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92 High Street
3rd & 4th Floor
Belfast
BT1 2BG

(028) 90 328 383
Info@phoenix-law.org
www.phoenix-law.org

The Attorney General
Attorney General's Chambers
Belgravia House
34-44 Circular Road
Douglas
Isle of Man
IM1 1AE

PRE ACTION CORRESPONDENCE PRIOR TO PETITION OF DOLEANCE

Date:1st August 2025 Our Ref: JR/PX9853/DM Your Ref: WW/AGCH.4945

BY POST AND EMAIL

Dear Attorney General,

RE: In the matter of a Petition of Doleance brought by Justice for Summerland

We refer to the abovenamed client for whom we act.

Please note that this is pre-action correspondence sent ahead of lodging an application for doleance/judicial review of your refusal to direct fresh inquests on 15 May 2025.

1. **Proposed Claim for Doleance/Judicial Review to:**

The Attorney General
Attorney General's Chambers
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2. The Applicant

Justice for Summerland
C/O Mr Darragh Mackin
Phoenix Law
92 High Street
Belfast
BT1 2BG

3. Reference Details

Our reference: JR/PX9853/DM
Your reference: WW/AGCH.4945

4. Details of the matter being challenged

4.1. The decision of the Attorney General ("the AG") on 15 May 2025 where he refused to exercise his discretion to direct fresh inquests into the deaths arising from the Summerland fire on 2 August 1973.

5. The Issue

5.1. The background

5.1.1. We act on behalf of Justice for Summerland, a campaign group made up of members of bereaved families.

5.1.2. 50 people, the names of whom are annexed to this correspondence, lost their lives following a fire at the Summerland leisure complex on 2 August 1973. The unimaginable loss suffered by each of the deceased's loved ones is aggravated by the sense of injustice they feel following flawed and perfunctory investigations into each of the deaths. The original inquests left bland and uninformative

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conclusions, and returned findings incorrect in law. It is accepted by the AG that "the inquests were a brief and summary process".[1] These deficiencies could not, and have not been, remedied by concurrent or subsequent enquiries. Since the original inquests, the reliability of the original forensic analysis has been called into question given the discredation of Dr Frank Skuse and the advancement of fire science and pathology in recent years. The loved ones of those deceased have seen other families who have suffered loss in similar circumstances, such as the Stardust families, achieve justice after fresh inquests were ordered and the truth of the circumstances of their loved ones' deaths can be unearthed. It would be unjust for the families of those who died at the Summerland fire disaster to be left behind.

5.1.3. On 4 March 2025, our client made an application for fresh inquests to be held pursuant to section 6(1)(c) if the Coroners Inquests Act 1987 into the deaths arising from the Summerland fire on 2 August 1973. In a letter dated 15 May 2025 ("the refusal letter"), this application for fresh inquests was refused.

5.2. **The issue**

5.2.1. The applicant seeks to challenge this refusal by the AG in a claim for doleance/judicial review on the following grounds.

5.3. **Grounds of challenge**

5.3.1. *Misdirection in law: the desirability threshold for fresh inquests*

5.3.1.1. A decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Section 6(1)(c) of the Coroner of Inquests Act 1987 reads as follows:

[1] Paragraph 115 of the refusal letter.

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> *"**6. Duty to hold inquest***
> *(1) A coroner shall hold an inquest touching a death –*
> *(a) where the body of the deceased is in the Island and the coroner has reason to believe that he died in the Island in any of the circumstances mentioned in section 2(1)(a) or (b) or (4)(d); or*
> *(b) [Repealed]*
> *(c) where the Attorney General has reason to believe that the deceased died (in the Island or elsewhere) in circumstances which in his opinion make the holding of an inquest <u>desirable</u> and directs the coroner to hold such an inquest.*
> *(2) Where a coroner receives a direction under subsection (1)(c) he shall hold an inquest whether or not he or any other coroner has viewed the body, made any inquiry or investigation or held any inquest into or done any other act in connection with the death."* [*emphasis added*]

This means that the AG ought to consider whether the holding of a fresh inquest is "desirable". "Desirable" is a much lower threshold than "advisable", as exists in Ireland and Northern Ireland, and is importantly distinct from the "<u>necessary</u> or desirable" threshold in England and Wales.

