

Neutral Citation No:

Ref: GIR10613

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 23/3/2018

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY BRIGID HUGHES
FOR JUDICIAL REVIEW

AND IN THE MATTER OF THE ONGOING FAILURE OF THE EXECUTIVE
OFFICE, THE EXECUTIVE COMMITTEE, THE MINISTER OF JUSTICE, AND
THE SECRETARY OF STATE FOR NORTHERN IRELAND TO PROVIDE
ADEQUATE FUNDING FOR LEGACY INQUESTS

Rt Hon Sir Paul Girvan

[1] In relation to the claim against the Former First Minister ("the FFM") the Court will make the following declaration:

The Court doth declare that the decisions of the FFM to refuse to permit the Minister of Justice's paper to be put on the agenda of the Executive Committee for discussion or to permit the matter to be pursued under the urgent procedure were unlawful by reason of the fact that the FFM:

- (1) erroneously took into account the absence of an overall agreed package to deal with legacy issues as being relevant to the question whether additional funding should be sought to enable the Coroners Service to carry out the legacy inquests (as defined in the judgment of the Court) in a manner compliant with Article 2 Rule 3 and the common law so that those inquests could be carried out within a reasonable time;
- (2) erroneously left out of account that there was an obligation on the state authorities to ensure that the Coroners Service could effectively comply with Article 2, Rule 3 and common law in carrying out the legacy inquests within a reasonable time irrespective of whether an overall package was agreed to deal with all legacy issues; and

- (3) were procedurally flawed by reason of the matters set out in paragraph [49] of the judgment of the Court.

[2] In relation to the question whether the court should make an order of mandamus in the terms sought in para 3(bb) of the applicant's Order 53 statement or should grant declaratory relief rather than imposing a mandatory order I have concluded that I should make a mandatory order for the following reasons:

- (1) Notwithstanding a number of declarations and statements by the Strasbourg court the United Kingdom authorities have failed to effectively deal with the delays and shortcomings in the carrying out of legacy inquests. Mere declarations do not appear to lead to effective relief being given and hence the point has been reached where more intrusive and coercive orders must be made to ensure that the relevant authorities face up and deal with to the fact that breaches of Article 2, Rule 3 and the common law are continuing and require to be addressed.
- (2) In the absence of ministers the Departments are not answerable to the Assembly for actions taken or not taken. There is currently an ongoing absence of democratic accountability. No resumption of the ordinary processes of an accountable democratic system is currently foreseeable. If there were in place ministers accountable to the Assembly any failure to act in accordance with a declaration would be something for which such ministers would have to answer to the Assembly. This might be a factor favouring declaratory relief if there were ministers in place. In the absence of ministers where a mandatory order is in place civil servants running the departments will know what their precise legal duty is and will not be restrained or influenced by the belief that they are in some way bound by the actual or potential views of past ministers and/or future ministers.

I propose to make an order in the following terms:

The Court doth order that the Executive Office and the Department of Justice for Northern Ireland and the Secretary of State for Northern Ireland do forthwith:

- (a) reconsider their respective duties regarding the provision of additional funding to the Coroners Service for legacy inquests in accordance with the judgment of the court forthwith; and
- (b) consider what steps should be taken to ensure that the legacy inquests can be carried out in a

manner which complies with the requirements of Article 2, Rule 3 and common law.

There are currently no ministers in the departments and it would be inappropriate to make an order against a non-party. The First Minister, the Deputy First Minister and the Minister of Justice when and if appointed will be bound as they will be the ministers in charge of the named departments. The Court cannot make an order against the Executive Committee as such for the reasons discussed in the judgment. For the reasons given in the judgment the EO, the DoJ and the secretary of State have roles to play in relation to ensuring compliance with the procedural obligations involved in the statutory inquests.

[3] In relation to costs, I reject the arguments of the Attorney General on behalf of the FFM and the respondents who argued that no order for costs should be made. The applicant has succeeded in obtaining relief against the EO, the DoJ, the FFM and the Secretary of State. I propose to make an order for costs against the FFM, the EO, the DoJ and the Secretary of State save in relation to the costs of the application by the FFM to set aside her joinder in the proceedings and the application that I recuse myself as judge. The FFM shall be separately responsible for the costs of those applications. The liability to the applicant for the other costs shall be joint and several and it is a matter between the respondents to decide on whatever division of the costs they may agree amongst themselves. The application to cross examine the FFM was adjourned to the trial and the costs of that application shall be costs in the cause.