THE BIRMINGHAM INQUESTS (1974)

Coroner: His Honour Sir Peter Thornton QC

RULING ON SCOPE

Introduction

1. On 21 November 1974 bombs were planted and exploded in two public houses, the Mulberry Bush and the Tavern in the Town, in the centre of Birmingham. As a result 21 people died. These simply stated facts do not begin to express the horror of these events and the tragedy for the families of those who died and the very many who were injured. This was a disaster which has scarred Birmingham and will never be forgotten.

2. The purpose of this ruling on scope is to identify the key topics which will be considered in the inquests which will be held, together, into these tragic deaths. It should also be firmly underlined that whatever I decide in this ruling, scope will remain a matter to be kept under review and may be revisited where appropriate later. As all Interested Persons know, the issue of scope will remain open for further consideration where appropriate.

3. I am acutely conscious that many of the families of the deceased consider that they suffer a continuing injustice. Their loved ones died from acts of mass killing and no one person has been brought to justice for these crimes. It is for this wholly understandable reason that they wish these inquests to cover as much ground as possible. As Julie Hambleton, sister of Maxine Hambleton who died at the Tavern in the Town, said at the hearing on 31 May 2017 (in the absence of her lawyers, see below):

> … if we don't get the widest scope possible it will further fuel rumours and conjecture that have been in the city and beyond for over 40 years.

4. I hope that the inquests will provide many answers about the events of 21 November 1974 and those who died. But I must state firmly and clearly at the outset that the inquests must (a) comply with the law, both statute and case law, (b) focus upon the four statutory questions of who died, how, when and where they came by their death (sections 5 and 10 of the Coroners and Justice Act 2009), and (c) be realistic about the availability of relevant evidence 43 years on.

5. It is for these reasons that the inquests may not achieve, and could not realistically achieve, all that the families seek. That may be disappointing and frustrating. I understand that. But, even where no inquests have been held before and where no person has been brought to justice, it is not in the public interest for these investigations and inquests to pursue unachievable, or indeed unlawful, objectives.

Resumption of inquests

6. In late 1974 and early 1975 inquests were opened into the deaths of the 21 who died. The inquests were all adjourned pending criminal proceedings; they have never been completed. The criminal proceedings, known as the trial and appeals of the 'Birmingham 6', did not conclude finally until 1991 when the appeals of the six against conviction were allowed.

7. The inquests therefore remained adjourned for over 40 years until family members of some of the deceased applied in 2015 to the Senior Coroner in Birmingham to resume the inquests. After a number of hearings the Senior Coroner ruled on 1 June 2016 that the inquests should be resumed. Following that decision the deaths of the 21 must as a matter of law be investigated according to the principles of the Coroners and Justice Act 2009 and taken to inquests (which will by consent be conducted together).

Appointment of Coroner

8. Following the decision to resume, I was appointed by the Lord Chief Justice as the Coroner (the nominated judge) to conduct the investigations and inquests into the 21 deaths.

Pre-inquest review hearings

9. Four pre-inquest review hearings (PIRs) have been held: on 28 November 2016, 23 February 2017, 31 May 2017 and 29 June 2017. A PIR is a preliminary hearing of a case management nature. Certain decisions were made in the first two hearings. They include the decisions that these inquests must comply with the procedural requirements for Article 2 inquests and that they will be held with a jury.

10. The hearings for submissions on scope have been delayed because of lack of funding for lawyers for certain families. A previous hearing to hear submissions on scope was adjourned. The hearing on 31 May 2017 was also incomplete because of ongoing funding difficulties (see below). Although submissions on scope were first scheduled for hearing on 23 February 2017, they were only finally completed on 29 June 2017.

Legal representation

11. A number of families of the deceased were represented before the Senior Coroner by counsel instructed by KRW Law, a Belfast firm of solicitors, who have been involved in this case since 2015. KRW Law now represent the families of 10 of those who died. An English firm, Jackson Canter, represents one person, the brother of two brothers who died.

12. Some families have chosen not to be represented. Other families have not made contact with the inquests.

13. There have been some difficulties in the lawyers for the families obtaining legal aid for those they represent and in concluding the funding arrangements. One difficulty arose because KRW Law is situated outside the jurisdiction, in Northern Ireland, not in England or Wales.

14. KRW Law have instructed representatives to appear before me at the first two PIRs. At the 31 May hearing, however, counsel declined to attend. Mr Stanley, litigation consultant at KRW Law, attended before me to explain the legal aid position, but not to make submissions on scope. He did not, however, ask for an adjournment and was quite content for others to make their submissions on scope. On a tight timescale I permitted KRW Law to make written submissions after the hearing should they wish to do so. In fact they provided written submissions dated 15 June 2017. Counsel to the Inquests (CTI) and other Interested Persons were invited to make written submissions in response. In the event, only CTI did so, by submissions dated 22 June 2017.