5.3.1.2. At paragraph 2 of the refusal letter, the AG writes that "[t]he meaning of the word 'desirable' is not further defined in Manx case law and so should be given its ordinary meaning". This is the correct characicertisation of the law. This is however not the approach that the AG applied for the reasons that are set out in more detail below.

5.3.1.3. In the next paragraph of the refusal letter, the AG confirms his intention to proceed against his stated position on the interpretation of the legal threshold. He writes "[i]n considering whether it is 'desirable' to direct fresh inquests the English & Welsh jurisprudence can provide assistance in interpretation, and so when considering the application I have

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3rd & 4th Floor
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www.phoenix-law.org

borne in mind the principles relied upon by the Lord Chief Justice, when allowing the Hillsborough victims' families' application for a fresh inquest in *Attorney-General v HM Coroner of South Yorkshire (West)* [2012] EWHC 3783 (Admin)". This approach to interpreting the legal threshold in Manx law, as the approach taken by the AG in the course of his consideration of the proposed applicant's application for fresh inquests, is a misdirection in law.

5.3.1.4. The outworking of the interjection of the English and Welsh jurisprudence (and legal test) is a misapplication of the law. Indeed, in his initial correspondence of 23rd May 2024 the AG was at pains to point out that the approach in Manx law is fundamentally different than that to England & Wale. Therein he stated: "*As you will be likely aware, there is no provision in Isle of Man equivalent to Section 13 of the Coroners Act 1988 (Westminster)..*" Again, this was a correct statement of the law. Again, this was not however the approach adopted by the AG in this ultimately decision making.

5.3.1.5. Put simply, the test and procedure that applies in England and Wales imposed (by virtue of express statutory language) a higher threshold insofar as it includes the additional hurdle of necessity. Despite clearly identifying in his earlier correspondence and opening paragraphs of his correspondene that this is indeed a different test on different statutory footing, the AG has sought to infect his entire decision by parachuting in the English and Welsh jurisprudential backdrop which has added the additional burden of necessity (or necessary) without any lawful basis. Manx law, just like Irish and Northern Irish law, does not require the additional hurdle of 'necessity' to be satisfied. This obvious but important flaw in the decision making exercise renders the entirety of the decision unlawful by virtue of the fact the incorrect legal test has been improperly applied, without any lawful basis.

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5.3.1.6. Furthermore, not only has the AG's decision been infected by the application of the English & Welsh test. It has been infected by virtue of the misapplication of the English & Welsh test. This is the second fatal flaw in the application of the correct legal test, in reaching his decision.

5.3.1.7. The AG's approach when considering the section 6(1)(c) of the Coroner of Inquests Act 1987 is impugned because he has misinterpreted English & Welsh jurisprudence relating to section 13(1)(b) of the Coroners Act 1988. In a footnote, the AG quotes the relevant passage as follows:

> "*(1)(b) Where an inquest has been held by him, that (whether by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, the discovery of new facts or evidence or otherwise) it is* ***necessary or desirable in the interests of justice*** *that another inquest should be held.*"

This quote is accurate. The section states that it ought either be necessary or desirable for a fresh inquest to be directed. However, it is clear that the AG has misunderstood that either (a) it ought to be both necessary and desirable that fresh inquests should be held, or (b) that 'necessary' and 'desirable' are co-references. This misapplication and misinterpretation of the English & Welsh law has the consquences of not only applying a higher test than what is provided for in English and Welsh law, but indeed, it seeks to apply a higher test that not only does not exist in Manx law, but it does not exist in English & Welsh law either. The misapplication of the conjunctive text misrepresents parliament's intention when they expressly included disjunctive terminology.

