



**An Chartlann Náisiúnta**  
**National Archives**

**Reference Code:** 2021/47/177

**Creator(s):** Department of Foreign Affairs

**Accession Conditions:** Open

**Copyright:** National Archives, Ireland.  
May only be reproduced with  
the written permission of the  
Director of the National  
Archives.

Feb 92

Inquests in Northern Ireland.

Background Note

1. Restrictions on the Scope of Inquests.

Since 1981 the scope of inquests in Northern Ireland has been severely restricted. The following are the more significant changes to have taken place since then:

- Juries can no longer return verdicts - a coroner or jury can only record their findings as to the identity of the deceased and how, when and where she/he died;
- Juries can no longer make recommendations designed to prevent the recurrence of deaths in similar circumstances, and coroners can no longer add riders to verdicts;
- Coroners were given absolute discretion to accept written unsworn statements from any witness. These statements are not subject to any form of cross-examination. A coroner's decision to accept without question the unsworn written statements of the SAS soldiers involved in the shooting of IRA members Michael and David Devine and Charles Breslin near Strabane in February 1985 was upheld by the House of Lords in a judgment delivered on 6 February 1992;
- Coroners were given complete discretion with regard to the calling of witnesses and can refuse to call someone who may have relevant evidence;
- A person who is suspected of causing the death, or has been or is likely to be charged with an offence relating to the death, cannot be compelled to give evidence (the House of Lords, in its ruling on the McKerr case in 1990, confirmed that members of the security forces who carry out fatal shootings cannot be compelled to give evidence at inquests).

2. Delays

It is the practice in Northern Ireland for coroners not to open any inquest until they have been informed by the prosecuting authorities that no charges are to be brought in respect of the killing or until any charges have been disposed of. This means that in some cases the inquest opens long after the disputed death. Coroners may also adjourn inquests to await the outcome of relevant legal proceedings. Appeals to the House of Lords in the McKerr and Devlin/ Breslin inquests have led to lengthy delays in several other similar cases

*Does the inquest in this jurisdiction?*

which might have been affected by the decisions of the House of Lords. The legal delays can in turn hold up the payment of compensation to the families of victims of controversial shootings.

According to the Committee on the Administration of Justice, there are some 45 inquests into disputed killings currently pending, including the 1982 shoot-to-kill cases of McKerr, Toman, Burns, Grew, and Carroll and Michael Justin Tighe; the eight IRA men and one innocent bystander (Anthony Hughes) who were shot dead in Loughgall in May 1987; and the three men shot dead outside the bookies shop on the Whiterock Road in January 1990. Now that the House of Lords has given a decision in the Devine/Breslin case, the way may be open for many of the outstanding inquests to proceed, but there will always be the possibility of further applications for judicial review and consequent delays in those cases.

3. Legal Aid

Full Civil Legal aid is not available to the next-of-kin in inquest cases. This places the families of disputed shooting victims at a considerable disadvantage vis a vis the security forces and the coroner who enjoy full legal representation at public expense.

4. Public Interest Immunity Certificates

These have been issued, in the interests of "national security" to prevent the disclosure of official information in a number of cases, including the Gibraltar Inquest and the McKerr, Toman, and Burns inquests.

5. Access by families to Post-Mortem reports

The entitlement of relatives to post mortem reports is at the discretion of the coroner and the practice seems to vary from coroner to coroner. Many families, including most recently the Carahers, have had difficulty in getting copies of the post-mortem report. In England and Wales and in this jurisdiction, the release of post-mortem reports to next-of-kin is mandatory. It was rumoured last year that the British authorities had plans to remove the Coroner's discretion and to prohibit the release of post-mortem reports in advance of the inquest. The matter was raised in the Secretariat and the British side responded that they were "not aware that any such decision has been made".

The legal representatives of next-of-kin are usually denied access to other forensic evidence in the possession of the authorities until the inquest opens. This places the families at a further disadvantage because it makes it difficult to arrange to have this evidence evaluated by independent experts.