15. KRW Law have not have been disadvantaged in this process. The transcript of the hearing of 31 May has been available and it can be seen that Ms Heather Williams QC on behalf of one of the families made extensive submissions on the key issues (both in writing and orally). I also have several written submissions on scope from KRW Law on the two key issues: dated 9 September 2015, 30 March 2016, 24 November 2016 and 15 May 2017. Mr Stanley conceded at the hearing on 31 May 2017 that I may well have sufficient submissions from them already. In any event I now have KRW Law's final written submissions and they have also availed themselves of the opportunity to make oral submissions, through Mr Malachy McGowan BL, at the most recent PIR on 29 June 2017, a hearing which was convened specifically for that purpose.

Submissions on scope

16. I am grateful to all solicitors and counsel for their helpful submissions. I am particularly grateful to Ms Williams who, in the circumstances outlined above, bore the brunt of submissions for the families.

17. In addition to counsel on behalf of the families I read and heard submissions from counsel for the West Midlands Police, the Devon and Cornwall Police and the Police Federation. I also received extensive written and oral submissions from CTI, who act independently in their advice to the Coroner. I am grateful to all of them.

Meaning of scope

18. The word 'scope' has no special meaning of its own. By 'scope' all that is generally meant is a list of the topics upon which the coroner, in the coroner's discretion, will call relevant evidence so as to be able to answer the four key statutory questions: Who died? How, when and where did they come by their death?

19. These questions and the answers to them, known as the determination, are provided by statute in Sections 5 and 10 of the Coroners and Justice Act 2009. They are the four central questions in every inquest. When decided the answers to them are recorded by the coroner or the jury, if there is one, in the statutory Record of Inquest.

20. Sections 5 and 10 provide:

> 5 Matters to be ascertained
>
> (1) The purpose of an investigation under this Part into a person's death is to ascertain—
> (a) who the deceased was;

(b) how, when and where the deceased came by his or her death;
(c) the particulars (if any) required by the 1953 Act to be registered concerning the death.

(2) Where necessary in order to avoid a breach of any Convention rights (within the meaning of the Human Rights Act 1998 (c. 42)), the purpose mentioned in subsection (1)(b) is to be read as including the purpose of ascertaining in what circumstances the deceased came by his or her death.

(3) Neither the senior coroner conducting an investigation under this Part into a person's death nor the jury (if there is one) may express any opinion on any matter other than—
(a) the questions mentioned in subsection (1)(a) and (b) (read with subsection (2) where applicable);
(b) the particulars mentioned in subsection (1)(c).

10 Determinations and findings to be made

(1) After hearing the evidence at an inquest into a death, the senior coroner (if there is no jury) or the jury (if there is one) must—
(a) make a determination as to the questions mentioned in section 5(1)(a) and
(b) (read with section 5(2) where applicable), and
(b) if particulars are required by the 1953 Act to be registered concerning the death, make a finding as to those particulars.

(2) A determination under subsection (1)(a) may not be framed in such a way as to appear to determine any question of—
(a) criminal liability on the part of a named person, or
(b) civil liability…

21. Lord Lane CJ famously described the task of an inquest in *R v South London Coroner, ex parte Thompson* (1982) 126 SJ 625, cited in *R v HM Coroner for North Humberside and Scunthorpe, ex parte Jamieson* [1995] QB 1 at 17H, as follows:

> The function of an inquest is to seek out and record as many of the facts concerning the death as [the] public interest requires.

22. The courts have consistently stated that the scope of an inquest will very often be wider than is strictly necessary for the production of conclusions answering the statutory questions: see, for example, *R v Inner West London Coroner, ex parte Dallaglio* [1994] 4 All ER 139, 155b, 164j; *R (Sreedharan) v HM Coroner for Manchester* [2013] EWCA Civ 181, at [18].

23. It is also well known and understood that in making a decision on scope the coroner has a broad discretion: see *Jamieson*, above, at 26; *Dallaglio*, above, at 155; and other cases cited in the Chief Coroner's Law Sheet No.5 at paras.3-8.

24. I refer also to the helpful summary by CTI on the law on scope at paras.9-16 of their written submissions dated 23 May 2017.

The proper scope of the inquests - the four issues

25. I turn now to the issues which have formed the subject of submissions in the two latest PIRs. The agenda for these hearings was set out in the letter of 3 May 2017 written on my behalf by the solicitor to the inquests. Four issues were listed for consideration on the question of scope:

(1) Forewarning - whether West Midlands Police (WMP) or other state agency had prior knowledge that a bomb attack would take place on or around 21 November 1974, and whether further steps could or should have been taken to prevent the bombings that did occur.