5.3.1.8. This misunderstanding is evidenced at paragraph 4 of the refusal letter, where the AG writes that "[i]n [*Attorney-General v HM Coroner of South Yorkshire (West)*] the meaning of the phrase '*necessary* ***and*** *desirable*' in the very similar English &

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Welsh legislation was considered" [*emphasis added*]. The test in Manx law is notably distinct from that in England & Wales, as has already been set out. Notwithstanding this difference, the AG has misinterpreted the meaning of section 13(1)(b) of the Coroners Act 1988. It does not state that it ought to be both necessary and desirable that fresh inquests should be held. It merely states that it ought either to be necessary or desirable that fresh inquests should be held. This important discrepancy has poisoned any lawful consideration of the application for fresh inquests made by the proposed applicant against the correct legal test set out at section 6(1)(c) of the Coroner of Inquests Act 1987. Necessity cannot be conjoined to or conflated with desirability.

5.3.1.9. This point is clearly illustrated by the correct application of the section 13(1)(b) test by High Court of England & Wales' judgment in *the Matter of the Inquest into the Death of Michael Vaughan [2020] EWHC 3670 (Admin)*. On the facts of that case, Lord Justice Coulson was not persuaded that a fresh inquest was necessary. However, the Court was "easily persuaded that a fresh inqest in this case is desirable. That is principally because that is what [the deceased's family] wants."[2] and therefore ordered a fresh inquest. This correct interpretation of the English & Welsh threshold at section 13(1)(b) of the Coroners Act 1988 is concisely summarised by Lord Justice Coulson where he explains that "[i]f it can be shown that a fresh inquest is *either* necessary *or* desirable, then it will be ordered".[3]

5.3.2. *Misdirection in law: the AG has applied an ultra vires test*

[2] Paragraph 16 of The Inquest into the death of Michael Vaughan [2020] EWHC 3670 (Admin).
[3] Paragraph 19 of ibid.

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5.3.2.1. The AG has misdirected himself by way of his application of additional hurdles over which the proposed applicant was expected to leap to meet the desirability test. His application of principles adopted from his impugned interpretation of paragraph 10 of the judgment in *Attorney-General v HM Coroner of South Yorkshire (West)* has led to a procedural defect. The additional principles applied by the AG are as follows:

> *"(a) Whether any fresh evidence has emerged since the initial inquests;*
> *(b) Whether a different conclusion is likely at fresh inquest and if not, whether public confirmation of earlier findings is desirable in all the circumstances;*
> *(c) Whether the process adopted at the original inquest has caused justice to be diverted or for the inquiry to be insufficient;*
> *(d) Whether the substantive truth regarding how the deceased lost their lives has been revealed;*
> *(e) The wishes of the bereaved;*
> *(f) Any distinct and separate imperative that the community as a whole should be satisfied that even if belatedly, the truth should emerge."*

This is not the legal test under section 6(1)(c) of the Coroner of Inquests Act 1987. Inventing and applying a more stringent legal test than that set out in Manx law is ultra vires, especially given that it is based on a misinterpretation of a different case in which a different legal test was being considered.

5.3.2.2. For the AG's decision making to be lawful, he must consider whether the holding of a fresh inquest is "desirable". The word "desirable" should be given its ordinary meaning,. While it is true that satisfaction of any one of the criteria outlined by the AG at paragraph 5 of the refusal letter may mean that fresh inquests are desirable, the express satisfaction of any or all of these principles is not required under Manx law. It is not even required under English & Welsh law, as exemplified by the aforementioned judgment in *the Matter of*

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the Inquest into the Death of Michael Vaughan [2020] EWHC 3670 (Admin). Its findings are concisely summarised by Lord Justice Baker and Mr Justice Butcher's judgment in *His Majesty's Senior Coroner for West Yorkshire (Western District) v (NoBeing Named) [2025] EWHC 1672 (Admin)* at paragraph 27 of same, which reads:

> "*[…] Coulson LJ emphasised that a fresh inquest may be ordered if the Court considers that it is either necessary or desirable (or both) for a fresh inquest to be held, that 'desirability' is more easily achieved than 'necessity', and that the question of desirability will be influenced by the extent to which the deceased person's family would like a further investigation to be conducted.*" [*emphasis added*]

The proposed applicant ought not be subjected to a test which goes beyond that specified by section 6(1)(c) of the Coroner of Inquests Act 1987, which centers on desirability which itself is based on the extent to which the proposed applicant would like a further investigation.

