson. He had asked the PSNI not to disclose this file because of the grave consequences for his own personal safety as well as his immediate family and friends. He stated in this letter "I wish to point out I am not trying to stop or obstruct any Inquiry."
141. He explained that people who knew him, soldiers, "Good friends that I made over 20 odd years...they made me aware these articles were appearing."

### *Soldier D's oral evidence*

142. Soldier D joined the army in 1964 as a boy soldier and was fully trained to use all infantry weapons. He was 21 in 1971. He had been in Northern Ireland only a matter of months before this incident took place. He was part of the reconnaissance platoon which did not engage in street patrols. He was involved in this operation and patrol because he was on the JNCO course.
143. The JNCO platoon was made up of around 30 soldiers. The object of this course was to teach rifleman to become junior non-commissioned officers, Lance Corporals. The platoon was headed up by either a lieutenant or a captain. It was divided into three sections for this operation. Each section was

headed up by a sergeant. Soldier B was the officer in charge of the platoon and Soldier A was the sergeant in charge of Soldier D's section.

144. As part of planning for the operation the officer in charge detailed arrangements to each section leader and this sergeant would then pass the information onto each section. Although Soldier D found it difficult to recall he thought that the briefing on the operation would have been provided by his section leader, Soldier A. In the course of this briefing it is likely that they would have been shown a map of where they were going and where the different sections and the outer cordon which was provided by B Company would be positioned.
145. The briefing would have included an instruction that firing was to be "per the yellow card". Soldier D did not believe that he had received any rider to the Yellow Card instructions such as that outlined in Soldier B's RMP statement or at all.
146. He had never been involved in an operation like this before. He reckoned that he was on the second week of the course. It was unusual that training was being conducted in the operational theatre. He had never received any specific training about patrolling on the street and how to react if someone was to fire a shot at him. He subsequently received formal training which involved the use of mock up villages and scenarios which included civilians where split-second decisions were required as to when and when not to shoot.
147. Soldier D maintained that his section provided rear cover from the grass area opposite to 129 Rathlin Drive rather than from the rear of the house that was searched.
148. The street lights were off.



149. Soldier D recalled that the banging of bin lids and blowing of whistles to alert the neighbourhood as to their presence worsened as they retreated, saying it got more severe as the soldiers collapsed the cordons.
150. Having received the order to retreat he was the last person in his section to do so. He was opposite Rathlin Drive and was walking in a "crablike fashion going backwards". He stated "out of the periphery of my vision I saw the flash and heard the bang at the same time." and "I was able to turn and see pretty much exactly where it had come from."
151. Soldier D could not be precise about his location when he fired given the passage of time and the fact that it happened "very very quickly", saying "this took two seconds". Although he marked on the police photograph the area where he was standing and the area where he thought the flash had come from he made it clear in the course of his evidence that he could not remember exactly. As outlined, he had not marked his position on a map in the course of his 1971 interview and had not been shown the map marked by Sgt Ruddell.
152. He thought that he was on the far side of Southway, "not close" estimating that he was about 20 yards away from the fence at 129 Rathlin Drive. He believed that he may not have been standing square on to the fence.
153. Given his experience in weapons he believes that the bang that he heard was the sound of a low velocity round being fired. He contrasted this to the crack heard on the firing of a high velocity round. He maintained that he was able to distinguish the sound of discharge above all of the noise in the area, saying that he could not mistake a bullet being fired in close proximity, "at this distance you'd still hear a low velocity."

154. He said "I believed I was being shot at. I released the safety catch on my weapon and raised it into the firing position and fired two rounds at the source of the flash."
155. Soldier D maintained that he believed his life was in danger and that he "reacted within probably one to two seconds".
156. He did not think that there was ambient lighting at 129 Rathlin Drive but there may have been in the surrounding buildings. He did not see a gun. As he could see the flash behind the fence he thought that the weapon's muzzle was very close to the gap in the fence.
157. It was only when he was asked "did you actually see a target to fire at or was it a case of simply firing at the location where you had observed the flash?" that he said that he observed what he believed to be a silhouette of a "head, arms and torso, but nothing more than that". He said the light was not very good but this was visible, saying that he saw a "very vague outline of an individual that he was associating with the flash and bang" and "it was only a vague outline, but nonetheless".
158. Under questioning by senior counsel for the next of kin Soldier D maintained he was quite clear that the shot had come from where he saw the figure. In answer to his counsel, Mr Rooney QC he said "I fired at the source of the flash and the silhouette behind that flash simultaneously where I had determined that the shot had come from, the bang."
159. He stated that he did not know if he hit the target, it disappeared and as there was no more threat there was no more reason to fire.
160. In describing what had occurred Soldier D did not make any reference to having seen movement in a very dark part of the garden as detailed in his

written statement to the HET and when this was raised under cross examination, he stated that he was putting all of the events together, the flash the bang and the movement. He maintained that he identified a target from the movement, that the flash and bang had drawn him to the movement of somebody clearly behind the fence and he perceived the figure which was directly behind the source of the flash and bang. He stated that given the passage of time he was unable to recall exactly the sequence of events and he was trying to the best of his memory to give an account.

161. Soldier D was questioned at some length about the phrase "flickering light" in his 1971 statement. He agreed that a flash rather than a flicker of light is consistent with muzzle flash which occurs on the discharge of a weapon. He maintained, "I know that there was a flash and a bang, regardless of how I described it."
162. Soldier D maintained that the flash and bang happened simultaneously and that the reference to his having "heard a shot" and having "turned around and saw a flickering light" in his 1971 statement did not suggest a sequence of events. He stated that he heard the shot and at the same time saw the flash out of the corner of his eye - "in his peripheral vision" and he turned towards it.
163. He stated that in contrast to the brief 1971 interview, the interview with the HET was extensive and gave him his first opportunity to say what had happened. He told the HET in interview that the shot and flash were simultaneous and this account to the HET predated the ballistic experts' reports.
164. Soldier D did not accept that it would have been virtually impossible to identify a figure, a torso or silhouette through the close boarded fence at

night. He stated that he believed the fence panels are a lot closer together than they were in 1971 and that from his position of about 20 yards away “there was enough light around to be able to see that distance”.

165. Soldier D stated that he did not aim at the gaps in the fence and he denied the suggestion that he had positioned the muzzle of his gun in between these gaps. He maintained that he fired from this distance of around 20 yards.
166. At the time he believed that the person was standing in the garden. Having since been advised of the level of the garden he considers that the person must have been at least kneeling.
167. He was unable to recall any voices from the garden as described in his 1971 statement. He agreed that hearing voices would convey there was more than one person in the garden but suggested that the voices might have come from the alleyway at the bottom of the garden or from a neighbouring garden. Further that these might not have been voices of innocent civilians.
168. He stated that within the split second that he fired the shots it had not occurred to him that there might be innocent unarmed civilians in the garden.
169. He was unable to recall an object having been thrown in his direction before he fired.
170. He stated that he did not hear the banging of a bin lid in the garden of 129 Rathlin Drive, but he was aware of this sound coming from elsewhere in the area. He accepted that there could easily have been someone banging a bin lid in the garden saying “I wasn’t aware of it, but I can’t rule it out.” Nor did he hear any noise in the garden after he fired the shots.

171. Soldier D did not give any warning before firing. He stated "I believed my life was in danger, immediate danger. It was not practical to give a warning so that's why I fired."
172. Soldier D accepted that it was possible that he had shot Kathleen Thompson saying that he was aiming at what he thought to be somebody who was discharging a weapon at him. He would be appalled if he was responsible. He maintained that he was shooting at an angle at a figure forward of the area where Kathleen Thompson was found. This was the only figure he saw behind the fence. He would not have been able to see Kathleen Thompson crouching / banging a bin lid behind the moped. It was possible that as he reacted quickly, he may have missed hitting the actual figure at which he was aiming and that one or maybe both of the holes in the gable wall were from shots fired by him.
173. Soldier D did not see any other soldier take aim in response to the flash and bang.
174. He had no recollection of firing six additional shots. When asked by Mr McAlinden QC whether he might have panicked when he fired these shots and the two shots into the garden, he responded that there is a difference between "heightened awareness and panic". "I certainly would say I was scared." He denied the suggestion made by counsel on behalf of the next of kin that he had been firing wildly when he fired the eight shots.
175. Soldier D was unable to recall CS gas having been fired and similarly had no recollection of being told to stop firing nor of being advised that he had fired on other soldiers. Based on the contents of his 1971 statement, he maintained that he was justified in firing the six shots as he believed that he was under attack. Although he accepted that he must have misinterpreted the nature of the threat he maintained that he had fired at an identified target. He stated

that he was aiming at the area he presumed was the source of these objects and denied that he could not identify the target. He denied that he had conveniently lost his memory about these shots in order to avoid accountability for them.

176. As the soldiers moved from the Southway area, he heard a number of high velocity shots being fired further away.
177. He recalled that shortly after they returned to Ballykelly he was informed that there had been a fatal shooting and he was told to report to Battalion headquarters. He was kept separate from others who were interviewed. He waited alone and did not have any refreshments before this interview. He was not sure whether the interview was conducted under caution. He had no legal representation. The interview was short and he had no real recollection of how it was conducted. He was spoken to again about 12 hours later when an addendum to his statement was made regarding the deployment of CS gas and the fact that he was not wearing a gas mask.
178. He does not believe that his weapon was taken for inspection, rather it was simply returned to the armoury. He did not receive any debriefing nor was he required to make any formal report about having discharged the rounds into the rear of 129 Rathlin Drive nor the shots fired at other soldiers.
179. He had never been involved in any previous incident where he had been fired upon.
180. He knew nothing of Mrs Thompson or her involvement in the Women's Action Committee. They were outside her house purely by chance.
181. Soldier D was questioned about various matters arising from his personnel file. He accepted that he was convicted of larceny in Germany in July 1968

involving theft from a fruit machine and that earlier in his career, he had been involved in some trouble: fighting and drunkenness. He accepted that he was convicted of drink-driving in 1986, 4 years before he left the army.

182. Soldier D's annual report and employment sheet dated August 1971 - July 1972 reads "this last year has been a fairly stressful one for D. He lost his place on the JNCO cadre through an unfortunate incident and returned to the platoon as a driver for a short time before being involved in a motoring accident when he broke his wrist... He has now returned to duty, gained his promotion and to some extent settled down again...."
183. During his evidence in 2018 Soldier D rejected the suggestion that the unfortunate incident was the shooting of Kathleen Thompson or his involvement in shooting at other soldiers. He denied losing his place and asserted that he had been promoted as a result of the JNCO course. Soldier D was unable to explain the entry, saying that "all I do know is that I was promoted to corporal quicker than any other person". He said this is concerning him because "I can't remember it." He asserted that he was promoted as a result of participating in the JNCO.
184. In his evidence given in June 2021 Soldier D stated that after three weeks on the JNCO course "this incident took place and I was stood down." Later in the course of his evidence in 2021 he stated that he had not been stood down but rather had been forgotten about and he was ultimately promoted in 1972. He denied being dishonest about his promotion to cover up any responsibility in respect of the subject incident.
185. He accepted and the records demonstrate that by 1 June 1972 he was promoted to Lance Corporal on an acting basis and was substantively given that promotion on 12 May 1975.

186. Soldier D was unable to remember the identity of the Soldiers A, B or C. He maintained that the JNCO cadre was comprised of people from different companies within the battalion who were together for a very short period of time on the course. In evidence in 2021 he asserted that his inability to recall the identity of any one from the cadre resulted from the fact that unlike the others he only completed three out of the eight weeks.
187. He recalled the identity of several soldiers who had been traced, KTM 7, 242, 416, 72 and several others, but stated that he knew these individuals through his time within the Battalion rather than through the cadre. He did not know KTM 368 whom the next of kin submit is Soldier C.

*Letter to the Chief Constable*

188. Soldier D stated that he was unable to remember the identity of the soldiers who alerted him to the newspaper reports regarding the potential release of the police file. He stated that the fact that he was involved in the shooting incident in 1971 was known within his battalion. He had met these soldiers at a reunion 16 or 17 years previously and could not remember who they were.
189. He was aware of Facebook groups telling soldiers not to cooperate with inquests but stated he had never posted on any.