(2) Agent/Informant - whether WMP or any other state agency were engaged in concealing the actions of agents or informants who were responsible for the bombings, or whether there was other state involvement or collusion to enable the bombings on 21 November 1974 to take place.

(3) Emergency Response - the response of the emergency services to the bombings, its adequacy or otherwise, and whether any failings caused or contributed to the deaths that resulted from the bombings.

(4) The Perpetrator Issue - the identities of those who planned, planted, procured and authorized the bombs used on 21 November 1974.

26. I agree with the submissions that have been made, and are not in dispute, that in assessing scope I am not restricted by the findings of the Senior Coroner in her Ruling of 1 June 2016. She decided to resume the inquests on the basis of the forewarning issue alone. Her task and mine were and are, of course, different. She was considering the question of resumption. I am considering the question of scope as the basis for further investigation and the inquests.

27. I shall take each of the four issues in turn.

(1) Forewarning

28. There is no dispute that forewarning is in issue for the purposes of the inquests. It is agreed by all Interested Persons that forewarning is within scope. I agree.

29. Forewarning was the foundation for the Senior Coroner's decision on 1 June 2016 to resume the inquests. As she stated in her Ruling at para.70:

> '… I have serious concerns that advanced notice of the bombs may have been available to the police and that they failed to take the necessary steps to protect life …'

30. The Senior Coroner relied for these purposes (at paras.48-49) on two incidents in November 1974. These two incidents, as described in materials before the Senior Coroner, were considered by her to be 'evidence that supports the argument that the state did have advanced warning of the attacks and may not have taken all reasonable steps in response' (para.47).

31. The Senior Coroner was not expressing, nor was she required to express, a final view of a conclusive nature upon this evidence. Indeed she emphasised that the evidence was 'not conclusive' (para.47). Nevertheless she was unable to 'exclude the possibility' that each incident was 'a missed opportunity to prevent the attacks' (paras.48-49).

32. Having seen the relevant material I conclude that these are incidents of relevance. There is also further evidence which may be relevant to this issue. This evidence will be assessed as part of the ongoing investigation on behalf of the Coroner.

33. For these reasons the forewarning issue is in my judgment within scope.

(2) Agent/Informant

34. As to this issue I have instructed my legal team to make further inquiries. Further investigation is required before a decision is made on this issue. As described by CTI at the hearing, that investigation is ongoing and is not yet complete.

35. For that reason I have not required submissions on this issue at this stage. Accordingly I make no ruling on this issue at this stage.

(3) Emergency Response

36. I have invited full submissions as to whether this issue is within scope.

37. Jackson Canter and KRW Law have both submitted that the emergency response should be within scope. I cannot do better than cite the general submission of Ms Williams instructed by Jackson Canter on behalf of Sean Reilly who lost two brothers, Eugene and Desmond, in the Tavern in the Town explosion, at para.34 of her written submissions:

> 'It is submitted that the response of the emergency services to the bombings, its adequacy or otherwise and whether any failings caused or contributed to the loss of life that resulted from the bombings, or possibly did so, is within the scope of these inquests.'

38. Ms Williams submits that the inquests should investigate potential failings of the emergency services including the police, the fire brigade, the ambulance and hospital services.

39. In her written submissions she cites alleged instances, by way of example, of insufficient police and ambulance personnel at the scenes, the use of taxis for transport to hospitals and the involvement of civilian volunteers to aid rescue operations, a lack of coordination between the services, a lack of information at police stations, and delay in the fire service being summonsed. This summary may not do justice to the full extent of Ms Williams's detailed submissions (particularly her eight pages of written submissions at paras.34-39).

40. Ms Williams does of course focus upon the incident at the Tavern in the Town because that is where the Reilly brothers were present at the time of the explosion in the basement public house.

41. KRW Law have also submitted that the inquests should consider the emergency response. In written submissions on 30 March 2016 they claimed there was an inadequate emergency attendance at the Tavern in the Town, including the use of taxis to take the injured to hospital, and a breakdown in communication between the different services. In their written submissions on 15 May 2017 they provide some further detail to support this approach.

42. KRW Law have also submitted in their most recent written submissions of 15 June 2017 (at paras.5-12) that there is substance for the issue to be in scope on the basis that the emergency response could have been more effective and that, had it been, lives could have been saved. They cite, through counsel, Fireman Alan Hill's account that 180 casualties were left without an ambulance attending for over an hour and the subsequent cover-up of this failure. They suggest that some of the post-mortem reports point to the injuries having been survivable and claim that 'individuals would have survived with treatment'.