5.3.3. *Misdirection in law: the meaning of 'misadventure' in Coronial Law*

5.3.3.1. 'Death by misadventure' was returned at the conclusion of the original inquests into the deaths of the proposed applicant's loved ones. The proposed applicant submitted in its application for fresh inquests that a different verdict would be returned at the conclusion of fresh inquests upon the correct application of Coronal Law, and that 'death by misadventure' could not reasonably be considered the appropriate verdict on the facts of these inquests. The AG rejected the proposed applicant's submission on this point because he considered that the concern of the families "*may arise from on [sic] a fundamental misunderstanding of the meaning of the term*

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'misadventure' in Coronial Law.".[4] The AG has misdirected himself as to the meaning of 'misadventure' in Coronial Law for two reasons.

5.3.3.2. The first reason appears at paragraph 59 of the refusal letter, the AG defines the verdict of 'death by misadventure':

> "*'Misadventure' properly understood connotes a deliberate human act that takes a wrong turn that leads to death. The deliberate act need not be an act by the deceased. Indeed the term misadventure is frequently used by coroners were the actions of one person lead [sic] to the death of another, but where there was never any intention on the part of the first person to cause the second any harm.*". [*emphasis added*]

Notwithstanding that the AG's claim above is not borne out in reality, as is exemplified below at paragraphs [5.3.3.6.]-[5.3.3.7.] of this correspondence, the proposed applicant submits that this definition is demonstrably incorrect and amounts therefore to a misdirection in law. As recently as in April 2025, Mr Justice Kerr affirmed the accepted definition of 'misadventure' in Coronial Law in the High Court of England & Wales when he held that death by misadventure is defined as death arising from "the unintended consequence of an intended act by the deceased"[5] [*emphasis added*].

5.3.3.3. Common law notwithstanding, it plainly stands to logic that the intended act must be carried out by the deceased. Otherwise, coroners and jurors would be unable to

[4] Paragraph 58 of the refusal letter.
[5] Paragraph 91 of The King (on the application of Mrs Veronica Robinson) v HM Assistant Coroner for Blackpool & Fylde v Chief Constable of Lancashire Police [2025] EWHC 781 (Admin).

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distinguish 'death by misadventure' from 'death by accident' when returning a verdict at an inquest into a death which arose as an unintended consequence of an intented act. For example: where a piano is being hoisted into a third-floor apartment by approved and trained movers and, due to a surprise mechanical failure, falls from its hoist and fatally strikes a passerby; a Coroner or jury would not return a verdict of misadventure. This is because the passerby did not participate in the intended act which had the unintended consequence. Logically speaking, a verdict of 'death by accident' would be the only appropriate finding to return. In failing to land upon the correct verdict at an inquest on similar facts, the AG's definition of 'misadventure' is therefore inadequate. Its inadequacy amounts to a misdirection in law. This is the first reason that the AG has misdirected himself as to the meaning of 'misadventure' in Coronial Law.

5.3.3.4. The second reason that the AG has misdirected himself as to the meaning of 'misadventure' in Coronial Law is clear from paragraph 60 of the refusal letter, which begins as follows:

> "*I cannot accept the assertion that misadventure* 'by its very nature infers a finding of risk upon the deceased'. *In my view it implies nothing of the sort.*".

It is not clear from where the AG has based his view of the legal definition of misadventure. No source has been provided, from any jurisdiction in the region, upon which this view has been formed – or can be supported. Without legal basis, the AG has purposefully rejected a definition widely accepted and understood in his consideration of the proposed applicant's application for fresh inquests.

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5.3.3.5. At page 145 of *The Law and Practice on* Coroners, Thurston expressly writes:

> "*It is submitted that a verdict of accident is the appropriate verdict to return when the death is caused by an occurrence which could not have been foreseen, whereas misadventure should be reserved for those circumstances when the death occurred as the result of a lawful or unlawful intentional human act unforeseeably leading to death.*"[6]

At pages 383-384 of *Jervis on the Office and Duties of Coroners*, the foreseeability of the unintended consequence is acknowledged:

> "*In modern times, for coronial purposes no distinction is drawn between accident and misadventure in the conclusion. It is sometimes suggested that 'accident' connotes something over which there is no human control, or an unintended act, while 'misadventure' indicates some deliberate (but lawful) human act which whas unexpectedly taken a turn that leads to death. Thus misadventure, apparently involving the taking of a risk, is seen as morally more blameworthy than accident.*
>
> *Even if this distinction exists in logic, it is clear that coroners have not observed it in practice, and, for statistical purposes, these conclusions are treated as being the same. The Divisional Court has encouraged this trend, treating the distinction between accident and misadventure as 'without purpose or effect', and suggesting the suppression of the latter in favour of the former. Nevertheless, misadventure may have a preferable*

[6] Gavin Thurston, *The Law and Practice on Coroners* (3rd edn, Barry Rose 1985) 145.

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> *ring to it in the right context, connoting bad fortune rather than mistake*."[7] [*emphasis added*]

At page 348 of *Coroners: Practice and Procedure*, Farrell writes that misadventure is more appropriate than accident where a risk is associated with an intended action:

> "*Where a patient dies in hospital as a result of some mishap during surgery (or other procedure) a verdict of 'misadeventure' is generally more appropriate than 'medical accident'. All medical and surgical treatment is attended by some risk and where complications cause death, then misadventure is appropriate in the majority of cases.*"[8]

It is clearly accepted that a distinction between the verdict of 'misadventure' and the verdict of 'death by accident' is that the former carries some foreseeable risk attached to the intended act.

5.3.3.6. At paragraph 61 of the refusal letter, the AG writes:

> "*A finding of misadventure differs from a finding of accident in that, for misadventure the initial (and ultimately fatal) act must have been intentional, whereas for an 'accidental death' the initial act will not have been intended.*"

The AG is correct to observe that a finding of misadventure differs from a finding of accident. However, if the difference were only that the initial and fatal act was not intended (rather

[7] Douglas James and others, *Jervis on the Office and Duties of Coroners* (15th edn, Sweet & Maxwell 2000) 384.
[8] Brian Farrell, *Coroners: Practice and Procedure* (Round Hall Sweet & Maxwell 2000) 348.

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than that embarking on the initial and fatal act carried no foreseeable risk), many verdicts of 'accidental death' returned in Manx inquests would have been wrongly delivered. It is our submission that this cannot have been so. Some examples include the following:

(a) On 7 February 2024, a verdict of accidental death was recorded by Coroner James Brooks at the inquest into the death of the late Mr Nathan James Harvey. Mr Harvey died at Noble's Hospital on 21 June 2022 after a slab of granite, which he was helping to move, fell on him at work. Coroner Brooks told the court that "Nathan played no part in how the slab came to fall" on him[9]. However, applying the logic of the AG to this case, the correct verdict ought to have been misadventure rather than accident because Mr Harvey deliberately helped to move the slab of granite. This is not correct.

(b) On 7 August 2024, a verdict of accidental death was recorded by Coroner James Brooks at the inquest into the death of the late Mr Liam Clarke. Mr Clarke died 11 July 2023 while marshalling a qualifying Southern 100 road race after being struck by a barrier displaced by a motorcycle crash during the event. Coroner James Brooks says that though being a marshal carried risks, Mr Clarke had not been undertaking a risky part of his role at the time.[10] Notwithstanding therefore that Mr Clarke could not have been expected to foresee the risk of the racer

[9] 'Accidental death verdict in case of quarry worker who was crushed by falling stone' *Manx Radio* (Isle of Man, 9 February 2023) https://www.manxradio.com/news/isle-of-man-news/accidental-death-verdict-in-case-of-quarry-worker-who-was-crushed-by-falling-stone/ accessed 10 July 2025.
[10] 'Liam Clarke: Isle of Man TT marshal died after barrier struck him' *BBC News* (Isle of Man, 20 August 2024) https://www.bbc.co.uk/news/articles/cx2el021njqo accessed 10 July 2025.

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missing a chequered flag signalling he should slow down, causing his motorcycle to go into the barrier, causing the barrier to strike Mr Clarke; the application of the AG's logic would mean that the correct verdict ought to have been death by misadventure because Mr Clarke deliberately marshalled the Southern 100 event (or the motorcyclist who crashed deliberately participated in the race). That cannot be correct.