**Other Military Evidence**

*Soldier E*

190. He was not interviewed by the RMP and the first statement he made about this matter was to the Coroner's Service in 2017. In his statement Soldier E says "At the time of this incident I was a section commander in B company 2 Battalion Royal Green Jackets. I was a corporal and my section included



about eight men. I began my career with the army in 1969 and I left in 1972...I was only 21 years old at that time and had already reached the rank of corporal". He was not on the JNCO Course. He stated that on 5 and 6 November 1971 he was briefed as part of an intelligence led operation to effect arrests of known IRA members in the Creggan area. He believed that members of the SAS and RUC were present and possibly also the "Paras." He was section commander of about eight men. The only briefing he received was to form a protective cordon in an area which in the course of his evidence he marked on a map as on the far western perimeter of the grass area opposite to 129 Rathlin Drive.

191. He was unable to recall who accompanied his section and whether this was the entire platoon of 30 or the entire company of around 120 men. He estimated that over 3000 troops would have been involved in an operation like this which was to cover the entire Creggan area.
192. He described proceeding to a grassed area below the Creggan estate where he was directed by a Sergeant. This was the only time he had been positioned on a grass area and the only time save for internment that they had gone out with so many soldiers. Whilst he acknowledged that it is difficult to distinguish between the many different times that he patrolled in the Creggan estate, he stated that he knew he was providing information about the night that Kathleen Thompson was killed because it was unusual to be positioned on the grass.
193. Counsel for both the MoD and next of kin suggested that he was confusing this incident with another incident which happened whilst he was on duty, for example Operation Huntsman. He maintained that he was not, although he may have been wrong about the number of troops deployed and about the Parachute Regiment being involved. He maintained that the SAS were part of

the operation despite it being commonly understood that the SAS were not present in any numbers in Northern Ireland until 1973.

194. He stated that his section was situated downhill and from this position they would not have been able to see into the estate. They had no view of 129 Rathlin Drive. Shortly after arrival he went to the brow of the hill to survey the area. He described visibility as reasonably good. He recalled that there were soldiers near a barricade to his right and there were soldiers on Southway. No one, including any soldiers, came over the brow of the hill across the open ground towards his section.
195. He stated that the rattle of bin lids had begun even before they were in position. He heard a rioting-type noise and the rattle of bin lids.
196. He heard pistols and army rifles being discharged more than once. There were two sets of shots, one when they were moving into position and one when they were in position. The shots numbered fewer than 10 within a period of 30 seconds. In his view this was an exchange of shots, the first set a round of two low velocity shots from a pistol, the second set four to six seconds later which were high velocity rifle shots. He could not really say how close the shots were. He described that the direction of the shooting as "in front of him". He was facing in the direction of Rathlin Drive but he was unable to say with any certainty where the shots had come from. He was able to hear the shots over the sound of bin lids being banged.
197. No one from his section deployed CS grenades or smoke canisters and he wasn't aware that CS had been fired.
198. Soldier E became aware either on his way back to the barracks or at the barracks that someone had been shot dead. They were told that a woman had been shot in her garden; they were not told by whom. He was not asked to

come forward to give information until he was contacted in relation to this inquest.

199. He heard that green-on-green shooting may have occurred from the Coroner's investigator in the course of his interview.
200. He now believes there was a lot of confusion that night between the arrest team and support.
201. He stated that at the briefing for the operation he was specifically told to shoot anyone with a weapon who came across the open grassland and to ask questions later. He was also told to shoot the streetlights first as a warning and then if anyone continued to run, just to shoot them. He stated that this order came from his commanding officer whom he believed to be a Lieutenant. Soldier E had never received that order before nor did he receive it again. He did not pass the order on to his men as it was contrary to the Yellow Card. He was not aware of the briefings and orders that other sections involved in the operation received.
202. He was questioned about the Yellow Card and was asked whether, if he believed a shot had been fired at him, it is justifiable to return fire. He said, "if I am sure that it is a gunman shooting at me, yes, I would return fire."
203. Soldier E was critical of how the army treated civilians in Northern Ireland and his concerns in this respect contributed to his decision to leave the army in 1972.

*Brigadier Guy De Vere Wingfield*

204. Brigadier Guy de Vere Wingfield was adjutant of the Second Royal Green Jackets stationed in Ballykelly in an administrative rather than operational

role in November 1971. His responsibilities included disciplinary action and investigations. In respect of the latter, whilst he facilitated these investigations he was not directly involved.

205. He has no direct knowledge of the incident on 5 and 6 November 1971. Although he must have been informed at the time, he now has no recollection. His only involvement with statement taking by the RMP would have been to make soldiers available for interview. Given that the statements were taken during the night it is unlikely that he would have been involved. The matter was most probably handled by his operations officer.
206. Whilst he would have been aware of the JNCO course at the time he was not involved. Participants would have been nominated by company commanders and assessed during the course to see if they were suitably qualified to be promoted. He believes that organisation of the course lay with A company and that the operations officer and major involved are now deceased. The fact that the course was run in 'live theatre' was not unusual.
207. Major Hayes recalled Soldier D but has no knowledge of the 'unfortunate incident' referred to on his annual progress employment sheet. An annual report would not typically have been placed before an adjutant. It would have been written up by Soldier D's platoon commander and would go on to the soldier's file. He would not have been involved in any decision to take a soldier off the JNCO course as a result of an unfortunate incident. Rather, this was an internal matter for those running the cadre.
208. He described Soldier E's evidence regarding both the 3000 strength of troops and the nature of the rider to the Yellow Card as "fanciful". He does not recall the Royal Green Jackets conducting an operation alongside the SAS. He was very doubtful that having joined the army in 1969 a rifleman would have been promoted to the rank of section commander or corporal by 1971.

209. He considered that what was described by Soldier B was in accordance with the Yellow Card, namely that soldiers could without warning shoot at anyone with a weapon deemed to be a threat.
210. Major Hayes outlined the operational arrangements generally between the 2RGJ and The Royal Artillery for Derry County and City as well as those prevailing on the night in question. He confirmed that the SITREP or Situation Report for 6 November 1971 recorded that when troops were withdrawing from the arrest operation they were fired on and returned eight rounds.
211. He stated that soldiers had to account for rounds which they expended and that RMP would investigate when shots were fired and there was an injury.
212. In addition to the investigation into the death of a civilian by the RMP, a case of 'green-on-green' shooting would have resulted in questioning. He understood Soldier D to have perceived that he was being fired at and did not think Soldier D's reaction of returning fire was surprising. He commented that Soldier D could have become confused, people get easily confused with the sound in a built-up area particularly when in a state of tension. Major Hayes recognised that what he was saying was supposition.
213. In recent years, he could not recall exactly when, Soldier D contacted him to ask for advice as he was under investigation as it was believed that he had fired the round which killed Kathleen Thompson. He felt as platoon commander he was a natural person to approach for advice. He told Soldier D that he should seek legal advice.

*KTM 368*

214. KTM 368 was part of the JNCO cadre. He believed he was nominated for the

course by Major KTM 1029. He recalled Soldier D being on the cadre but not him leaving.

215. As part of the cadre, he was involved in the operation of 5 and 6 November 1971. He did not have any recollection of the Creggan Estate or the location of the operation. He recalled the cadre being split into three sections, two to support and one to go into the house. He recalled his section being lined up in a back street at the rear of the house. He recalled that there was an incident and they had to withdraw quickly, he now believes that to have been this shooting incident. The section commander told them to leave the area. He did not recall being attacked or shots being fired, nor green-on-green shooting. No one in his section fired their rifle. He did not recall CS gas. He did not recall any conversation back at the barracks about a woman having been shot. He has no recollection of Mrs Thompson's death.
216. KTM 368 told the Coroner's investigator that he had no recollection of speaking to the RMP. He gave evidence to the inquest in February 2021 that subsequent to his giving a statement to the Coroner's investigator and after he had read the statements of the ciphered soldiers in preparation for the hearing, he had woken up in the middle of the night having just recalled that he made a statement to the RMP. He assumed that other people had been spoken to by the RMP as well. This is his only recollection of being interviewed by the RMP during his career. He agreed with the suggestion put by counsel for the next of kin that of the statements, the one most likely to be his was Soldier C. I deal with this suggestion in more detail below. Although the opening paragraph regarding rear cover accords with his recollection, he was unfamiliar with the remainder of the events described and has no recollection of the events described in any of Soldiers A, B or D's statement regarding Soldier D discharging shots. He was unable to state categorically but he did not think he was Soldier C. He thought he would have remembered if he had seen a gunman as set out in Soldier C's statement.

*KTM 271*

217. KTM 271 was the commander of the third platoon in A Company in the Royal Green Jackets in Ballykelly in 1971. He was never an instructor on a JNCO scheme and did not recall the JNCO training cadre from 1971. He has no recollection of the operation on 5 and 6 November 1971. He was sure his platoon was not deployed that night as he would recall an operation during which a female civilian died. He has no memory of being interviewed by the RMP. This is something he would recall had it occurred. He would not have had knowledge of incidents which occurred outside his own company and did not recall any discussion of the incident at the time. Deployment as a battalion rarely occurred and the battalion was hardly ever together in one place. He denied being Soldier B. He has no recollection of Soldier D. He recalled Lieutenant Travers as respected by his men and stated that he could have led the JNCO scheme.

*KTM 466*

218. KTM 466 was a member of A company who attended the JNCO course. He recalled being part of the search and arrest operation. His section provided cover, he was not at all sure, but thought this might have been at the entrance to Rathlin Drive. He understands the description in Soldier D's statement that they provided rear cover to mean to the rear of the house being searched. He recalled hearing bin lids but no shots. He recalled Soldier D and the fact that he left the course before it was completed. He recalled some "chit chat" in the canteen that shots had been fired in the course of the operation. He has no recollection of the death of Mrs Thompson or 'green on green' shooting.

*KTM 381*

219. KTM 381 was on the JNCO course. He recalled that either Lieutenant Carter

or KTM 353 was the cadre's commanding officer. Lieutenant Travers nominated him for the JNCO course but was not involved in the course.

220. He thought that he provided rear cover on the night of the operation but was very confused as to where he was positioned upon reviewing maps and photographs. He thought that Soldier D was part of the arrest party. He has never discussed the events of the night with Soldier D. He recalled hearing shouting, shooting, voices and bangs like the sound of fireworks. He said that the shooting "passed over the roof" and then over his position and he recalled three tracer rounds were fired. These were not used by the army. He believed the shooting to have come from Rathowen Drive. He did not see any groups of civilians.

*KTM 1039*

221. KTM 1039 does not recall being on the JNCO course in Ballykelly, November 1971. He initially believed that he had gone AWOL in 1971 after the death of his mother. When records were produced to show that he was AWOL in 1972 and that he was serving in NI and promoted to Lance Corporal in 1971 he accepted that his recollection was flawed. He does not recall the events set out in Soldier D's statement and believes that had he been involved he would have remembered given the nature of the incident. He does not recall conversations about the death of a civilian woman and again would have expected to remember this given the death of his mother during the same year. He does not recall weapons being fired in and around the city. Nor does he recall any patrols in the Creggan area. He denied choosing not to help the inquest.

*KTM 602*

222. KTM 602 recalled being in C Company in Northern Ireland from April 1971



and going on a JNCO course in Magilligan and then in the city of Londonderry shortly before being promoted in 1972. He knows Soldier D and has seen him at battalion reunions.

223. He recalled being deployed in the Creggan and stated that tasks such as arrests occurred on a daily basis. He recalled some other operations but has no memory of the operation on 5 and 6 November 1971 and did not recall any search and arrest operations having occurred on the JNCO course. He had not heard about Kathleen Thompson's death. He stated that if anyone had been shot there would have been talk all over the camp. He denied the suggestion that due to the deaths of soldiers in Northern Ireland at that time there was an order to 'go hard' at the Creggan. He denied any suggestion that he would try to thwart the inquest process.

*KTM 707*

224. KTM 707 recalled being put forward for a JNCO course he thought by KTM 1024 but could not remember anyone else on the course or the instructors. He thought it was likely to be the course in November 1971.
225. He did not recall Soldier D. He had no recollection of Kathleen Thompson's death, nor of Rathlin Drive nor of search and arrest operations in built up areas.
226. He would have expected to hear conversations in the army camp as the discharge of a weapon, shooting of a civilian woman, green on green shooting, an investigation by the Royal Military Police, the withdrawal of a soldier from the JNCO, would have been talking points among the men. He denied that he had been involved in any advice to keep information from the Coroner and denied the suggestion that the Green Jackets went into the Creggan hard following the death of two colleagues.