43. The submissions by CTI take a different view. They submit that there are, broadly, two approaches open to me in respect of the emergency response. The first is to conduct an over-arching investigation into the events of the 21 November 1974, which seeks to reconstruct the emergency response and resolve disputes of evidence about it. The second is to approach the matter on a case-by-case basis, looking at the circumstances of each individual death by identifying and obtaining relevant evidence (including expert evidence) about the experiences of each of those who died. Where there is credible evidence that suggests that failings in the emergency response caused or contributed to the death, then that matter would be considered further. Under that second approach, there would – at least in the first instance – be no wide-scale investigation of the totality of the emergency response.

44. CTI support the second approach. They set out their reasons in their written submissions of 23 May 2017 (paras.27-34) and 22 June 2017 (paras.11-13). In short, they argue that there is, at present, no evidence establishing a causative link between the purported failings of the response of the emergency services and any of the deaths; that it would not be possible to provide the jury with a full and fair picture of the emergency response on the limited evidence that has survived to this day; that it would be premature and disproportionate to pursue the first approach; and that to do so would risk re-traumatising many of those who witnessed the awful scenes in the aftermath of the bombings.

45. In considering whether this issue is within scope, I hold that there are two aspects to the emergency response which are in my judgment of significant importance.

46. First, the sheer scale of this mass fatality disaster. It was one of the worst ever mass killings in this country in recent history. The coded warning provided to a local newspaper with a known IRA code was far from accurate and would not have directed emergency services straight to the Mulberry Bush or the Tavern in the Town. In any event, whether deliberately or otherwise, the warning came only minutes before the explosion at the Mulberry Bush, which in turn was followed shortly thereafter by the explosion at the Tavern in the Town. This would inevitably have hampered and delayed the emergency response. Just as a response was being requested at one location, a response was required at a second separate location.

47. Furthermore, the explosions caused extensive damage. There were, sadly, not just a few casualties. Twenty-one people died as a result of the explosions. Nineteen were confirmed dead on the night of the 21/22 November. Two others died in hospital, one on the 27 November, the other on 9 December. Hundreds were injured, many with life-changing injuries. All had to be attended to as best could be done in the circumstances. At the same time both sites were located in the town centre of Birmingham, which was busy with traffic soon after 8.15pm when the explosions occurred. Reaching the locations would inevitably have been difficult for the emergency services.

48. One must not lose sight of the fact that communications and coordination were very different in the mid-1970s, in an age of paper records and no mobile phones. Ms Williams accepts in her written submissions that the emergency response must be ‘judged by the standards and expectations of the time, rather than with modern eyes’ (para.37).

49. In the light of these difficulties, one would expect there to be some observations about the emergency services appearing not to be wholly adequate at the time, at least from a modern perspective. That is inevitable. It does not, however, of itself mean that there is sufficient material to justify including the emergency response within scope.

50. This takes me to the second point, and a more significant one, the issue of causation. The statutory question 'how' may only be answered in relation to the emergency response if there were failures which caused or contributed to the death or may have done so. (Despite Ms Williams's cogent submissions I do not need for these purposes to distinguish between probably caused and possibly caused: see *R (Lewis) v HM Coroner for the Mid and North Division of Shropshire* [2010] 1 WLR 1836; *R (Le Page) v HM Assistant Deputy Coroner for Inner South London* [2012] EWHC 1485 (Admin) at [45]).

51. It is therefore necessary to look a little more closely at the distressing causes of death, although I underline that nothing stated in this ruling will pre-empt or is intended to pre-empt the final findings of the jury on each individual death.

52. The expert evidence that I have before me at present is to the effect that most of the deceased were apparently killed almost immediately if not immediately, such was the effect of the bomb blasts and the devastation that followed. This is the conclusion contained in the overview report of Dr Nat Cary, experienced forensic pathologist, dated 22 May 2017. He concluded that:

> In the case of the majority of the fatalities, the nature of their injuries suggests that death is likely to have occurred within a few minutes of the explosions at the very most … [F]or many the nature and extent of injuries was so severe, even leaving aside the difficulties around accessibility and rescue, that early death within minutes of the explosion was inevitable. In none of the cases was there evidence of injuries of a kind where long term survival and discharge from hospital, particularly if treated within minutes of the explosion, would have been likely in those days.

53. There is no evidence that I have seen that the lives of any of those who died may have been saved by a quicker response. I therefore agree with the submission of CTI (at para.27) that there is no evidence at present that establishes a causative link between purported emergency response failings and the death of any individual.