(c) On 22 October 2021, a verdict of accidental death was recorded by Coroner Jayne Hughes at the inquest into the death of the late Mr Luke McNicholas. Mr McNicholas died on 16 January 2021 while cycling on the Heritage Trail over the Curragh Road when he collided with a vehicle due to an "inadequately marked and controlled" road crossing.[11] The AG's definitions as described above would mean that Mr McNicholas died by misadventure because he deliberately cycled on that trail (or the driver of the colliding vehicle was deliberately driving their vehicle), notwithstanding that the inadequacy of the crossing could not have been foreseen by him. That could not be correct.

(d) On 8 November 2008, a verdict of accidental death was returned in each of the seven inquests into the deaths of the Solway Harvester crewmen which sank in January 2000. The seven crewmen drowned after the vessel sank for reasons which could not be pinpointed because of conflicting experts' views. The inquests heard that the boat's owner had installed a bilge alarm in the fish room of the Solway Harvester, but it was not working when the

[11] 'Inquest finds cyclist died after crash on 'inadequately-marked crossing'' *BBC News* (Isle of Man, 22 October 2021) https://www.bbc.co.uk/news/world-europe-isle-of-man-59013779 accessed 10 July 2025.

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boat began its final trip and therefore the boat's skipper was not alerted when water was rising in the fish room during the storm.[12] If the AG's definitions of 'misadventure' and 'accidental death' are sound, the Coroner would have erred by failing to record verdicts of the former given that the crewmen deliberately participated in their roles on the Solway Harvester off the Manx coast despite not possibly being expected to have foreseen that the alarm was faulty (or by virtue of the boat's owner deliberately installing the alarm, which happened to be faulty). This cannot reasonably be the case.

(e) On 16 May 2017, a verdict of accidental death was returned by Coroner John Needham in the inquest into the death of the late Mr Gareth Sowden. Mr Sowden died on 1 May 2013 while working on the sewage treatment works on Balleira Road in Kirk Michael when a structure lifted into an upright position, and thought by all onsite workers to be secure, was blown over by a gust of wind and landed on top of Mr Sowden.[13] If the AG's position is correct, given that Mr Sowden deliberately worked on the sewage treatment works and therefore was situated near the structure which fell on him, the correct verdict which ought to have been returned at his inquest was death by misadventure. That cannot be correct.

5.3.3.7. The aforementioned examples meaningfully contrast with inquests where a verdict of misadventure has been returned.

[12] 'Solway Harvester crew deaths were accidental, says coroner' *The Guardian* (Scotland, 8 November 2008) https://www.theguardian.com/uk/2008/nov/08/solway-harvester-scotland accessed 10 July 2025.
[13] 'Kirk Michael building site crush death 'accidental'' *BBC News* (Isle of Man, 16 May 2017) https://www.bbc.co.uk/news/world-europe-isle-of-man-39941986 accessed 10 July 2025.

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This is best illustrated with reference to two inquests which returned different verdicts on otherwise similar facts.

(a) On 22 May 2019, a verdict of accidental death was recorded by Coroner Jayne Hughes at the inquest into the death of the late Mr James Cowton. Mr Cowton died on 12 July 2018 following a motorcycle crash during a race. The crash was attributed to a wire fault leading to the loss of power in his engine. Coroner Hughes said it was very clear that no responsibility could be attributed to anyone involved in preparing or checking the bike ahead of the race.[14] Notwithstanding that the risk caused by the hidden wire fault was not foreseeable, the logic of the AG would lead to a verdict of death by misadventure in this case instead of accident because Mr Cowton deliberately raced his motorcycle. That would not be correct.