*KTM 461*

227. KTM 461 was in the Second Battalion Royal Green Jackets from April 1971 to March 1973. He recalled being in a JNCO cadre in 1971 which would have patrolled the Bogside and Creggan. He could not remember the name of the officer in charge nor anyone else who attended the scheme.
228. The Creggan was familiar to him and the McGlincheys were well known to the army. He had no knowledge of the incident in question or Mrs Thompson's name and had he been involved in an incident when a person was shot, he would have remembered. He had no recollection of green-on-green fire. He was unable to give any details in respect of the statements of Soldiers A to D.
229. He stated he would have been able to identify the difference between the sound of high and low velocity shots.
230. He stated he is not in touch with anyone who served in Derry during 1971 and denied an unwillingness to assist the inquest.

*KTM 1046*

231. KTM 1046 was the commander of a platoon in B company 2RGJ which provided the outer cordon in the countryside in the Southwest approaches to the Creggan. He thought that sections rather than platoons were more likely to be located at each of the grid references detailed in the statement of Soldier B. He thought it unusual that the JNCO cadre was the designated search and arrest group.
232. He did not hear any shots because of the general noise from banging dustbin lids, shouting, the blowing of whistles and the distance that he was from the

search area.

*KTM 290*

233. KTM 290 served in the Royal Green Jackets at the relevant time in B Company. He was an instructor on an NCO training course but was not sure when other than to say it could have been 1970, 1971 or 1972. He did not recall any search and arrest operations on the cadre in which he was involved and he believed his course was undertaken within Ballykelly rather than being deployed operationally.
234. His platoon commander at the time was Lieutenant Travers and he stated that the Lieutenant was well thought of by his men. He considered Soldier E's statement to be full of inconsistencies and factually incorrect, for example no one in the regiment made corporal in three years. He did not believe that Lieutenant Travers would have given the order described by Soldier E to anyone.

*KTM 25*

235. KTM 25 was not on the JNCO course. He was a soldier with 2 Royal Green Jackets at Ballykelly in November 1971 and was deployed with Soldier D in the Reconnaissance 'Recce' Platoon. He had no recollection of the incident or of being deployed in the Creggan Estate. He did not recall any conversation in Ballykelly about the shooting of Kathleen Thompson. He did not recall Soldier D gaining or losing his place on the JNCO course but recalled him being promoted to corporal. He accepted that his recollection of the date of this promotion does not correlate with the records.
236. Whilst friendly with Soldier D, he did not recall Soldier D discussing the shooting of Kathleen Thompson at the time nor of his being involved in

green-on-green shooting.

237. He recalled the incident being discussed with Soldier D in the late 1990s when investigations into soldiers began. He felt that the investigation was vexatious. He understood that Soldier D was being investigated as the person who may have fired the fatal shot. Soldier D had always maintained that he fired at a gunman, that they had found a woman shot, and that he had been investigated and cleared at the time. He recalled Soldier D being upset and that Soldier D did not know if he had fired the fatal shot.
238. Based on their conversation he made the assumption that Soldier D thought he hit the gunman, but that in relation to the woman being shot this could have been a ricochet or the gunman could have shot her.

*KTM 72*

239. I will deal briefly with the evidence of KTM 72. I do not consider that KTM 72's evidence is relevant to the death of Mrs Thompson. While his initial accounts may have suggested he was in the locality at the time, having heard his evidence I find that the search operation he described was an operation on a different occasion and not the operation carried out at the McGlinchey house on the night in question. Neither the next of kin nor the MoD sought to persuade me otherwise and I consider that to be the proper approach. Therefore, KTM 72's evidence is not relevant for the purposes of my findings and need not be set out in this decision.

### **Summary of the other military evidence**

240. I bear in mind that these witnesses were asked about the events in 1971 for the first time in very recent years. The soldiers who were on the JNCO course recalled the events of 5/6 November 1971 to differing degrees. None were

able to give evidence in respect of Soldier D discharging his weapon. Some recalled Soldier D from the JNCO cadre and his leaving the course. Some had a limited recollection of the search operation and those who did, described the noise of the banging of bin lids and shouting. The shots described by one witness were tracer rounds which he saw overhead. None of these witnesses gave evidence relevant to the central issues in this inquest. I determined that in light of the limited value of this evidence and the extensive evidence received, no further witnesses from the cadre should be called.

241. The next of kin suggested to KTM 368 that he was Soldier C. I was struck by his account of waking up during the night remembering that he had given a statement to the RMP after having read the statements of Soldiers A to D. KTM 368 appeared to be very confused in the evidence that he gave, he did impress me as someone who was trying his best, but his recollection is simply not reliable given the passage of time. I considered him to be hopelessly confused in his account.
242. I have already addressed the submissions on the identity of Soldier B and have made a finding in this regard.
243. Both the next of kin and the MoD suggested to Soldier E that he was recounting a different operation such as Operation Huntsman. Having considered his evidence and that of the other military witnesses I consider it likely that Soldier E misdirected himself regarding his involvement in the operation on 5/6 November 1971. On balance it would appear that Soldier E was describing a different operation. In reaching this conclusion I have considered carefully the exchange of shots that he recounted. I find that his account does not accord with any of the other evidence.

## Pathology evidence

244. I had the benefit of reports from two pathologists who both gave oral evidence.
245. Professor Jack Crane was in general agreement with the findings of Dr Press. He agreed with the findings regarding the entrance and exit wounds of the top left shoulder and the right side of the chest respectively. The trajectory of the bullet was from left to right and downwards. Further, that the degree of penetration and the nature of the injury caused was consistent with and more likely to be a bullet of high velocity than low velocity.
246. The shape of the entrance wound was such that it was more likely that the bullet had not struck an intermediate object, for example the fence, before striking Mrs Thompson. There was no evidence that this was a close-range discharge. Close range describes a bullet fired from a distance of less than a metre away.
247. Professor Crane expanded upon the trajectory of the bullet and explained that if the fatal shot was fired from Southway, given the topography, the bullet would have travelled in an upwards direction in which case Mrs Thompson must have been kneeling on the ground, bent forwards so that her left shoulder was lower than her right side. The wounds sustained by Mrs Thompson did not accord or “fit with” someone firing from Southway at a target presenting a head, torso and arms. He emphasised that Mrs Thompson had to be in a kneeling position and “she has to be very low down with her head bent down, her neck bent forwards and with her left shoulder presented in the right side of her chest then slightly elevated if the bullet comes from Southway.” If Mrs Thompson was standing up when struck, the shot must have been fired from an elevated position such as an upstairs room of an adjacent building. It was not feasible for Mrs Thompson to have been

standing when struck if the bullet came from Southway.

248. The location at which Mrs Thompson was found was explored. Professor Crane was of the opinion that “theoretically Mrs Thompson could have been mobile” after she was wounded. She could have moved slightly. Therefore, he did not think that any conclusions could be drawn as to her position in the garden when struck by the bullet. It is possible that she could have cried out after being struck by the bullet.
249. Dr Russell James Delaney was largely in agreement with the evidence of Professor Crane. He agreed that the injuries resulted from a high velocity round caused by a direct strike. He was unable to specify what type of high velocity round caused the injury. There was no evidence to suggest the weapon was discharged at close or contact range. Mrs Thompson may have been capable of some movement and of making some noise before death.
250. He agreed that if Mrs Thompson was erect when struck the firing point would have been from above and from her left. If the firing point was on Southway Mrs Thompson must have been in the position Professor Crane described with the left shoulder lower than the right side of the chest, but Dr Delaney considered that kneeling was not the only feasible position. He agreed with the suggestion made by senior counsel for the MoD that Mrs Thompson could have been cowering in a protective position.

### **Ballistics evidence**

251. I had the benefit of reports from the ballistics experts who met on 5 March 2018 and produced a joint note, summarising their areas of agreement and dispute, which reads:

“Areas of agreement

- (1) The cause of death was a single high velocity gunshot wound.
- (2) The injuries to Mrs Thompson are consistent with her being in a crouched or kneeling position when she sustained the shot. She must have been at least bent over.
- (3) The pathway of the bullet that killed Mrs Thompson was in a downward trajectory with an angle of 45 degrees. Upon the bullet exiting her body, her right arm was not in the path of the exiting bullet, her arm could have been forward or back from her body. The bullet exited intact.
- (4) The shot was fired from greater than 30cm, based on the limited examination of the clothing at the post mortem. Propellant grains could be deposited on the garment up to a range of approximately 90cm, however these propellant grains, if present, would not have been necessarily obvious and visible with the naked eye at the post-mortem.
- (5) It cannot be excluded that the muzzle of the weapon was fired from within one or more of the gaps of the wooden fence. The range of >30cm can still be achieved with the muzzle of the SLR positioned through the gap(s) in the fence. This is based on the dimensions of the SLR, the size of the gap(s) and the lack of information on the precise location of Mrs Thompson within the garden when she was shot.
- (6) The two identified areas of damage to the wall are assumed to be associated with two separate bullet strikes.
- (7) No chemical testing was done on the alleged bullet impact damage(s) on the wall, either at the time of the incident or any of the subsequent site visits



by any of the experts to support or indicate that the damage was resultant from the strikes of a bullet(s). Given the time that has passed any residues that may have been present are likely to have dissipated, furthermore permission was not given to excavate the higher mark which may have yielded in some ballistic material, it is not known how this damage was repaired.

(8) Assuming that they are bullet strike marks, the lower damage is more in line with the shot that had passed through Mrs Thompson.

(9) Excavation of the damage by a penknife could have altered the damage caused by the bullet(s) thus making any extrapolation of the bullets(s) trajectory(s) uncertain. PB is of the opinion that the excavation of a penknife would not alter the damage significantly to change the point of impact, and therefore is of the opinion that the shot is more likely to be straight on.

(10) We are all in agreement that the possibility of an angular impact cannot be ruled out due to the excavation. The damage could have resulted from a straight on shot or could have been fired from further down Southway, looking back at 129 Rathlin Drive resulting in a more angular trajectory. If the damage was more or less horizontal then the shots would have to be fired from directly facing the fence.

(11) Position B as indicated on the police sketch map is more in line with houses 53/55 Southway. AK reports on page 13 of her report that position B is almost directly opposite 57/61 Southway. This she explains is because the sketch indicates a position on the curvature of the bend, however in reality position B is more in line with 53/55 not 57/61.

(12) Shots could have been fired from directly opposite 129 Rathlin Drive or anywhere down Southway (either on roadway/footpaths) until one reaches

the pathway/roadway opposite 53/55 on the western side, and if on the eastern pathway then anywhere as far as no 57. These possible positions include Position B as indicated on the police sketch. Beyond this, line of sight is not possible, this is based on the current construction of the fence.

(13) The flash, sound and the possibility of the sound of a passing bullet would be perceived as being instantaneous. Differentiating between the sound and identifying a particular weapon, and or origin of the shot cannot be identified based on the location and the surroundings of the incident at the time.

(14) The ability to identify anything other than shadow(s) within the garden from the roadway at this time of night cannot be relied upon.

(15) Taking points 13 & 14 above, Soldier C's testimony, in seeing, the flicker and hearing a shot, and identifying a 22 weapon is not in keeping with what would have happened.

(16) Visits to the scene have not ruled out or pinpointed the shooters potential position with any certainty, given the current construction of the fence the shots could not have been fired from beyond no 57. The shots could have been fired from being directly opposite 129 Rathlin Drive or anywhere positioned down Southway, inclusive of Position B. Had the shots been fired further down the road, the subsequent strike marks may have had an angular component, however as pointed out in point 9 excavation of these strike marks could have altered the damage. "

252. These issues were explored in the course of the experts' oral evidence which reflected the agreed findings of the minute. Mr Boyce agreed with the evidence of Ms Kiernan and Mr Mastaglio save in one respect to which I will return.