54. KRW Law submit that some of the post-mortem reports 'point to the injuries being survivable' (para.7.b.iii.). I do not find evidence for this conclusion in those reports. It is suggested, for example, that Paul Davies died from inhalation of regurgitated gastric contents. That is not correct. The pathologist's report concludes that 'the cause of death was multiple bomb blast injuries'.

55. It should be noted, too, that there is a significant lack of documentation. My legal team has made requests of several organisations, including hospitals, fire service, ambulance service and others. The responses all show a significant absence of relevant documentation: see submissions of CTI at para.29. That may be surprising, even disappointing for some families, but it is a fact. Forty-three years ago records were made in paper form and kept only for a limited period of time. Very little remains today. I therefore accept the submission of CTI that it will not be possible to present the jury with a full and fair picture of the totality of the emergency response.

56. In my judgment, therefore, I do not consider that it is necessary or desirable to conduct an over-arching investigation into the totality of the emergency response. Such an exercise is not, at present, within the scope of these inquests. That does not, however, mean that all aspects of the emergency response will be excluded from further consideration. There will, of course, be some reference in the evidence to the actions of the emergency services in the immediate aftermath of the bombings at the two public houses, and indeed to the valiant efforts of volunteers and taxi drivers who came to the aid of those injured in the explosions. That is relevant evidence to describe the circumstances of the deaths and/or events immediately following the death of each person who died.

57. I agree with CTI's submission at para.35 of their submissions of 23 May 2017 and para.12 of their submissions of 22 June 2017 that the better approach is to consider the evidence relating to each of the deceased individually. If, in the course of such consideration, credible evidence is identified that suggests that failings in the emergency response caused or contributed to a death or deaths, then further investigations can be undertaken and, where appropriate, evidence may be adduced before the jury. Such an approach does not require the broad, over-arching investigation of the emergency response as proposed in the submissions on behalf of the families. It is, however, and as CTI submit, a fairer, more proportionate and more effective way of addressing the circumstances in which each of the 21 died.

58. I can quite understand that the families of those who died following the bombings would wish to know, if at all feasible, that everything possible was done that could have been done to save the lives of their loved ones. Insofar as that question can be answered we shall try to answer it. But the law restricts a coroner from embarking on an inquest inquiring into all possible issues, particularly those of a speculative nature. This is not a public inquiry in which issues not causative of death may sometimes be considered.

59. Ms Williams submitted at the hearing that it would be premature at this early stage to restrict or limit scope on this topic. I do not agree. This is not an early stage. Very extensive evidence has been collected and disclosed. Inquiries are certainly ongoing, so I shall, of course, consider further relevant evidence on this topic, including the evidence of Professor Anthony Bull and his team on blast impact and of Dr Nat Cary in his ongoing work on pathology.

60. But scope needs to be determined now, so that the continuing investigation may be shaped for the inquests. This does not mean that a rigid position is to be adopted and I reiterate the point that I made at the start of this ruling, that the issue of scope remains open for further consideration where appropriate. For now I am satisfied that an over-arching investigation into the emergency response does not fall within scope.

(4) The Perpetrator Issue

61. The identities of those who planned, planted, procured and authorized the bombs in November 1974 has been an issue of public interest for over 40 years. As CTI explained at para.40 of their written submissions:

> The atrocity of the bombings has been followed and compounded by an enduring injustice to its victims and their loved ones, namely that those responsible for the bombings have not been publicly held accountable for their acts. There is a manifest

> public interest in righting that injustice. But the critical question is whether these inquests are the means by which that can and should occur.

Should, therefore, the identities of the perpetrators be placed within the scope of these inquests?

62. The families who are legally represented have made submissions that the identities of the perpetrators should be within scope. Ms Williams, for example, has submitted that evidence about all possible perpetrators and their identities should be within scope, whoever they may be.

63. As she clarified at the May hearing, Ms Williams submits that the Birmingham 6 trial should in effect be revisited on an extensive basis. She submits that the jury at the inquests should assess whether each of the six (whether alive or no longer alive) were guilty or innocent, that the evidence relating to the Court of Appeal issues of the records made of alleged confessions given while in police custody and scientific evidence purportedly showing the handling of explosive materials should be considered afresh, that all possible suspects including the Birmingham 6 and others should be assessed through evidence for guilt or innocence, and that any person in this category could be 'named and shamed' in the media whether innocent or guilty.

64. She submits that in relation to the Birmingham 6 it is irrelevant that their convictions were quashed by the Court of Appeal. The inquests, she says, can review their innocence or guilt. The prohibition on a determination not being 'inconsistent with the outcome of the proceedings [in the Birmingham 6 appeal]' does not apply: see para.8(5) of Schedule 1 to the 2009 Act, below.