(b) On 28 December 2022, Coroner James Brooks recorded a verdict of misadventure at the inquest into the death of the late Mr Park Purslow. Mr Purslow died on 1 June 2022 in a crash on the third lap of TT evening qualifying. Coroner James Brooks was right to consider misadventure to be appropriate on the facts of this case because Mr Purslow's bike had been in perfect working order, without any hidden faults, and his crash arose from his trying to rectify an incorrect manoeuvre around a corner.[15] The reason that misadventure is appropriate in this case is because the risk

[14] 'Coroner returns James Cowton accidental death verdict' Bike Sport News (27 May 2019) https://bikesportnews.com/tt-and-roads/coroner-returns-james-cowton-accidental-death-verdict/ accessed 15 July 2025.
[15] 'Misadventure verdict into Llanon TT rider's death' *Cambrian News* (Courts, 28 December 2022) https://www.cambrian-news.co.uk/news/courts/misadventure-verdict-into-llanon-tt-riders-death-585308 accessed 10 July 2025.

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embarked upon by the deceased was, or ought to have been, foreseeable to him. That is distinct from the example cited at [5.3.3.7](a) above, where the risk could not have been foreseen by the deceased.

It is clear therefore that the factual distinction between these two inquests illustrates an operable difference between verdicts of 'misadventure' and 'death by accident' by Coroners themselves upon hearing real inquests. In addition to the requirement that the intended act is embarked upon by the deceased, there must be an element of risk or danger associated with embarking upon that intended act which ought to have been foreseeable. This is the second reason thate that the AG has misdirected himself in law as to the legal definition of 'misadventure' in Coronial Law.

5.3.4. *Irrationality: that a different verdict would not be reached at the conclusion of fresh inquests*

5.3.4.1. In the refusal letter, the AG rejected submissions made by the proposed applicant in favour of directing fresh inquests because different conclusions are likely to arise from fresh inquests. The original findings were death by misadventure. The AG's rejection was based on a misdirection in law resulting from his misunderstanding of the meaning of 'misadventure' in Coronial Law. That misdirection was material because it has poisoned the refusal decision on grounds of rationality. On the correct application of Coronial Law, findings of misadventure could not be arrived at on the facts. Therefore, a different verdict would certainly be returned at the conclusion of fresh inquests.

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5.3.4.2. As explained above, misadventure is appropriate as a cause of death when the deceased was "doing an intended act with unintended fatal consequences for the doer"[16] [*emphasis added*]. The AG endorses the Summerland Fire Commission's Report's findings as to the cause of the fire at paragraph 29 of the refusal letter. He writes:

> "*The Report also clearly identifies the cause of the fire. Supported by witness accounts and their own counsel's formal public admission, it was determined that the fire originated shortly before 19:40 hours with a match lighted by three schoolboys in a dismantled kiosk section that was leaning against the external Galbestos wall of Summerland.*"

That the intended act (lighting the fire) was not carried out by any of the proposed applicant's deceased loved ones means that no rational person could consider that 'death by misadventure' is a correct verdict to be returned on the facts.

5.3.4.3. Additionally, it does not stand to reason that any of our client's deceased loved ones ought to have foreseen the risk associated with their attendance at the Summerland leisure complex on 2 August 1973. This is further evidence that a different verdict would certainly be returned at fresh inquests.

5.3.4.4. The availability of other verdicts at the close of fresh inquests into the deaths of the proposed applicant's loved ones

[16] Paragraph 57 of The King (on the application of Mrs Veronica Robinson) v HM Assistant Coroner for Blackpool & Fylde v Chief Constable of Lancashire Police [2025] EWHC 781 (Admin).

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including 'unlawful killing' should also be considered on the facts of the Summerland fire disaster. This observation is made on the facts endorsed in furtherance of his position by the AG at paragraph 28 of the refusal letter which, for brevity, will not be restated here. This, coupled with the AG's description of how the fire was caused, grew and was responded to from paragraphs 29-35 of the refusal letter, points to the availability of an alternative verdict which would likely (given the discussion in the two paragraphs above) be returned following the hearing of fresh inquests.

5.3.4.5. At paragraph 62 of the refusal letter, the AG expressly says "*I do acknowledge that given the change in inquest practice after 50 years a narrative conclusion might now be considered available were fresh inquests to be heard. A coroner returning a narrative conclusion might choose to describe more of the findings of the Commission Report regarding the responsibility for the numerous failures at Summerland*". The AG has acknowledged the likeliness that a long-form verdict would be preferable to the short-form verdict delivered at the time, given the passage of time and with respect to the circumstances specific to the deaths arising from the Summerland fire disaster. This is an argument in favour of directing fresh inquests and indicating their desirability.

