
The Bloody Sunday Inquiry

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PRESS NOTICE

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RULING ON REFUSAL TO ANSWER QUESTIONS RULING ON WITNESSES WHO HAVE FAILED TO OBEY SUBPOENAS

The Tribunal of the Bloody Sunday Inquiry has today made rulings on those who have refused to answer questions and on those who failed to obey subpoenas.

Refusal to Answer Questions

Tribunal has ruled that it does not believe it appropriate to take further action against journalists, ex paramilitaries and others who refused to answer certain questions.

The ruling is made on the grounds that the Tribunal has already heard oral evidence from over 900 witnesses, considered the written testimony of an even greater number and amassed a mass of video, photographic and other evidence.

Under the circumstances the Tribunal believe further action is unlikely to produce new information of any real value and, furthermore, would cause substantial delay in completing the Inquiry.

Refusal to Obey Subpoenas

Daniel and Vera McGilloway

The Tribunal will consider a belated application to have the subpoenas set aside on health grounds before deciding what, if any, action to take.

PIRA 9

PIRA 9 has provided no adequate reason for his refusal to attend. The Tribunal take the view he is in contempt and will so certify to the High Court in Belfast.

Witness X

The question of Witness X's health remains unresolved and the Tribunal will decide what action, if any, to take in the light of further information it hopes to obtain.

A copy of the rulings as delivered orally at the end of hearings today is attached and has been posted on the Inquiry website under Rulings and Judgements.

Notes to Editors

1. For further information, contact the Inquiry's Chief Press Secretary, Ivan Bailey, tel: 020 7661 9532; mobile: 07715 001 361; e-mail: ivanb@bloody-sunday-inquiry.org.
2. The Inquiry's website address is: <http://www.bloody-sunday-inquiry.org>

The Bloody Sunday Inquiry Refusal to Answer Questions and Refusal to Obey Subpoenas Ruling

In a number of instances during the course of taking oral evidence at this Inquiry witnesses have refused to answer questions. These witnesses include journalists and members or ex members of paramilitary organisations as well as others.

In the case of journalists the refusal was to identify some of their sources of information relating to the events of Bloody Sunday, on the grounds that to do so would breach the undertaking of confidentiality given by the journalist to the source. In legal terms, the question was whether, applying Section 10 of the Contempt of Court Act 1981, the interests of justice were of such an overriding nature that the journalists were nevertheless obliged to reveal that source to the Inquiry.

In the case of paramilitaries the refusal was to identify some others who were members of the organisations at the time of Bloody Sunday or give logistical or similar information relating to those organisations at that time, on the grounds that to do so would be disloyal to their comrades or would contravene the oath or undertakings that they gave when joining those organisations. It was not suggested by the lawyers acting on behalf of these individuals that there was any legal justification for a refusal based on these grounds.

In the case of others, the refusal was to provide similar information. Here no particular reason was advanced to justify the refusal, though to our minds it is possible, at least in some cases, that fear of possible reprisals from paramilitary organisations still active may have been the reason. In some of these cases, therefore, the refusal may be justifiable on the grounds that to require an answer would be to breach the individual's rights under Article 2 of the European Convention on Human Rights.

Depending on the circumstances, in each case the Tribunal either simply noted the refusal, or told the witness that it might prove necessary to have a further hearing to decide whether or not to direct the witness to answer, or, having given lawyers acting on behalf of the witness an opportunity to make submissions, made a formal direction that the witness was obliged to answer. In the case of journalists, the matter was fully argued out on more than one occasion, and the Tribunal gave reasons for concluding that as a matter of law it should direct the journalists in question to reveal the source, which it then did.

In some cases, the witness concerned later provided the information in question. In other cases, the journalists at our request sought and obtained a waiver of the undertaking of confidentiality and revealed that source to us. In a substantial number of further cases, the Inquiry was eventually able from its own investigations to discover the information that it was seeking. There remain, however, some instances where the Inquiry has not been successful in this regard. Thus we have to consider whether it is appropriate to take any further steps in these latter cases, by giving the witness in question a further opportunity to provide the information sought, or to show a legal justification for a refusal or, in those instances where the Tribunal has already directed the witness to answer, to certify to the High Court that in its view the witness is in contempt of the Tribunal.

Having considered the matter the Tribunal has concluded that it is not appropriate to take any further steps in these cases. In the view of the Tribunal it is unlikely that any further action will produce new information of real value to its investigation of the events of Bloody Sunday. Furthermore, any attempt to pursue the matter is likely to cause substantial delay in completing this Inquiry, which has already lasted more than six years. The fact of the matter is that we have heard the oral testimony of over 900 witnesses, have considered the written testimony of an even greater number and have a wealth of contemporary video, photographic and other evidence. In theory, an Inquiry of the present kind could continue indefinitely, in an attempt to follow up every possible lead, however unpromising it might appear. In practice, however, the time must come when the Tribunal has to draw a line, balancing the prospects of obtaining further information of value with the need to keep the duration of the Inquiry within reasonable limits. In our judgment that time has come and the balance falls on the side of concluding our search for relevant information from the witnesses in question. Our task now is to draw conclusions from the voluminous material that we have gathered over the last six years.

There remain those individuals who have failed to comply with subpoenas to attend to give evidence. These are Daniel McGilloway AM507, Vera McGilloway AM506, and the witnesses known as PIRA 9 and Witness X.

As we stated on day 423, both Mr and Mrs McGilloway indicated at that time that there were health reasons that justified their non-attendance. However, they failed to comply with the Inquiry's request that they should provide proper medical evidence in support of this contention. They have now indicated that a belated application to set aside the subpoenas is to be made on their behalf. The Tribunal will, in the light of any further information provided by the McGilloways, what further action, if any, to take.

PIRA 9 refused to be interviewed by the Inquiry or to make a statement. He was served with a subpoena that required his attendance on Day 424. He failed to attend on that day and failed to avail himself of a further opportunity given to him by the Tribunal to attend yesterday. He has made clear through his solicitors that he will not attend to give evidence. His solicitors have informed the Inquiry that PIRA 9 claims not to have been present on Bloody Sunday but have put forward no adequate reason for his refusal to attend. We take the view that PIRA 9 is in contempt of the Tribunal and will so certify to the High Court in Belfast.

Witness X was required to appear to give evidence on Day 418. On that day, after he had failed to attend, we informed the interested parties that a question had arisen as to the state of his health. That question remains unresolved. We will decide what action, if any, to take in the light of the further information that we hope to obtain in respect of this witness.

Finally, we should make clear that nothing in this ruling is intended to inhibit any interested party from submitting that the Tribunal could and should draw inferences from the refusal of witnesses to answer questions, or indeed from the failure or refusal of witnesses of potential importance to come forward to assist the Tribunal in its task.

Lord Saville of Newdigate

The Hon. William Hoyt

The Hon. John Toohey

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