65. She says that the Birmingham 6, or any others who may be guilty, are not entitled to any special protection in the inquest process, save that 'possibly' they could apply and obtain anonymity orders or 'possibly' Contempt of Court Act orders. Mr McGowan suggested that ciphers could be used, although I believe that his clients want names to be named. In any event he accepted that individuals would inevitably be named in evidence.

66. Ms Williams explained that the only limitation on this wide-ranging form of investigation by the coroner and the jury would be that the jury would not be able to name any guilty person in their conclusions: see section 10(2)(a) of the 2009 Act, below. She submits that the jury would be able to hear evidence about the identity of perpetrators (in open court), they could make findings for themselves having identified guilty perpetrators, but they are prevented by law from naming them in their conclusions.

67. In summary she submits (in para.42) that the identity of the perpetrators is 'part of the "circumstances" that led to the fatalities' and is of the greatest public importance particularly since no one has been charged with offences relating to the bombings, except in the case of the Birmingham 6 which led to 'discredited convictions'. She submits that there is credible evidence, mostly from journalists, of the true identities and evidence should be called accordingly.

68. KRW Law have made similar submissions. In their submissions dated 15 May 2017 they suggest that 'in the absence of any successful prosecutions … the issue of "Perpetrators" falls squarely within the scope of the Inquests' (para.35). More recently, both in their written submissions (15 June 2017, para.14) and in the oral submissions of Mr McGowan on 29 June 2017, they have submitted that

the issue of the perpetrators is 'central'. It is central, they submit, because the 'how' question 'inherently requires an inquest to consider who was responsible for it, simply as a matter of plain usage of English' (para.14.d.). KRW Law therefore support the approach of Ms Williams. Whoever committed the bombings must be named in evidence, although not in the jury's conclusion.

69. The West Midlands Police oppose this approach. They submit that investigation into the identities of perpetrators is neither lawful not practical. Counsel for Devon and Cornwall Police agree. The Police Federation, who are not an Interested Person, nor are they likely to become one as a result of this ruling, have submitted that it would be lawful but impracticable, after 43 years. CTI submit that while, arguably, it may be lawful to pursue such an investigation at this stage of the Inquests, I have a discretion as to whether or not to do so. It is their submission that I should exercise this discretion by ruling that the 'perpetrator issue' is out of scope. They give their reasons at paras.48-60 of their written submissions dated 23 May 2017 and paras.15-23 of their submissions of 23 June 2017, supplemented by oral submission at the hearings in May and June 2017. They also submit that it would be unlawful to allow the jury to make any form of factual determination that identifies any person as someone who was involved in the bombing operation.

70. I have considered all of these submissions carefully, particularly knowing the strength of feeling of the families on this aspect of the case. I am also grateful to Ms Williams for putting her case so clearly and for KRW Law and Mr McGowan for providing written and oral submissions shortly after legal aid was finalised.

71. I make my decision without hesitation. I rule that the identity of the perpetrators should not be within scope. I make this ruling as an exercise of my broad discretion as to the scope of these Inquests, rather than as a finding that it would be unlawful to undertake such an investigation. I do not have to decide the latter point, and I do not do so.

72. In the first place I approach these important submissions by repeating the statutory framework of an inquest. As I have shown above the statute and case law is clear. An inquest must answer the four statutory questions: Who died? How, when and where did they come by their death? The scope of the inquest, however widely drawn, must be directed to providing, where possible, evidence for the jury to be able to answer those questions.

73. It is firmly decided in law that there is a marked distinction between a criminal investigation and an inquest. And there are good reasons for it. The former seeks to identify suspects (who are believed to be guilty) and bring them to justice through the process of arrest, prosecution and trial in a criminal court. The latter, an inquest (in this case 21 inquests), seeks only to answer the four statutory questions. Those four questions are the 'matters to be ascertained' as set out in section 5 of the 2009 Act (see para.20 above). Under the law, as it now stands, the answer to those four questions must be given by the coroner (when sitting without a jury) or the jury (if there is one) in their conclusions, described in section 10 as a 'determination' and recorded in the Record of Inquest for each person who died.

74. By virtue of section 10(2) that determination is subject to a prohibition:

> A determination … may not be framed in such a way as to appear to determine any question of –

(a) **criminal liability on the part of a named person**, or
(b) civil liability. [emphasis added]

75. The previous statutory prohibition was to be found with similar wording in the now repealed Rule 42 of the Coroners Rules 1984. (For what it is worth the prohibition has been promoted from a rule to a section of the main Act itself.) The familiar prohibition dates back to the Criminal Law Act 1977 which abolished the long-standing power of juries in coroners' courts to commit a named person for trial.