253. The nature and occurrence of muzzle flash and the sound made by the discharge of a low and high velocity weapon was explored in some detail with Ms Kiernan and Mr Mastaglio in the context of the descriptions given by Soldiers A, C and D in the 1971 statements of hearing a “bang” and seeing a “flicker of light” and “flickering light” and the account of hearing the sound of the bullet as it passed by.
254. Ann Kiernan referred to muzzle blast and muzzle flash interchangeably. Mark Mastaglio stated that these are separate occurrences, and that muzzle flash refers to the flash of light that is seen upon the weapon being discharged caused by the residual propellant hitting the atmosphere whereas muzzle blast refers to the blast that is felt upon discharge caused by the overpressure of expanding gases at the muzzle. He explained that what you hear when a gun discharge is the bang of the primer and the propellant, these chemicals burning and exploding.
255. The experts did not consider that the flash which occurs could properly be described as a flicker of light or a flickering light. Ann Kiernan stated that this would never be referred to as a flicker, and she would not expect that trained soldiers experienced in the use of firearms would describe what is seen on the discharge of a weapon as a flicker of light or a flickering light. She agreed that muzzle flash is a term understood by people who use guns. Although she stated that she would not use the term flicker she could not rule out the possibility that “some other people might.” Mark Mastaglio stated that ‘flicker’ is entirely inappropriate as it does not convey the very short transitory event involved. He referenced research on low velocity ammunition which found that the duration of the muzzle flash had a maximum in the region of 6/10,000th of a second- “it is within the blinking of an eye.” He stated that flickering is not a term which is ever used with regard to muzzle flash.

256. The experts explained that at one and the same time as the muzzle flash is seen, the sound of discharge is heard. What you hear is the bang of the primer and the propellant, essentially the explosion of these chemicals. At a distance of around 20 yards from the weapon being discharged it is impossible to differentiate between the muzzle flash and the sound of the discharge. These occur instantaneously. In answer to counsel on behalf of the next of kin Mark Mastaglio stated that the description of the incident provided by Soldier D in his 1971 of what he saw and heard did not convey to him the concept of muzzle flash and the sound being witnessed simultaneously.
257. The ability to hear the whizz or whisper of a passing bullet was explored. Ann Kiernan and Mark Mastaglio agreed that at a distance of around 20 yards you will not hear the bullet passing by your ear because of the bang of the gun. Mark Mastaglio stated that the bullet will pass in a fraction of a second and “no matter how trained you are” within those fractions of a second you will not hear the bullet passing because of the bang of the gun “they both reach you at essentially at the same time.” The variable properties of small calibre/ low velocity bullets as opposed to high velocity bullets were explored, but neither type of bullet could be heard as it passes at a distance of 20 yards.
258. Mr Boyce gave evidence that muzzle flash, the sound of discharge and the sound of a bullet passing by “whilst in reality all three are instantaneous, the person, depending on the individual, could perceive that they had actually heard a bullet passing them as well”. However, he agreed that objectively a person could not differentiate between the discharge and the noise of the bullet passing and that he was not in a position to give scientific evidence as to what a person might think they heard.
259. On behalf of Soldier D it was suggested to Ann Kiernan that having never been in the ‘butts’ she had no basis on which to give evidence in respect of

whether or not a person could hear a bullet passing by one's head at 20 yards. The expert confirmed that the butt is at the end of a shooting range next to the target. The distance down the range is in the region of 100m plus. The speed of a bullet which has travelled that distance may have reduced below the speed of sound and if so, you can hear the whizz of the bullet as it travels. However, she maintained that it would not be possible to hear a low velocity or indeed high velocity bullet passing by at a distance of 20 yards. This is a scientific impossibility.

260. Mark Mastaglio agreed. He confirmed that at this distance of 20 yards or indeed at a distance of 20 m from where the gun was fired the bullet would still be travelling faster than the speed of sound, would pass a person in a fraction of a second and no matter how attuned their ear might be that person will not hear or perceive the bullet passing because of the bang of the gun. In relation to Soldier D's statement to the HET where he said "I heard the crack of a low velocity bullet going past my head. I understood the difference between the sound of a high and low velocity bullet." Mr Mastaglio stated that at 20 yards Soldier D could not have heard the crack of a bullet going by near his head because it would have been simultaneous/instantaneous with the bang from the discharge of the cartridge.
261. The experts agreed that the calibre of the gun cannot be identified from the sound of the discharge. It is possible to differentiate between a high velocity and low velocity weapon from the sound of discharge as the sound of the bang is bigger in a high velocity weapon.
262. Similarly, in an urban environment because there is acoustic echoing and sound waves "bounce around" the origin of where the shot came from cannot be pinpointed by the sound of the discharge. Nor would this sound allow you to determine how far away the shot was fired. It was accepted by the experts that the location of the origin of the shot can be pinpointed on seeing a flash.

263. The experts each had extensive experience of assisting pathologists in the identification of bullet calibre and trajectory. They were of the opinion that the entry and exit wounds, the pathway and injuries caused to Mrs Thompson were consistent with a single high velocity bullet. It was impossible to identify the precise calibre of bullet, but certain types could be ruled out such as a .22 round. A 7.62mm bullet could not be ruled out.
264. On the basis of the pathology evidence the ballistics experts agreed that the bullet was stable and had not ricocheted or passed through an intermediate object, such as the wooden planks of the fence before striking Mrs Thompson. The gap between the planks would have allowed a 7.62 bullet to pass through, although the possibility that it grazed the edge of the plank could not be excluded.
265. The location from which the shot was fired, the position and location of Mrs Thompson within the garden and the marks on the wall of 129 Rathlin Drive were explored in detail with the ballistics experts.
266. The experts noted that there was no evidence of a shot having been fired from an elevated position. They were in agreement that Mrs Thompson's injuries were consistent with her being in a crouched or kneeling position when she was shot.
267. As no contemporaneous forensic examination of the scene had been undertaken and no reliable evidence could now be gleaned from such examination the experts were unable to state definitively that the marks photographed by the RUC in 1972 were bullet strikes which resulted from the shots fired by Soldier D. The experts accepted that the marks on the wall had the appearance of bullet strikes with the lower mark appearing to have less velocity than the upper. They proceeded on the assumption that the marks are bullet strikes and, on this basis, considered that the lower mark is more in

line with the shot that passed through Mrs Thompson.

268. The anecdotal evidence from various local residents of a bullet having been removed from the wall by a person unknown was explored, in particular, whether such attempted extraction would interfere with the ability of a ballistics expert to provide an opinion on the angle at which the bullet struck the wall. When questioned on this issue Ms Kiernan confirmed that agreement was reached between the experts that it was more likely that the shot was straight on given the appearance in the 1972 RUC photograph of the hole in the gable wall. However, because it may have been excavated one cannot rule out an angular shot.
269. The experts could not pinpoint the precise location on Southway from where the shots were fired.
270. It was not possible to determine the range at which Mrs Thompson was shot, save that it was probably greater than 30cm. The possibility that the muzzle of the weapon was positioned between the gaps of the wooden fence could not be excluded.
271. It was also not possible to confirm the precise location of Mrs Thompson within the garden when she was shot.
272. Mr Mastaglio agreed that the closer the shots were fired to the fence the greater the chance that they would have passed through the gaps between the planks. Ms Kiernan stated that the bullet could pass through a gap even if shot from an angle to the fence, however the opportunity of a clean shot decreases the further the shooter moves down Southway.
273. Ms Kiernan accepted that it was possible that a gunman could fire from behind the fence at 129 Rathlin Drive, being in an elevated position and

obscured by the fence.

### **Engineering evidence**

274. I have already referred to the evidence of Mr Murphy, consulting engineer who visited Rathlin Drive on two occasions in October 2017 with the second visit during the hours of darkness. In the summary of his written reports he states that analysis of the scene is dominated by two physical characteristics. The first is the steepness of Southway as it descends from number 129 Rathlin Drive. The second is the gaps between the fence boards at this property.
275. He confirmed that with the exception of some planting of trees in the grass area the topography and housing in the area had not changed since 1971.
276. As outlined, the fence and wall to the side of 129 Rathlin Drive are in the same position but there has been some work undertaken in the intervening years. As illustrated by a comparison between the RUC photographs taken in 1972 and those taken by Mr Murphy in 2017 works have been undertaken on the exterior side of the wall in that a grass strip which previously abutted the pavement has been covered in asphalt. Mr Murphy considered it likely that the works to the wall occurred at the same time as these alterations to the pavement area.
277. The works would have required the removal of the planks of the fence. Whilst the height of the wall has not changed since 1971 there are now 45 rather than the 46 planks visible in the 1972 photograph of the wooden fence. Based on his inspection of the fence's nails Mr Murphy expressed the opinion that along Southway the planks are the original planks shown in the 1972 photograph. Whilst there was no evidence of bullet damage, he agreed that given there are now 45 rather than 46 planks in use it is likely that the best planks would have been retained.



278. The gaps between the planks in the fence were measured by Mr Murphy and were found to vary from one and a quarter inches up to nearly three inches, two and seven eighths. This represents an increase in the original gaps between the planks which on his calculations would have been on average an inch and a half.
279. Mr Murphy illustrated the significant difference in height between the rear garden of 129 Rathlin Drive and Southway. This difference ranged from one of three feet and eight inches to just over 22 feet as one descends Southway. A person standing on Southway would be substantially below the height of the rear garden.
280. Mr Murphy stated that the view that a person on Southway would have into the rear garden would be affected by this difference in height and also by the fence. He confirmed that it is impossible to see over the fence from Southway, so the view is restricted to the gap between the fence panels. Further, that view through the (average) inch and a half gap becomes more restricted as one moves up or down Southway by the thickness of fence planks which is 13 sixteenths of an inch, 20.5mm. He described these as quite thick planks.
281. Mr Murphy agreed that the quality of light available will affect the view into the garden and stated that the fact there is a close boarded panel fence will reduce it even more. He confirmed that if lights were on in the back of the house they would have shone into the back garden. Whilst the rear door of this property had been removed, presumably when large patio doors were installed, photographs taken by Mr Murphy of the neighbouring property show a rear kitchen window and partially glazed door facing on to the rear garden.
282. Mr Murphy detailed the substantial alterations to the layout within the rear garden. However, he was confident having viewed the 1971 photograph from

the Derry Journal and in particular the concrete area and manhole cover shown that the levels within the garden have not changed.

283. The 1971 Derry Journal photograph shows that the area of concrete is adjacent to the house. The moped is within this area. This is the area where Mrs Thompson's body was found, as described by her husband. The adjacent area of the garden which was laid in grass is illustrated in the 1972 RUC photographs.
284. Mr Murphy agreed with Mr McAlinden QC that this concrete area shown is likely to have been used for the banging of a dustbin lid if that was the activity in which Mrs Thompson was engaged.
285. He confirmed that the moped would add to the restricted view into the garden.
286. Mr Murphy agreed that a DOE map the date of which was unclear shows a lamppost in the alley to the rear of 129 Rathlin Drive and that the street lighting has changed in the period since 1971.
287. He agreed that the garden of 129 Rathlin Drive would allow a gunman to be elevated above Southway. He stated that his view would be restricted because of the fence unless he was standing very close to it. He stated that in terms of a viewing location, it has its deficits. In terms of an elevation it has advantages. He confirmed that access to and from the rear garden is easily gained onto the alleyway which runs in several directions from the rear of the property.
288. He confirmed that the muzzle of an 18mm wide instrument could be placed between two of the fence planks and could be angled.

289. Mr Murphy elaborated on the drawing he had prepared based on the grid references contained within Soldier B's supplementary statement. These references included the location of the platoon or sections which fired gas in the direction of Rathlin Drive which Soldiers A, D and Soldier C had described in the 1971 statements as being from "high ground" and the "objects were thrown downhill". Mr Murphy stated that the soldiers would have needed to be very far down Southway to regard those firing the gas canisters as being on the brow of the hill or on high ground.

### **Consideration**

290. I will first of all consider the evidence regarding the circumstances prevailing in and around the home of Kathleen Thompson on 5/6 November 1971 including the actions of Mrs Thompson. I will then consider whether the person who shot and killed Mrs Thompson can be identified. If I find that such person was a soldier, I will consider whether the use of force was justified which requires asking whether the soldier held an honest and genuine belief that the use of force was necessary and if so whether the level of force used was no more than was absolutely necessary. I will address whether the use of such force and the operation in which it was used were planned, regulated and controlled in such a way as to minimise to the greatest extent possible, any risk to life. I have already addressed the adequacy of the investigation into Kathleen Thompson's death.

