
The Bloody Sunday Inquiry

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PRESS NOTICE

02/04

14 January 2004

TRIBUNAL RULING

The Bloody Sunday Inquiry Tribunal has today ruled in respect of:

- i) An application by Madden & Finucane (solicitors) to pursue on behalf of their clients a number of allegations against Colonel Overbury; and*
- ii) An application by McCartney and Casey (solicitors) to pursue similar allegations on behalf of their clients.*

The Tribunal have ruled against both applications. A summary is attached. Full details have been posted on the Inquiry website under Rulings and Judgements.

The Tribunal's ruling of 12 October 1999 sets out the procedure to be followed in the event that interested parties wish to make allegations against witnesses to the Inquiry. Full details of this ruling are also on the website. Briefly, this 1999 ruling aims to ensure fairness for witnesses by allowing proper notice of allegations prior to their giving evidence.

Background

Colonel Overbury was at the time of Bloody Sunday the Assistant Director of Army Legal Services. He interviewed and took statements from a number of soldiers present on Bloody Sunday. He was also present at a number of interviews conducted by staff working for the Widgery Inquiry.

In August 2002 Madden & Finucane wrote to the Inquiry alleging that Colonel Overbury had suppressed and/or distorted evidence about the events of Bloody Sunday.

The Inquiry replied in September to the effect that, in accordance with the October 1999 ruling and to prevent allegations with no sound basis, these allegations could not be pursued in their present form without further information to support them.

Madden & Finucane responded to this later in the month by saying they were making no positive allegations.

The Inquiry replied the next day saying that in view of the fact that no positive allegations were being made the Inquiry would proceed on that basis.

On 3 October 2002 Colonel Overbury gave oral evidence to the Inquiry and Counsel acting for Madden & Finucane did not seek, either during the course of evidence or after the conclusion of his testimony, to re-open the question of whether any of the allegations made against Colonel Overbury could be revived.

In addition, the question of whether Colonel Overbury was instrumental in causing soldiers to suppress or falsify evidence to Widgery was not raised with any of the soldiers concerned when they gave oral evidence subsequently.

Nothing more was heard of the matter until November 2003 when Madden & Finucane responded to a letter from the Inquiry, sent in October 2003, which sought clarification on allegations with regard to the presentation of written submissions by the Interested Parties after the end of oral evidence.

In December 2003 the Inquiry replied by pointing out that this latest letter from Madden & Finucane constituted by and large the same allegations they had told the Tribunal in September 2002 they were not making. The letter also informed Madden & Finucane that, nevertheless, the Tribunal would give them the opportunity to make oral submissions on the matter.

These oral submissions took place later in December 2003. On the same occasion submissions were made by McCartney and Casey in relation to allegations they had raised against Colonel Overbury on behalf of their clients.

Ruling

The Tribunal have ruled as follows:

Madden & Finucane

“In the circumstances it seems to us that it would be unfair to Colonel Overbury and contrary to our ruling of October 1999 (which was designed to avoid unfairness) to allow allegations not put to this witness to be revived at this stage.

To make allegations against a witness and then in effect to withdraw them, to put no allegations to that witness during his testimony, and then nevertheless many months later for no good reason to revive them, seems to us to be self-evidently unfair, giving rise to the very ambush and surprise Madden & Finucane professed to wish to avoid.

If in truth there was any substance in the allegations they could and should have been raised long ago, but no attempt was made to suggest that December 2003 was the earliest practicable moment for them to be revived. We have a duty to seek the full truth about Bloody Sunday, but as we have observed on more than one occasion, this duty does not override our obligation to treat witnesses fairly.

We have, of course, considered whether we should recall Colonel Overbury, but since we remain un-persuaded that the allegations have any sensible foundation, to do so would run counter to our own ruling of October 1999, would to our minds serve no useful purpose, and would in our view be even more unfair to the witness now than it would have been in September 2002.

For these reasons we direct that the allegations identified in Madden & Finucane’s letter of 18th November 2003 cannot be raised at this late stage and accordingly must not appear in the final written submissions of their clients.”

McCartney & Casey

“We now turn to allegations that the clients of McCartney & Casey submit they should be permitted to advance against Colonel Overbury.

The correspondence with the Inquiry reveals that in recent letters from McCartney & Casey to the Inquiry these allegations have altered more than once in both form and content, but finally in the course of his oral submissions Lord Gifford on behalf of these interested parties put forward as the definitive allegation that Colonel Overbury suggested in the course of interviewing Soldiers 15, 40 and 134 that they should falsify their evidence in order to make it consistent with the Army’s case that all firing by the soldiers was justifiable.

No notice was given to Colonel Overbury before he gave evidence that McCartney & Casey were seeking to raise this or any similar allegation against him. Lord Gifford sought to explain this by saying that it had not become apparent to him until Colonel Overbury gave evidence that this officer had interviewed these soldiers.

Be that as it may, the fact remains that Lord Gifford did not put the allegation to Colonel Overbury. It is true that he suggested to Colonel Overbury that he may have tried *“to put a spin on some evidence which was otherwise potentially damaging to the Army”* a suggestion that Colonel Overbury rejected, but to our minds this falls far short of the allegation as it is now formulated.

To put a *“spin”* on evidence may well merely mean an attempt, not to falsify evidence, but to present it in the most persuasive or attractive way. If it was to be alleged that Colonel Overbury had, in fact conspired to pervert the course of justice, then that should have been suggested in terms. As it is, the transcript reveals that at the time the Tribunal expressed itself as not regarding the questioning by Lord Gifford as putting forward an allegation against Colonel Overbury; and Lord Gifford did not seek to persuade the Tribunal that this was what he in fact was seeking to do.

As with Madden & Finucane, no attempt was made to raise the allegation with the soldiers concerned. Nor was it suggested that any later evidence supported the making of such a serious allegation against Colonel Overbury. Likewise, no attempt was made to establish that the allegation was made at the earliest practicable moment.

In the circumstances it seems to us that, as in the case of Madden & Finucane and for much the same reasons, it would be unfair to Colonel Overbury and contrary to our ruling of October 1999 to allow allegations not put to this witness to be revived at this stage or to recall Colonel Overbury to deal with them.

For these reasons we direct that the allegations identified by Lord Gifford cannot be raised at this late stage and accordingly must not appear in the final written submissions of the clients of McCartney & Casey.”

Notes to Editors

1. For further information please contact the Inquiry’s Chief Press Secretary, Ivan Bailey, on 020 7661 9535 (mobile 07715 001 361).
2. The Inquiry’s website address is: <http://www.bloody-sunday-inquiry.org>