76. Although the power for a jury to commit a named person for trial exists in some common law countries such as The Bahamas (where it was re-introduced in 2014), it has been absent in the law of England and Wales since 1977. A coroner or a jury may conclude that the deceased was unlawfully killed but not say by whom. The identity of the perpetrator is a matter for the police and prosecuting authorities.

77. Sir Thomas Bingham MR explained the reason for the distinction between criminal proceedings and inquests, as prescribed by the section 10(2)(a) prohibition (at that time in the Rules), in the well-known case of *Jamieson* (see para.21 above) at p24:

> (4) This prohibition in the Rules is fortified by considerations of fairness. Our law accords a defendant accused of crime or a party alleged to have committed a civil wrong certain safeguards rightly regarded as essential to the fairness of the proceedings, among them a clear statement in writing of the alleged wrongdoing, a right to call any relevant and admissible evidence and a right to address factual submissions to the tribunal of fact. These rights are not granted, and the last is expressly denied by the Rules, to a party whose conduct may be impugned by evidence given at an inquest.

78. Ms Williams argues that the prohibition in section 10(2)(a) is limited to the jury's conclusion and provides no restriction on the scope of the investigation or evidence called at the inquest on the identity of a possible perpetrator. Had Parliament intended to prohibit the identity of perpetrators from evidence, she submits, the statute would have said so. I do not agree. Sir Thomas Bingham's words above describe the opposite, particularly in the phrase 'to a party whose conduct may be impugned by evidence given at an inquest'. They clearly envisage that the prohibition may be a relevant factor to be considered in the exercise of the coroner's discretion on the scope of an investigation.

79. Nor in my judgment would it make logical sense if the prohibition were strictly limited to the final concluding words of the jury (or coroner) in all cases. Ms Williams conceded in argument that that approach, as favoured in her submissions, was bound to produce a 'peculiar inconsistency'. She was obliged to accept that it would be a peculiar inconsistency if a coroner sitting alone (without a jury) - section 10 applies to jury and non-jury inquests - were able to make extensive findings of fact in public of the guilt of named persons but then not name them in the conclusion. In one sentence the coroner would be permitted to name perpetrators; in the next sentence not. She blamed the wording of section 10(2)(a) for producing this remarkable result. In my judgment this is a nonsense. It is neither a sensible interpretation of the words of the statute nor in accordance with Sir Thomas Bingham's remarks. Nor does it make any logical sense for the purposes of this case.

80. As Lord Lane CJ had earlier explained in *Ex parte Thompson* (1982) 126 SJ 625 (as cited in *Jamieson*, above, at 17G), an inquest is 'a fact-finding exercise'; it is 'not a method of apportioning guilt':

> The procedure and rules of evidence which are suitable for one are unsuitable for the other. In an inquest it should never be forgotten that there are no parties, there is no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish facts. It is an inquisitorial process, a process of investigation quite unlike a criminal trial where the prosecutor accuses and the accused defends, the judge holding the balance or the ring, whichever metaphor one chooses to use.

81. The prohibition does not, however, exclude an examination of relevant facts, as Sir Thomas Bingham explained in *Jamieson* at p24 at (5):

> Plainly the coroner and the jury may explore facts bearing on criminal and civil liability. But the verdict may not appear to determine any question of criminal liability on the part of a named person nor any question of civil liability.

82. Facts may therefore be explored in order to explain, for example, whether a person was lawfully or unlawfully killed or whether they were unlawfully killed or died accidently (or by misadventure). But the identity of perpetrators is not a question that an inquest is charged with answering. Indeed, it may be prohibited from expressing its view on this matter when, as in this case, the outcome, in one form or another, of the jury's conclusion must be unlawful killing. Deliberate homicide is always unlawful killing. Only the conclusion of unlawful killing, as listed in the Notes to the Record of Inquest in Form 2 of the Schedule to the Coroners (Inquests) Rules 2013, could be reached. But it must be reached, according to section 10(2)(a) of the 2009 Act, without identifying perpetrators.

83. Whether the conclusion of unlawful killing is expressed in these inquests by way of a short-form conclusion or by a short-form conclusion with additional words or by a narrative conclusion will be a matter for a decision at the inquests (see *Middleton* at [36]). And whether that conclusion is ultimately expressed as unlawful killing by the IRA or as part of a longer narrative conclusion will be a matter for decision at the inquests. In this respect I note the judgment of the Court of Appeal in *R v McIlkenny* (1991) 93 Cr.App.R. 287 at 289 (the Birmingham 6 final appeal), that the two explosions were a culmination of 'a campaign of bombing in the Midlands' in 1974 mounted by 'the IRA'.