291. In my analysis of the evidence, I will apply the law and principles relating to the burden and standard of proof as detailed above. I am of course mindful of the effects of the passage of time on memory and I am also conscious of the limitations in the investigations conducted in 1971 and the absence of any forensic examination of the scene as well as the absence or unavailability of witnesses to include Soldiers A, B and C.

292. The evidence from the Thompson family including the deposition of Patrick Thompson provides some insight into what occurred in the immediate period prior to Kathleen Thompson's death. The arrival of the army at the McGlinchey house prompted Mrs Thompson to leave through her back door with the apparent intention of going to her neighbour who lived at number 53 Southway. She was not seen again by either her husband or daughter Minty, neither of whom were aware of Mrs Thompson's presence in the rear garden of their home given their attempts to find her in the neighbourhood. Although not a view shared by Patrick Thompson the family believe that Mrs Thompson went to the garden to bang a bin lid or other object.
293. The family, civilian and military witnesses described the civil disturbance which quickly ensued upon the arrival of the army including whistle blowing, the banging of bin lids, the throwing of stones and the breaking of bottles. Some but not all of the witnesses described the army's deployment of gas/smoke which occurred as the army was withdrawing from the area. The evidence from Soldier D suggests that the army withdrawal commenced around 20 minutes after they arrived at the McGlinchey home. Eamon McGlinchey thought that the search was completed within five to seven minutes.
294. Minty Thompson gave evidence regarding the 'commotion' that developed in the area. Patrick Thompson described the scene which unfolded from his position at his front door, the crowd that had gathered at the corner of Southway and Rathlin Drive, the firing of CS gas and the crowd that gathered further down Southway from where he believed he also heard four or five shots fired.
295. No civilian witnessed or heard any gun shots fired from the garden of 129 Rathlin Drive.

296. The evidence of Dr Press and the pathologists who gave evidence to this inquest is very clear as to the trajectory of the fatal shot. I found the evidence of Professor Crane in particular to be extremely helpful. Professor Crane with whom Dr Delaney agreed gave evidence that if the fatal shot was fired from Southway, given the topography, the bullet would have travelled in an upwards direction. He stated that Mrs Thompson must have been kneeling on the ground, with her head down, bent forwards so that her left shoulder was lower than her right side. Dr Delaney considered that kneeling was not the only feasible position, Mrs Thompson could have been cowering in a protective position. If Mrs Thompson was standing up when struck the shot must have been fired from an elevated position such as an upstairs room of an adjacent building.
297. Patrick Thompson wondered whether Mrs Thompson might have stood on the moped to look over the fence, something which neither Minty nor David Thompson could contemplate their mother doing.
298. There is no evidence either from the military or civilian witnesses of any shot having been fired from an elevated position such as the first floor of an adjacent building. There is no evidence of any gun shots having been fired into the garden of Mrs Thompson's home on the night that she died either from Southway or anywhere else in the vicinity other than the two bullets fired by Soldier D whilst the army was retreating from the area.
299. The banging of dustbin lids was ongoing in the area in the course of the search operation and the weight of the evidence from the Thompson family was that Mrs Thompson was engaged in this activity at this time. Given this evidence and the trajectory of the bullet, I consider that it is likely that Mrs Thompson was in a kneeling position as described by Professor Crane and was banging a bin lid or other object on the ground in her back garden when she was hit by a bullet. The bin was located to the right of the back door on

entering the garden from the kitchen. This area has a concrete surface and would present as an obvious location to someone seeking to generate noise from the banging of a bin lid or other object. This is close to the area where Mrs Thompson was found by her husband.

300. The fatal bullet passed through Mrs Thompson and has never been located. Dr Press, Professor Crane, Dr Delaney and the ballistic experts were all agreed that the degree of penetration and the nature of the injury caused was consistent with and more likely to be a bullet of high velocity than low velocity.
301. The inquest heard that SLR rifles were used by the Army in Northern Ireland in 1971. These fired high velocity bullets. The ballistics experts share the opinion that although one could not identify the type of bullet which fatally wounded Kathleen Thompson from the shape of the entrance wound it is possible to exclude certain types of bullet. The bullets fired by an SLR do not fall within this excluded category.
302. The photographs taken by the RUC in 1972 demonstrate holes in the wall facing towards Southway which is adjacent to the area where the bin was located and where Mr Patrick Thompson described having found his wife. Mr Patrick Thompson and Mr David Thompson noted this damage the day after the shooting.
303. The ballistics experts whilst recognising that there has never been testing undertaken to establish definitively whether the damage noted was resultant from the strikes of a bullet(s), considered that the damage had the appearance of bullet strike marks. They assumed these marks to be associated with two separate bullet strikes and considered that the lower damage is more in line with the shot that had passed through Mrs Thompson.

304. The experts agreed that the damage was more likely to have resulted from a straight on shot opposite to the garden of 129 Rathlin Drive although it was possible that it was caused by a shot fired from further down Southway, looking back at 129 Rathlin Drive.
305. Soldier D stated that when he fired the two shots he was on the road on Southway and approximately 20 yards away from the garden at 129 Rathlin Drive. The precise location from which he fired is unknown. He did not seek to suggest that he fired from a position outwith the parameters detailed by the experts.
306. Taking into account all of this evidence I am satisfied to the requisite standard that the bullet which fatally wounded Kathleen Thompson was one of the bullets fired by Soldier D.

### **Was the shooting justified?**

307. Having determined that Soldier D fatally wounded Mrs Thompson I turn now to consider the evidence regarding the circumstances prevailing at that time and whether the shooting was justified within the definition already outlined.

### *Summary of D's submissions*

308. Essentially Soldier D states that he discharged two shots as he believed he had been fired on by a gunman who was in the garden of 129 Rathlin Drive and was therefore under immediate threat. On behalf of Soldier D it was submitted that the fenced and elevated rear garden provided an ideal location for a gunman intent on shooting soldiers as they retreated from the area. Ann Kiernan, ballistics expert and Brian Murphy, engineer both accepted that this was a potential vantage point. There was an exit from the back garden of 129

Rathlin Drive onto the alleyway. David Thompson confirmed that the gate into the garden was open and operated easily. On Soldier D's case this provided a ready means for a gunman to enter and leave the rear garden.

309. He states that he was acting in the defence of himself and others from a real and imminent risk of harm.

*Summary of Next of Kin submissions*

310. The next of kin challenge this account and contend that Soldier D's actions of shooting two shots into the garden and a short time later a further six shots demonstrate recklessness on his part.

311. The first question which must be determined on the balance of probabilities is whether Soldier D held an honest belief that he was being fired on. I bear in mind that an honest belief can be a mistaken one.

312. In the course of this inquest the matters in issue, which on any account occurred within a very short timeframe, were explored in a high level of detail and much time was spent examining these matters individually with the expert witnesses and Soldier D. Whilst this was an altogether appropriate mode of enquiry, the actions and events must be considered by me as a whole rather than in individual segments. Furthermore, whilst I assess the evidence objectively, the question of whether Soldier D held an honest and genuine belief that it was necessary to use force by is determined by a subjective standard, with my standing in the shoes of Soldier D and looking at the matter from the perspective of what he honestly perceived at the time. This requires me to take into account all of the material which sounded on his belief in the need to use force: what Soldier D saw, what Soldier D heard, his background and experience generally and his training in the use of firearms and in the application of the Yellow Card, his instructions in respect of the



exercise on the night in question and the circumstances which were prevailing.

313. Of the four original ciphered military witnesses Soldier D was the only soldier to give evidence to the inquest. The identity of Soldiers A, B and C remains unknown and at this remove is likely never to be known. None of the other military witnesses provided any direct evidence about the shooting in issue. The military logs do not assist. Nor was I assisted by any civilian evidence in this regard.
314. The evidence from the ballistics experts was very helpful, particularly that of Mark Mastaglio who explained and presented technical scientific matters in a very clear and understandable form. Whilst the ballistic experts were limited by the want of any contemporaneous forensic investigation and examination of the scene, their careful analysis of the available evidence enabled an informed scientific opinion on matters in issue such as the parameters of the range in which the fatal shot could have been fired, the factors that inform what is audible when a gunshot is discharged and the ability to rely on sound to pinpoint the source of discharge, the simultaneous occurrence of a flash and bang upon discharge and the nature of muzzle flash.
315. The evidence from these experts was largely agreed, inter alia, that a flicker of light/flickering light is not consistent with the appearance of muzzle flash. Mark Mastaglio gave very clear evidence on this issue. Muzzle flash occurs within the blink of an eye. Further, that the sound of discharge and the appearance of a flash of light at the muzzle of a gun occur simultaneously rather than sequentially and at a distance of 10 or 20 yards from the point of discharge it would be scientifically impossible to hear or perceive the whizz or whisper of a passing bullet fired from a low or high velocity weapon.

*Features of the garden fence and topography*

316. The photographs from 1972, the evidence of Patrick Thompson and the inspection and analysis of Mr Murphy assisted in gaining an understanding of the view available into the garden from Southway. I accept the evidence of Patrick Thompson that the gaps in the fence were approximately between one inch to one and a half inches wide and the planks were six inches wide and three quarters of an inch thick. This evidence accords with the analysis and findings of Mr Murphy. The 1972 photographs of this close boarded fence, which were taken during daylight hours, illustrate the very limited nature of the view into the rear of 129 Rathlin Drive from Southway.
317. Mr Murphy was also helpful in demonstrating how the topography of the location affects the view into the garden. Southway is substantially below the height of the garden. Soldier D's precise location on Southway at the point of discharge is unknown, however, the evidence of the ballistics experts enables me to determine the range of positions within which the shot was fired. At any point within this range Soldier D would have been substantially below the height of the rear garden of between three feet eight and a half inches to just over 22 feet as one goes further down Southway.
318. Mr Murphy explained that the considerable thickness of the fence boards further restricts the view through the gap as one moves up or down Southway.
319. Plainly, the view into the garden from Southway was extremely restricted both by reason of the fact that Southway is substantially below the height of the garden and by the design of the fence. Upon looking through the fence orthogonally the view is confined to the gap between the fence panels of on average an inch and a half. This view diminishes when a person ascends or

descends Southway.

320. Mr Murphy confirmed that obviously the quality of light will affect an ability to see into the garden.

### *Lighting*

321. There were streetlights in the area but according to Soldier D these were not operational. This was also reflected in the Thompson family and civilian evidence save that a street light appears to have been working outside the McGlinchey house and there may have been some streetlights operational in the High Park area. Neither would have provided illumination on Southway and the area of the garden of 129 Rathlin Drive.
322. In his HET statement Soldier D says "...I remembered seeing the appearances of a flash from the area of the garden of 129 Rathlin Drive and some movement in a very dark part of the garden". He told this inquest that he did not believe there was any ambient lighting at 129 Rathlin Drive. He stated there may well have been ambient lighting in the surrounding buildings. I will turn to his evidence shortly, but, on this issue, Soldier D stated that there was sufficient light as to allow him to see and fire at the head arms and torso behind the fence.
323. Soldier A does not mention lighting in the garden at 129 Rathlin Drive. He stated that the street lighting was not operational in Rathlin Drive nor in Southway. Commenting on the weather he said it was overcast and dark but visibility was good.
324. Soldier C stated that the rear garden was well lit from the light from the house. For the reasons detailed below I do not consider that any reliance can be placed on Soldier C's evidence.

325. Minty Thompson was just 11 years of age in November 1971. Her first statement was made for the purposes of this inquest some 46 years later. Ms Thompson portrayed a quiet dignity in relaying the tragic events of her childhood. I found her testimony to be patently honest and straightforward, however, there is cause to question the accuracy of her recollection as to the porch light being on. She was very young at the time in question and did not make a statement for very many years. In contrast, her father Patrick Thompson provided a detailed account in his deposition which was provided within a year of Mrs Thompson's death. He recalled that after Mrs Thompson left the house Minty ran out to the porch and switched on a wall light. He recalled that he ran out and told her to put out the light due to the presence of the army on Southway.
326. Both Minty and David Thompson were clear that there was no outside garden light and the only light in the garden area would have been light coming from the kitchen. David Thompson recalled that the light was not on the living room which faces onto the rear. He could not recall whether the porch light was on. He said that the area of the garden where his mother was found was very dark.
327. The preponderance of the evidence suggests that there was limited lighting in the general area and little if any illumination in the rear garden. Minty and David Thompson said the only light would have been from the kitchen if the light was on in that room.