6. Inquests and Public Confidence in the Administration of Justice

Except for the few cases in which members of the security forces have been prosecuted, an inquest is the only form of public inquiry into disputed killings by the security forces. In such cases inquests assume particular significance, despite the many limitations on their effectiveness. However, on balance, inquests in Northern Ireland have in several important cases failed to meet the general public expectation of a prompt and thorough investigation of the circumstances of disputed killings. Instead, by creating suspicions of cover-ups, they have helped to undermine confidence in the administration of justice.

7. The Existing Police Procedures for Investigating Incidents.

At present, all lethal force incidents which involve the security forces are investigated by the RUC, without, as a rule, the involvement of any outside independent element. In the case of fatal shootings by the British Army, the Independent Commission for Police Complaints is not empowered to supervise the investigation. In the context of the ongoing discussions in the Conference and the Secretariat on the general question of the use of lethal force we have argued that fatal shootings by the security forces should be speedily and thoroughly investigated and that an independent outside element, for instance a senior officer seconded from a police force in Britain, should always be involved. We will be putting forward further views and proposals on the lethal force issue, including the investigative procedures, in due course.

8. The SDLP Discussion Document on Inquests

A discussion document on inquests was considered at the party's 1991 annual conference. It contained the following proposals for reform:

- The coroner should use his discretion to ensure that where no one is charged with an offence within 28 days an inquest is held at the earliest possible opportunity so as to avoid the long delays which occur at present;
- The families of victims should get legal aid;
- All documents in the possession of the authorities, including police reports and post-mortem reports, should be disclosed to all sides before the inquest;
- The Coroners Rules should be amended to allow juries to bring in the same verdicts as those permitted in England

and Wales, which would include a verdict of unlawful killing;

- All persons should be compellable by the coroner to give evidence, including those suspected of causing the death or those who have been or are likely to be charged with an offence arising from the death.

9. The Committee on the Administration of Justice

In January 1992 the CAJ produced a very comprehensive (67 pages) pamphlet on inquests which looks at all the issues in considerable detail and makes the following recommendations:

- An inquest should always be held into a disputed death
- Coroners should always sit with a jury in disputed cases
- Inquests should be held promptly and adjournments kept to a minimum
- Legal aid should be made available for next of kin and they should have equal access to all relevant evidence in time to prepare for the inquest
- Interested parties should have the right to examine witnesses and challenge jurors
- Material witnesses should be entitled to testify
- Coroners should have the power to compel material witnesses to attend and testify, subject to their being protected from self-incrimination
- Hearsay evidence should not be admissible
- Coroners should have the power to decide whether to accept a public interest immunity certificate
- Juries should be entitled to bring in verdicts and to apportion responsibility for disputed deaths in general terms
- Coroners and juries should be allowed to make appropriate recommendations for the avoidance of further deaths
- Coroners and juries should be entitled to add riders to their verdicts.

The pamphlet concludes that "the reputation of the ability of inquests to enquire into disputed killings is at a low ebb. There is a widespread public perception that the automatic reaction of the authorities when someone is killed by the



security forces is to cover up the truth and obstruct the course of justice. Urgent action is required if that image of inquests is to be refuted." It calls on the British Government to set up a committee to review the functioning of inquests.

10. The Unionist View

The Ulster Unionist Party's legal spokesman, Mr. David Trimble M. P. is reported in the Irish Times of 19 February as saying that there was a need for changes to the inquest system and that he would be exploring the possibility of holding some other sort of standing inquiry into deaths which take place in disputed circumstances. "There is obviously a public interest in getting as many facts about disputed shootings into the public arena as quickly as possible, but trying to push the coroner's court into a substitute trial is the wrong thing to do."

*J. Farrell*

J. Farrell  
Anglo-Irish Section  
27 February 1992.