84. Section 10(2)(a) is not, however, the only statutory prohibition relevant to this case. There is a further restriction on the jury's determination. In the case of an investigation which has been suspended (adjourned) pending criminal proceedings but later resumed, which this is (these are), by reason of paragraph 8(5), Schedule 1 to the 2009 Act, the determination(s)

> may not be inconsistent with the outcome of -
> (a) the proceedings in respect of the charge (or each charge) by reason of which the outcome was suspended …'

85. In this case the inquests were originally adjourned pending the outcome of the Birmingham 6 proceedings. The Birmingham 6 were tried for the 21 murders and convicted. But their appeals against conviction were allowed in March 1991. Accordingly the 'outcome of the proceedings' was that the appeals against the convictions were allowed by the Court of Appeal and the convictions no longer stand. For that reason the jury's determination(s) may not be inconsistent with that outcome.

86. In considering the exercise of my discretion on the question of scope I have therefore taken into account both the distinction between the roles of inquests and criminal proceedings and the statutory prohibitions in section 10(2) and paragraph 8(5) of Schedule 1. I have also looked at the particular circumstances of the instant case. Having done so, I conclude that the perpetrator issue should not be within scope in this case.

87. To permit the identity of perpetrators to be within scope, would be seen to be taking on the role, as one counsel put it, of a proxy criminal trial. If this were to result in a determination identifying those responsible for the attacks that would in my judgment be unlawful. It would contravene both the prohibition in section 10(2)(a) and in the case of the Birmingham 6 the additional prohibition in paragraph 8(5). It would also offend against the decision and explanation of Sir Thomas Bingham in *Jamieson* above.

88. As the Chief Constable of Devon and Cornwall Police recognised in his written submissions on the perpetrator issue (at para.5), there are very significant private and public interests in the identification of those individuals who planted, procured, planned and authorized the bombings. But these are, in my judgment, matters for the police and not these inquests. The inquests are not the appropriate vehicle for determining who is criminally responsible for these deaths. Nor would it be fair or logical for named individuals, whether the Birmingham 6 or others, to be paraded through the evidence in the hope that they could be identified as perpetrators, but not named in the determination.

89. There are also practical difficulties which make the submissions on behalf of the families untenable. One cannot ignore the sheer size and complexity were the inquests to commence an investigation into the guilt of any named individuals. Years of police investigations, inquiries and reviews have yielded no clear result. It would be invidious for the inquests to attempt to do so now, 43 years on, with a fresh search. The approach would inevitably be piecemeal and incomplete, mostly reliant upon persons named in books and the press, mostly by journalists. It would be a task entirely unsuited to the inquest process and its limited resources; the Coroner's team does not have the resource of an independent police force. It would be disproportionate to the real goal in hand, which is important enough, namely to answer the four statutory questions.

90. In any event, no counsel arguing for the perpetrator issue to be within scope has been able to explain to my satisfaction how the jury could answer the question they want asked without breaching the statutory prohibitions: Was Mr X [a named person] involved in the planning, planting, procuring or authorizing of the bombings?

91. For these purposes it makes no difference that these are Article 2 inquests. As CTI submitted (at para.59), the Article 2 procedural duty does not require the state to investigate who perpetrated these bombings through inquests. The state, through the West Midlands Police and the Devon and Cornwall Police, has initiated and undertaken extensive criminal investigations into these crimes. The failure to obtain convictions to date does not render those investigations valueless in this context or point to any 'gap' that must or could be filled by these inquests in order to discharge that procedural duty.

92. For these reasons I conclude that the perpetrator issue is not within scope.

Other matters

93. The Coroner's legal team will return to the Agent/Informant issue in due course. Other inquiries are also ongoing.

94. There is no dispute that other matters will be within scope. They include the background to and the events of 21 November 1974. They include personal information about each person who died. They include the nature and effects of the explosive devices, including the Hagley Road devices. They include the medical cause of death of each person who died.

95. These and other possible matters within scope will be discussed by CTI and lawyers for the Interested Persons following this ruling.

Interested Persons

96. I have said on a previous occasion that I would consider whether the Chief Constable of Devon and Cornwall Police should be granted Interested Person status under section 47 of the 2009 Act. I see no reason for that grant at present.

97. Similarly, there is no reason for the Police Federation to be granted Interested Person status.

98. As with all inquest matters, these things can be kept under review as the investigations proceed.

Next hearing

99. The next Pre-Inquest Review hearing is scheduled to be held at Birmingham Crown Court on 27 July 2017.

HH SIR PETER THORNTON QC
HM CORONER

3 JULY 2017