#### *Civil disturbance*

328. As outlined, the evidence from both civilians and military personnel demonstrates that there was disturbance and noise generated by local residents which resulted in the army's deployment of CS gas in the area. This

disturbance which included missile throwing heightened as the soldiers were withdrawing from the area.

*Soldiers A and C*

329. I have already alluded to the fact that the only witness to give evidence regarding the direct circumstances of the fatal shooting of Mrs Thompson is Soldier D. The statements given by Soldiers A, B and C have not been tested under cross examination and there has been no opportunity to hear their evidence. Evidence given in this way tends to carry less weight than that which has been subject to full scrutiny. I take this into account in determining the weight that I afford to this evidence. I will consider the evidence of Soldiers A and C briefly at this stage.

*Soldier C*

330. Soldier C purports to have been able to see a great deal in the rear garden such that he was able to give a description of a gunman and a woman. He said that he was 10 yards away. This account appears to be highly dubious and implausible. Neither Soldier A nor Soldier D referenced having seen a man with a gun or a woman in the garden. Given the height and design of the fence it is entirely understandable that the HET officers who visited the scene said in the course of the interview of Soldier D that they believed that it would be virtually impossible for anyone to identify any individuals behind the fence with a gun due to the lack of lighting in the area and the small gaps in the fence.

331. The account of what Soldier C said that he heard, which appears to be a bullet passing his head, is rejected by the ballistic experts as a scientific impossibility. I accept this expert evidence.

332. In short, I find that Soldier C's account of seeing a gunman is not reliable. I also find that the account given by Soldier C is so fanciful as to call into question his credibility and the propriety of Soldier C's objectives in making this statement.

*Soldier A*

333. On behalf of Soldier D it has been suggested that Soldier A gives an account of simultaneously hearing a bang and seeing a flickering light. However, it is significant that Soldier A does not mention having heard any gunfire and does not refer to a shot having been fired either from the rear of 129 Rathlin Drive or at all. This is despite the fact that elsewhere in his statement and in reference to a totally different event A does refer to hearing gunfire.

334. It is noteworthy that he states that he had stopped to ensure that all of his men were clear of the house that was being searched and that he was the last to come down Southway. He specifically referenced that his men had gone past him. Soldier D was one of his men. Although, and in common with Soldier D, the actual position of Soldier A at the time of these events is unknown, on his account he was close enough to Soldier D as to see and be able to describe two objects having been thrown from the garden at 129 Rathlin Drive, a piece of wood and a dustbin lid. After these items had appeared he described Soldier D taking aim and firing twice into the garden. He also observed Soldier D some 30 yards further down Southway firing at his own men who were deploying CS gas canisters in the direction of Rathlin Drive.

335. It is submitted on Soldier D's behalf that despite the limitations of the RMP investigation process the statements of Soldiers C and A provide corroboration to Soldier D's account of there being a bang and flash at the

rear of 129 Rathlin Drive. Further, that the inconsistencies between these statements contradict the submissions made on behalf of the next of kin that Soldiers A and C provided fictitious accounts in order to support Soldier D.

336. As outlined, I find Soldier C's account to be unreliable and highly questionable. Soldier A's account of seeing a flicker of light and hearing a bang is consistent with Soldier D's account as given in 1971, but Soldier A did not describe the bang as a gunshot. There is no suggestion that Soldier A considered that they were under fire, for example, he did not react by shouting a warning, raising his weapon or taking aim. Rather, he goes on to give an account of seeing objects, a dustbin lid and a piece of wood, being thrown from the garden before seeing Soldier D fire. The MoD do not address this aspect of Soldier A's evidence. The next of kin submit that such actions are wholly inconsistent with the presence of a gunman who has just fired at retreating soldiers or indeed with anyone acting in conjunction with any such gunman. I find that such actions are indeed incongruent with the presence of a gunman. Given Soldier A's position of responsibility for the other soldiers I would have expected him to specifically evidence any belief that a shot had been fired from the garden of 129 Rathlin Drive. That information would be of central importance to the account he does give of seeing Soldier D use his weapon to fire in the direction of the fence.

*General observations on Soldier D's evidence*

337. On Soldier D's behalf I was asked to take into account his level of co-operation in investigations and this inquest as well as the fact that it was through Soldier D's own actions that his name and whereabouts became known and that but for his actions, in common with Soldiers A, B and C, he might never have been identified. It is fair to say that Soldier D's identity only became known as a result of his action of contacting the PSNI Chief Constable in 2002 upon learning of the newspaper reports in the Derry Journal that the police were to release their file concerning the death of Mrs Thompson. I do

take his co-operation into account as a matter of credit to Soldier D. However, this must be viewed in the context of Soldier D understanding that his identity was already known to the PSNI and his primary objective in making contact was to persuade the Chief Constable to withhold his identity. Soldier D did at the same time make it clear to the Chief Constable that he was not seeking to obstruct any inquiry.

338. These events were explored in some detail with Soldier D, in particular the identity of those persons who had alerted him to the newspaper reports. In his interview with the HET officer he said that it was soldiers who were good friends he had made over 25 years who made him aware that these articles were appearing. Soldier D gave evidence to this inquest that he could not recall the identity of the retired soldiers who told him about these newspaper reports. The HET interview took place around 8 years after these newspaper reports were drawn to Soldier D's attention. At that time, 2010, Soldier D certainly appeared to recall who had alerted him to the matter, which one might expect as those concerned were described as longstanding and good friends. It is surprising that Soldier D is now unable to recall any of the names of these good friends when giving evidence. He appeared to be unwilling to disclose the names of any of these individuals. Of course, a lack of candour regarding this issue does not mean that Soldier D is being less than candid generally in his account. It is possible that these friends have no direct knowledge of the matters under consideration and Soldier D simply did not want to involve them in these proceedings. I recognise that Soldier D co-operated with the HET and gave evidence over a period of three days in 2018 and again in June 2021. Nonetheless, his approach to this issue runs contrary to the submissions made on his behalf that he has been entirely co-operative with this process.

339. A striking feature of Soldier D's evidence was his inability to recall anything about firing the six shots at his fellow soldiers, the "green-on-green shooting".



His interview with the RMP addressed not only the shots fired into the garden at 129 Rathlin Drive but also these further six shots. I have already discussed the issue of delay and the passage of time at paras 28-30. The vagaries of memory must be recognised not least when someone is asked to recall events of nearly 40 years ago at the time of the HET interview and 48 years by the time that Soldier D first gave his evidence to this inquest. However, I find it surprising that Soldier D could not recall firing these six shots. On his 1971 account the green-on-green shooting occurred in the immediate aftermath of the shooting at 129 Rathlin Drive. He travelled only 15 yards down Southway when these events occurred. Both episodes of firing, that is 129 Rathlin Drive and green on green, occurred in the course of the same operation and were highly proximate in time.

340. It is also surprising that Soldier D cannot recall the name of either the leader of his section, Soldier A or Soldier C who provided an account of having been with Soldier D during the entire episode when he fired shots into the garden and at his own men. It is important to remember that these events involve soldiers for whom typically there will have been many difficult experiences and events. However, on the evidence of Soldier D himself this was the only occasion that he discharged live rounds. Soldier D has stated he cannot recall the names of Soldiers A and C because he did not know the soldiers in his section at all well as he did not serve with them for any protracted period. He left the JNCO course after only a few weeks. However, this was a singular experience in the life and career of Soldier D which involved his being part of an investigation not only into the fatal shooting of a civilian woman in her garden but also his shooting six rounds at his own men. These are events that one would regard as truly memorable and it is difficult to understand, given that they arise out of the same operation and are so proximate in time, that Soldier D is able to recall in some detail the shooting at 129 Rathlin Drive but does not recall at all the green on green shooting and has no memory of the name of at least one if not both of the persons who were so closely involved.

341. It was submitted on behalf of the next of kin that Soldier D had conveniently lost his memory about firing the six shots in order to avoid accountability and questioning in respect of them. This was strongly denied by Soldier D.
342. The fact that Soldier D purports to recall in some detail the shots fired into the garden at 129 Rathlin Drive and to have a complete absence of any recollection of having fired six shots only a matter of minutes later are matters that I will take into account in my overall assessment of the credibility and reliability of his evidence.
343. In 2018 Soldier D was emphatic in his rejection of the suggestion that he had lost his place in the JNCO as a result of the events on 5/6 November. He did not accept that the entry in his 1972 annual report that he had lost his place in the cadre “due to an unfortunate incident” referred to his shooting of Mrs Thompson and the green-on-green shooting. He denied losing his place and asserted that he had been promoted as a result of the JNCO course. In June 2021, by which time the promotions letter had been located and his name was not included, he said that after three weeks on the course “this incident” took place and he was stood down. At a later point in his evidence in June 2021 he said that he had not been stood down, he had just been forgotten about and he was ultimately promoted. Whilst with the passage of time it would be difficult to recall details of dates, it is somewhat surprising that Soldier D did not recall his early departure from the JNCO course. That aside, I find it noteworthy that Soldier D was so emphatic in his initial assertions that he had not ceased the course early yet despite this strongly held position he presented a starkly different account in the evidence in 2021.
344. This characteristic in his evidence was again apparent in his account that he was not positioned at the rear of the McGlinchey house, but rather was in the

grass area adjacent to Rathlin Drive. He maintained that at no time was he at the rear of number 58. He adopted this firm position despite the considerable body of evidence to the contrary. For example, in his contemporaneous statement Soldier D stated, “on arrival at the house at about 0015 hours on the 6 November 1971, I was deployed outside the house as rear cover.” Further, in Soldier A’s statement where he said “at the corner of Rathlin Drive and Southway I stopped to check that all my squad were clear of the house. D and C were the last two to pass”. That Soldier D was positioned to the rear of number 58 was also supported by the statements of Soldiers C and B. Soldier D nevertheless doggedly maintained that he did not think he had ever actually entered Rathlin Drive during the search operation. This is a feature of his evidence and manner of presentation that I bear in mind in my overall assessment of the reliability and credibility of his evidence.

#### **Consideration of Soldier D’s evidence - D’s perception and actions at the time of the shooting**

345. It was submitted on Soldier D’s behalf that his RMP statement was terse in nature, taken at a time when he was likely to have been in shock and without the benefit of legal advice. That it was not until the HET statement / interview that Soldier D was afforded the opportunity to give a detailed account of what had occurred, albeit he was prejudiced in this regard by the significant passage of time.
346. Indeed, it was submitted that the recent criticisms and findings of Mr Justice O’Hara in the case of *R v Soldier A and Soldier C* [2021] NICC 3 regarding the RMP investigative process and resulting statements apply with equal force to this RMP statement. Therefore, it is submitted that this inquest should approach this RMP statement with caution and should be slow to draw inferences or reach conclusions in respect of Soldier D and his actions on the night in question on the basis of perceived omissions from his 1971 statement or alleged inconsistencies between it and Soldier D’s later evidence. These

criticisms of O'Hara J and those of Kerr J and Girvan J detailed at paragraphs 49 and 50 above, alongside the very concise nature of the statement are relied upon by Soldier D who contends that he ought not now to be prejudiced by failings in the 1971 investigative process. Of course, I am not here concerned with whether the statement of Soldier D would be admitted in any criminal trial where different considerations apply.

347. For their part the next of kin submit that the RMP statements should be approached with caution for a different reason: that they are self-serving accounts obtained under a scheme designed to protect the army involved in civilian shootings. The next of kin highlight that the account in 1971 was nevertheless contemporaneous.
348. I bear these submissions in mind. I adopt the approach of Keegan J in the 'Ballymurphy inquests' concerning the product of the investigation, where at paragraph [89] of her findings she references the criticism in *Re Marie-Louise Thompson's Application for Judicial Review* [2003] NIQB 80 of military personnel investigating other military personnel. She said: "I bear this in mind, but I have received the material produced by those investigations in evidence and have assessed that material as appropriate in conjunction with all other evidence in this case, having regard to the investigative and procedural obligations of Article 2 ECHR ..."
349. It is plainly necessary that in my consideration of the evidence I take into account and consider all of the evidence and that by definition must include the accounts given by Soldier D in 1971 and 2010 as well as his oral evidence in 2018 and 2021. Further, such consideration, if it is to be properly undertaken, requires an assessment of any material differences in accounts provided at different times. The significance of any material differences and the weight to attach to them forms part of an overall assessment of the evidence. I also bear in mind that whilst Soldier D may now highlight the

circumstances in which the statement was given, he does not seek to resile from the core account he gave of the shooting in his 1971 statement. In short, his position remains that he shot twice into the rear garden of 129 Rathlin Drive, that he was shooting at what he perceived to be a gunman and did so because he was under threat.

*D's background and experience in 1971*

350. In 1971 Soldier D was aged 21 and had been a soldier for 5 years. He was normally attached to the Recce platoon and in this role was not involved in operations such as the search and arrest operation in Rathlin Drive. This was his first tour of duty in Northern Ireland, he had been posted only a few months previously and this was his first involvement in an operation of this type. He therefore had not previously taken part in an operation in an area like the Creggan Estate.

351. He was fully trained in the use of firearms but had not received any training in patrolling streets/ urban operations of this type. It was only at a later date that specific training of this type for example in mocked up villages was provided to troops serving in Northern Ireland.

352. He had been briefed on the operation and was trained in and familiar with the provisions of the Yellow Card. He had no recollection of the rider detailed in the statement of Soldier B to shoot at anyone carrying a weapon.

*D's account of seeing a figure in the garden*

353. As outlined, it was submitted that the elevated position and the nature of the fence in the rear garden offered a gunman an ideal location from which to fire on soldiers withdrawing on Southway. There was a ready means of access and escape through the rear garden gate on to the alleyway.

354. Soldier D has given a number of accounts of what he saw of this gunman in the garden. In 1971 he stated that he saw the figure of a person. In his statement to the HET in 2010 he made no reference to seeing a figure and related seeing the flash and some movement in a very dark part of the garden. The HET interviewer, who had visited the scene, questioned him about the limitations of the view into the garden and asked whether he had any view at all through the fence, in answer to which he said only a silhouette.
355. In his evidence to this inquest he stated that he saw a vague outline of a head and torso. He said the lighting was not very good but he associated the very vague outline of an individual with the flash and bang.
356. In answer to questions by his own counsel Soldier D said that he fired at the source of the flash and the silhouette behind that flash where he determined the shot had come from, the bang. He later said that he was putting all the events together, that the flash and bang, had drawn his attention to the movement of someone clearly behind the fence and that he perceived the figure as the source of the flash and bang.
357. Soldier D was questioned in some detail regarding the target. He maintained that the figure was his target. He stated that he believed that the fence panels are a lot closer than they were in 1971 and that from his position of around 20 yards away there was enough light for him to see that distance. Whilst he had not seen a gun, as he could see a flash behind the fence, he thought that the weapon's muzzle was very close to the gap in the fence.
358. Soldier D stated that this was the only figure he saw behind the fence. He would not have been able to see Kathleen Thompson crouching behind the moped.

359. In his 1971 statement he said that after he fired the figure disappeared. In his addendum to that statement, he said that he believed that he hit the figure when he fired. In his oral evidence he stated that having fired his two shots the figure disappeared and as there was "no more threat he stopped firing after two rounds."
360. Plainly, his belief as to the presence of a gunman is central to the account of Soldier D. This gunman was the source of the flash, the bang /sound of gunshot, the source of the threat and the target at which he aimed.
361. Although allowance must be given for the vagaries of memory and passage of time, it is necessary to consider the significant level of inconsistency in this important element of his account, namely the presence of a gunman in the garden.
362. Soldier D stated in his 1971 statement that he saw and fired at a figure of a person behind the fence. He then does not mention a figure in the statement he provided to the HET and only in interview when questioned as to his ability to see anything in the garden does he mention seeing "only a silhouette."
363. In oral evidence he initially did not mention a figure and described firing two rounds at the source of the flash. It was only when asked by Mr McAlinden QC if he had actually seen a target to fire at as opposed to having fired at the location of the flash that he said that he observed what he believed to be the "silhouette of a head, arms and torso but nothing more."
364. On being questioned on this issue by senior counsel for the next of kin he maintained that he was quite clear that the shot had come from where he saw the figure. He reiterated when questioned by his own senior counsel that he had fired at the source of the flash and the silhouette behind the flash, where

the shot had come from.

365. Given the importance in Soldier D's mind of the presence of a gunman and the concomitant threat I would have expected greater clarity and consistency in his evidence concerning a figure in the garden. I do not find that his evidence has been consistent on this central issue.
366. Aligned to these concerns is the restricted nature of the view into the garden. The close boarded design of the fence permitted a view through gaps of no more than an inch and a half. The shots were fired at around midnight in November. Soldier D referred to the garden being dark and although he had no clear recollection, he did not think that there was light coming from the house at 129 Rathlin Drive and that the streetlights were off. In evidence to this inquest, he said that there may have been some ambient lighting from neighbouring houses.
367. In these conditions it is highly questionable that Soldier D was able to see any figure or silhouette behind the fence. I also do not think he is right to say that the fence boards were more broadly spaced than they are now, for the reasons set out above.
368. Furthermore, there were inconsistencies in Soldier D's description of the figure which I have already outlined. It is noteworthy that he first adjusted his description of what he saw when challenged by the HET about the target and his ability to see into the garden and to see this figure.
369. This inconsistency in his account of seeing a figure and of firing at the figure, the very considerable restrictions on the view and therefore his ability to see into the garden and the varying descriptions of the figure taken together call into question whether Soldier D held an honest and genuine belief as to the



presence of a gunman, of having seen a figure and having aimed at a figure. This in turn calls into question his honest belief that he saw muzzle flash and heard gunfire. The essence of Soldier D's account was that all of these elements, the flash, the sound, the figure, combined to inform his belief that he was being fired on and his belief as to the source of that gunfire and the target. In his evidence all of these elements were presented by Soldier D as inextricably linked and were all relevant to his claimed honest belief that he was under threat from a gunman and therefore fired back.

370. However, credibility is not a seamless robe and it is possible that although Soldier D did not provide a truthful account that he saw a figure and fired at a figure, he nonetheless may have held an honest belief that he had been fired on and that it was necessary to return fire. I turn now to consider his evidence in this regard.

*D's account of what he heard*

371. In his contemporaneous statement Soldier D stated that he heard a single shot possibly fired from a .22 rifle which appeared to come from the rear garden of 129 Rathlin Drive which he was opposite. In 2010 he stated that he heard the crack of a low velocity bullet passing his head. He did not volunteer this account given in 2010 in his evidence to the inquest.
372. In his evidence to this inquest he described hearing a bang stating that what he heard was the sound of a low velocity round being fired. He agreed with the HET interviewer that given the level of noise prevailing in the local area it would have been difficult to identify noise coming from the rear garden. He maintained in his oral evidence that it was possible to hear the sound of a shot above the ambient noise.
373. It was submitted on Soldier D's behalf that considerable weight should be

attached to his evidence on the issue of his ability to hear a shot being fired. Soldier D accepted that it was very noisy, but it is contended that he remained clear that a shot from a low velocity weapon is “very distinct”.

374. The agreed evidence of the ballistics experts is that although it would be possible for an experienced ear to differentiate between the sound of a high and low velocity bullet, the source or place of discharge cannot be pinpointed by sound in an urban environment. Nor at a distance of 20 yards from discharge is it possible to hear a bullet as it passes by.
375. As already outlined Soldier A described hearing a bang but made no reference to a gunshot.

*Soldier D's account of seeing a flash/ flicker of light*

376. In his 1971 statement Soldier D described that he was running down Southway when he heard a single shot and stated that he turned and saw a flickering light in the rear garden and the figure of a person behind the fence. In 2010 he described a measured withdrawal. He said that he was the last soldier in his section, and he was facing the direction they were withdrawing from which was the general direction of where he believed the shot had come from. He described that out of the corner of his eye, as he was turning his head in that direction, he saw the appearance of a flash from the garden and some movement in a very dark part of the garden. He stated that the flash and the crack were simultaneous and although he did not see a weapon, he believed that he was being fired at because of the flash. In evidence to this inquest he described that he was walking in a crablike fashion going backwards and “within the periphery of my vision I saw the flash and heard the bang at the same time” and “I was able to turn and see pretty much exactly where it had come from.”

377. This account as given initially to the HET in 2010 and elaborated upon before me comprises a number of significant differences from the contemporaneous 1971 statement. Soldier D is no longer running, which of course would have afforded him a better opportunity to see and hear, is now the last man in the section to withdraw and is facing back up towards Rathlin Drive. This, he says, allowed him to see the flash directly in front of him, although only out of the corner of his eye he was able to turn and see exactly where it came from.
378. I am mindful of the risk that in the years since 1971 Soldier D has gone over the events in question in his mind and is presenting an account or narrative of what he now thinks may have happened rather than recounting an actual recollection of events. It is well recognised that the human mind can display a tendency to fill in gaps in memory. However, I find it difficult to characterise Soldier D's account as filling in the gaps. Rather he presents with a significantly altered account and one which struck me as rather convoluted and contrived as I observed him give evidence.
379. Soldier D maintained that the bang and flash were simultaneous and that even though his description in his RMP statement was of a flicker of light he saw a flash. It is suggested on his behalf that as Soldier A was interviewed before him and the term 'flicker of light' appears in Soldier A's statement it is possible that the words 'flicker' and 'flickering' were those of the interviewer rather than the interviewee. I note that the same interviewer took Soldier C's statement and Soldier C refers to 'flash.'
380. Soldier D was unable to recall the detail of the interview but attributed any sequential description of the bang and flicker as might be interpreted from the 1971 statement to the interviewer's failure to clearly transcribe his account. I find that the 1971 statement presents a sequential account of a bang followed

by a flash/ flicker. It is noteworthy that in the statement submitted to the HET, Soldier D did not refer to seeing and hearing the bang and flash simultaneously. He made reference to this for the first time in the course of the HET interview. It is submitted on his behalf that this account was given before any ballistics evidence was commissioned. This is correct, but it remains surprising that this aspect of his evidence did not emerge until the HET interview.

381. On Soldier D's behalf it is submitted that throughout questioning across several days he at all times remained steadfast in his belief that he saw a flash and heard the bang at the same time. This is the evidence that Soldier D gave. However, I note that in some respects Soldier D demonstrated an ability to present as emphatic and steadfast in his evidence without proper basis or justification. For example, in 2018 Soldier D was resolute that he had not lost his place in the JNCO as a result of events on 5/6 November only to say in 2021 that he had only completed three weeks of the eight week course. Similarly, he maintained that he was never positioned at the rear of the McGlinchey house when the evidence plainly demonstrates that he was. Of course, these are matters quite distinct from Soldier D's belief as to what he heard and saw, but his ability to present steadfast emphatic but flawed evidence is a matter that I take into account in my overall assessment of his evidence.

382. In taking account of the evidence, I remind myself that what I must determine, applying the subjective test outlined, is whether Soldier D honestly believed that the flash or flicker that he described having seen and the bang or sound that he stated he heard represented gunfire and he believed that he was being fired upon. Although I have regard to the expert ballistics evidence on the issues outlined including muzzle flash, my determination does not turn on any single matter in issue such as a flicker as opposed to a flash of light or the simultaneous as opposed to sequential

nature of what was described. Rather, ultimately my determination turns on my overall assessment of the credibility and reliability of Soldier D's account.

383. Although there is evidence of noise in the area, other than Soldier D's own account and that of Soldier C which I find to be unreliable, there is no evidence of gunfire in the vicinity of 129 Rathlin Drive. In all likelihood the noise in the area included the banging of a dustbin lid or other object in the rear garden of 129 Rathlin Drive. There is no evidence before me that Soldier D confused or could subjectively have mistaken the sound of a bin lid or other object being banged on the ground with the sound made by a low velocity weapon.
384. Soldier D was adamant that he had seen a flash of light despite his description of seeing a flicker of light in 1971. He gave evidence that this was very close to the fence. Other than Soldier D's account there is no available evidence as to the source of a flashing light close to the fence.
385. Soldier A described a flickering light and I have accepted the evidence of the ballistics experts that this is not consistent with muzzle flash. Soldier A did not describe gunfire.
386. I remind myself of the need, when considering matters from Soldier D's perspective, to take into account all of the circumstances prevailing and that he perceived including the speed at which matters were unfolding. He describes events as having occurred within a matter of moments. It is important to remember the limitations on decision-making that this pressure of time imposes.
387. These circumstances include not only the matters recalled by Soldier D in evidence but also matters that Soldier D did not recall in 2018 which are detailed in his 1971 statement. Soldier D did not recall that he had seen an

object being thrown after hearing the shot from the garden. Counsel for the next of kin suggested that an object thrown from the garden was hardly consistent with the actions of a gunman. In answer and despite the fact that on a plain reading the import of his 1971 statement is that the object came from the garden at 129 Rathlin Drive, Soldier D suggested that the object could have come from the crowd at the corner of Rathlin Drive and Southway.

388. Similarly, whilst Soldier D said in 1971 that he had heard voices in the garden, in oral evidence he stated that he had no recollection of hearing voices and that any voices may have come from the alley to the rear of 129 Rathlin Drive. Further, that the voices may have included that of the gunman.
389. Whilst I have regard to the significant passage of time and its effects on memory, I find that it is noteworthy that Soldier D is unable to recall the occurrence of events that might call into question his decision to fire to include those just outlined and also the six shots fired moments later yet he appears to be able to recall in a high level of detail what he saw and heard that made him believe that he had been fired upon.
390. It is apparent that Soldier D's ability to recall matters in support of his position stands in contrast to his inability to recall matters which might be contrary to his actions and purported state of mind. This is a matter of very considerable concern and not readily explained simply by the passage of time or other obvious reason.
391. I have already highlighted my concerns over the changes in Soldier D's original account of what he saw and the convoluted and contrived nature of this important evidence.
392. Much has been said on Soldier D's behalf about the flawed RMP

investigation and the limitations on the product of that process, the RMP statement. It is submitted that these factors coupled with the passage of time should prevent any substantial weight being attached to any purported inconsistencies in Soldier D's account. Whilst I do not accept the validity of the argument advanced that the judgment of O'Hara J is directly relevant to this inquest, it will be seen that the concerns which I hold regarding Soldier D's evidence largely emanate from the selective nature of his recollection. Therefore, and, leaving to one side the relevance of the judgment relied upon, although I am cognisant of the limitations of the RMP investigation and of the passage of time, the issues raised by the MoD on Soldier D's behalf are not directly relevant to the matters which are central to my concerns as to Soldier D's evidence.

393. It is necessary to step back and consider all of the evidence. As outlined, account must be taken of the impact of delay on memory and the limitations in the investigation processes 1971. It is Soldier D's perspective that falls to be considered: what he saw and understood at the time that he fired shots into the garden of Kathleen Thompson. Having taken all these factors into account and having weighed and considered carefully Soldier D's evidence, I cannot be satisfied to the requisite standard that Soldier D held an honest belief that he was under fire.
394. I find that he did not have an honest belief that there was a gunman, and he did not have an honest belief that he had seen muzzle flash and heard gunfire. I find that he has presented a contrived and self-serving account where he purported to remember aspects that supported his position and to forget aspects that would expose him to challenge and question regarding his state of mind, judgment and actions when he fired into 129 Rathlin Drive.
395. Whilst I firmly reject his evidence that he had an honest belief that he was being fired on, I take into account his complete want of experience of

operations of this nature and of civil disturbance. He gave evidence that he was in a heightened state and although I reject his evidence that this flowed from having been fired upon, I consider that in all likelihood he was frightened. It is more likely than not that in fear he has over-reacted to the noise and activity which was prevalent at the time of his withdrawal by firing shots when there was no subjectively perceived credible threat of gunfire. I find that such noise and activity that he heard and reacted to in a state of fear by firing shots into the garden included the banging of a bin lid or other object in the rear of 129 Rathlin Drive. His actions of firing a further six shots and the fact that he was the only member of the cadre to have fired shots are consistent with this heightened state and with his acting out of fear.

396. I am satisfied that when he fired, he could not have seen Mrs Thompson leaning over banging the bin lid or other object.
397. His actions of shooting into a dark garden in a residential area in such circumstances are plainly contrary to the provisions of the Yellow Card.
398. In light of my factual findings above as to Soldier D's subjective belief I must consider whether, even on that factual basis, the use of force was objectively reasonable.
399. This issue can be addressed in appropriately straightforward terms.
400. Soldier D used a level of force that carried a high risk of being lethal. The threat that he honestly perceived did not justify the use of that force. Being frightened or panicking in the circumstances does not begin to justify the use of that force. That level of force in these circumstances requires a threat of death or, arguably, at least really serious harm. There was no such threat and Soldier D did not believe there to be such a threat.



401. Whilst the guidance in the Yellow Card is not determinative, I have held that his use of force was not in accordance with that guidance. That is further support for his use of force not being reasonable.

### **Organisation/regulation of the operation**

402. As set out above, the inquest should assess whether this operation was organised and regulated in such a way as to minimise to the greatest extent possible the risk to life.

403. This assessment has to be made in its proper context. The 'operation' that night was not in any way focused on Mrs Thompson. The operation was to perform a search and arrest of the McGlinchey's house.

404. I see no specific criticism of the fact that this operation was being conducted as part of a JNCO course. Indeed, it could be said that would indicate the soldiers involved could be assumed to be of a reasonable level of competence given their being assessed for promotion. The cadre in common with other soldiers deployed in Northern Ireland at this time had not received any specific training in urban operations.

405. I heard evidence that the search/arrest operation was planned in some detail. Groups of soldiers were given specific tasks, either to enter the premises or stand guard at various locations outside.

406. I have rejected the evidence that orders were given to wholly depart from the Yellow Card guidance. There were no orders such as to shoot out streetlights or 'shoot on sight'.

407. The specific operation was conducted reasonably promptly, with soldiers

going into the area, the search taking place and then withdrawal from the area. A civil disturbance arose in respect of which CS gas was deployed. I have set out in detail the circumstances of Mrs Thompson's death above. It is noteworthy that Soldier D had left Rathlin Drive and was withdrawing down Southway when he shot and killed Mrs Thompson.

408. Soldier D was only in the area because of the operation, but I do not see those actions as part of the operation or part of what could reasonably have been planned.
409. I find that Soldier D was well aware of the Yellow Card guidance. His actions were outside of that guidance.
410. Whilst I have found that Soldier D's actions were informed at least in part by panic, fear and over-reaction that does not of itself mean there was a failure of regulation or organisation. I have to make a realistic assessment of the circumstances and anticipate a great many operations performed by the army at around this time resulted in fear, not least night operations in a hostile area.
411. For the avoidance of doubt, I am making no adverse comment about Mrs Thompson or her family in this regard.

### **Narrative findings**

412. (a) The deceased was Kathleen Mary Thompson of 129 Rathlin Drive, Derry.
- (b) Her date of birth was 28 of October 1924. She was born in Quarry Street in Derry and her maiden name was Doherty. She was a housewife, married to Patrick Thompson who was a Boilermaker Welder. The deceased was also the mother of six children, David, aged 18 Pat, aged 16 (now deceased), Billy, aged 15, Mary-Louise (Minty) aged 11, Patricia, aged 9 and Erne, aged

7years.

(c) She was shot and fatally wounded at around midnight on 5/6 November 1971, whilst in the rear garden of her home at 129 Rathlin Drive, Derry.

(d) The cause of death was a bullet wound of the chest. The bullet entered the top of the left shoulder, fractured the left collar bone and grazed the left shoulder blade before it entered the top of the left chest cavity. It then passed through the upper part of the left lung, lacerated the air passages and the oesophagus and passed through the lower part of the right lung before leaving the body through the right side of the chest.

(e) Her death was caused by a high velocity shot fired by Soldier D from a position on Southway, Derry as he and other soldiers were withdrawing from the area.

(f) Kathleen Thompson was unarmed and was in her garden in order to bang a bin lid or other object to alert neighbours as to the presence of soldiers in the area.

(g) Soldier D did not have an honest belief that a gunshot had been fired from the garden of 129 Rathlin Drive and that his life and the lives of others were under immediate threat.

(h) His actions of shooting into a dark garden in a residential area in such circumstances were in breach of the guidance as to deployment of lethal force provided to soldiers in the Yellow Card.

(i) Soldier D discharged two shots into the rear garden of Kathleen Thompson's home in circumstances which were unjustified.

(j) No proper investigation was carried out into Kathleen Thompson's death.

### **Postscript: Military Witnesses / Social Media**

413. The next of kin point to Soldier D's evidence that the events of 5/6 November and his involvement in the shooting of Mrs Thompson were known within the 2RGJ 'family'. The next of kin submitted that there was a deliberate "wall of silence" presented by the military witnesses and that they had colluded to obstruct the inquest. The next of kin sought to rely on social media materials which they had accessed in support of this contention.
414. In their closing submissions at paragraphs 456 and 457 the next of kin make the following submissions:

"KTM602 was not ultimately recalled but two further points still remain. Firstly, we repeat that the list of persons who posted on the Rifle Depot FACEBOOK page and posted on KTM602's FACEBOOK page should be compared with: all witnesses who have given evidence; all persons on the Promotions Letter or who have otherwise been identified as having been on the JNCO cadre; all witnesses who have been contacted about this witness because it was perceived that they have relevant evidence to give and who have failed to co-operate, in order to review whether there is relevant disclosure arising in relation to any of these persons.

Secondly, we repeat that the Coroner's Service should check the social media accounts of witnesses to consider whether there is relevant disclosure.

Clearly some accounts will be private, but KTM602's account was open, there was material on his account of relevance, and it could and should have been easily obtained by CSNI/MOD."

415. The first of these 2 submissions repeats a request for specific further steps to be taken at this inquest, the second is a more general suggested requirement for disclosure processes.
416. In relation to the first submission, the boundaries of what is a proportionate inquiry ultimately fall to me to assess. Inevitably there are occasions where rulings must be made to limit the scope of the evidence to be called and the issues to be investigated. It remains my view that KTM602 need not be recalled and that the further comparative exercise was not required.
417. This inquest heard a very wide range of evidence that touches upon the circumstances of the death. I have taken an inclusive approach on the reach of the evidence. I am satisfied, as set out above, that I have heard sufficient evidence to make detailed findings about the broad circumstances of the death. That is the primary purpose of this and any inquest.
418. I acknowledge that whilst the absence of any direct evidence regarding Soldier D discharging his weapon was disappointing, I must bear in mind that none of these witnesses were interviewed at the time and given their peripheral involvement in the events at 129 Rathlin Drive and the passage of time their recollection was limited. There is a distinction between the position of Soldier D and his central involvement and that of the other members of the cadre. Witnesses had different levels of involvement in the relevant events. This event will have been much less memorable for many of the soldiers than it was for Soldier D. I also bear in mind that they may have been involved in a great many operations over their years in the military.
419. I also bear in mind that this inquest was considering events occurring 50 years ago. That is a very long time ago in the context of the human memory.

420. Many former military personnel have in fact complied with requests to assist in this inquest.
421. In these circumstances I do not find that there was any deliberate agreement or intention to obstruct or mislead this inquest by the military witnesses. Several of the witnesses were reluctant, perhaps very reluctant, but that is not to be equated with intentionally misleading.
422. Social media postings containing negative comments about former military cooperation with the legacy inquisitorial process is of course to be deprecated and such communications are no doubt a source of considerable upset for the next of kin. Further, and as I highlighted in the course of this inquest, there is plainly a need for all parties involved to be afforded the opportunity to give evidence so all relevant material is heard and considered.
423. It is not necessary to restate the ruling given not to recall KTM 602. As outlined in the course of the proceedings on 22 June 2021 the actions taken in connection with accessing the social media material do not appear to be consistent with observance of witness anonymity orders. I highlighted this as a matter of concern and would again emphasise the need for full compliance with such orders.
424. In response to the next of kin's second submission as to the need of CSNI to check the social media accounts of witnesses, I observe that there is an established protocol whereby persons make disclosure of potentially relevant material to the coroner in any inquest. I do not consider it appropriate to make any comment as any changes as may be suggested to the protocol and present process should follow a process of consultation.

Her Honour Judge Crawford

Coroner

29 June 2022