5.3.4.6. It should be noted that, at paragraph 10 of *Attorney-General v HM Coroner of South Yorkshire (West)*, upon which the AG so heavily relied in the refusal letter, it is expressly stated that "[…] it is not a pre-condition to an order for a further inquest that this court should anticipate that a different verdict to the one already reached will be returned. If a different verdict is likely, then the interests of justice will make it necessary for a fresh inquest to be ordered […]" [*emphasis added*]. Therefore,

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the lower legal threshold for ordering fresh inquests as stated at section 6(1)(c) of the Coroner of Inquests Act 1987 is indisputably met.

5.3.5. *Irrationality: the advancement of forensic science is a relevant consideration*

5.3.5.1. Further, it is notable that the AG's quote of paragraph 10 of *Attorney-General v HM Coroner of South Yorkshire (West)* omits its opening sentence. That sentence reads "We shall focus on the statutory language, as interpreted in the authorities, to identify the principle appropriate to this application." [*emphasis added*]. This explains the reason why the focus of the paragraph is on the emergence of fresh evidence in particular. From paragraphs 40-56 the refusal letter is focused on disputing whether the fact of the advancement of fire science and pathology, and the discredation of Dr Frank Skuse, constitutes actual evidence. It appears to be the AG's position that these facts are not evidence (in that they themselves may not be heard as evidence at fresh inquests) and therefore cannot result in fresh inquests being desirable. Section 13(1)(b) states that "the discovery of new facts or evidence" [*emphasis added*] can give rise to a fresh inquest being desirable. These new facts cannot lawfully be disregarded by the AG in his consideration of the proposed applicant's application for fresh inquests.

5.3.5.2. The AG himself at paragraph 44 of the refusal letter concedes "[t]hat there has been evolution in forensic science over the past five decades which might allow one to conduct analysis which was unavailable at the time in 1973 is indisputable" [*emphasis added*]. There is no disagreement between the proposed applicant and the AG as to the veracity of the fresh facts. Their total disregard on the basis that they don't constitute new witness evidence is the point of disagreement.

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It is the proposed applicant's position that these new facts are evidence that fresh inquests ought to be directed by the AG.

5.3.6. *Article 2 ECHR obligations*

5.3.6.1. At paragraph 108 of the refusal letter, the AG summarises his position by saying "[he] can detect nothing that would arguably revive the Art 2 ECHR procedural duty here". He does, however, concede that ths inquests into the deaths of our client's loved ones might "no doubt be improved upon today" [*emphasis added*].[17]

5.3.6.2. It is agreed that new facts have arisen since the inquests into the deaths of our client's loved ones were concluded. These facts include the advancement of fire science and pathology and Dr Skuse's discredation. The credibility of these new facts is not at issue. The European Court of Human Rights ("ECtHR") held at paragraph 70 of *Brecknell v UK (2007) 46 EHRR 42* that "the State authorities must be sensitive to any information or material which has the potential either to undermine the conclusions of an earlier investigation or to allow an earlier inconclusive investigation to be pursued further". It cannot reasonably be held that the advancement of fire science and pathology, and the impact of this advancement as seen in the fresh inquests into the Stardust fire disaster and Hillsborough disaster, does not cast doubt on the effectiveness of the inquests into the deaths of those who perished at the Summerland fire disaster. At paragraph 56 of *Re Finucane's Application (2019) UKSC 7* it was held that "[…] it is right to bear in mind that a similar issue arises in respect of the article 2 procedural obligation that the Strasbourg Court has held can revive on the discovery of fresh facts and which persists in respect of a suspicious disappearance" [*emphasis added*]. That is plainly the set of circumstances as applies here.

[17] Paragraph 117 of the refusal letter.

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5.3.6.3. It should be noted with respect to paragraph [5.3.4.4.] of this correspondence, that the ECtHR held at paragraph 71 of *Brecknell v UK (2007) 46 EHRR 42* that "the Court takes the view that where there is a plausible, or credible, allegation, piece of evidence or item of information relevant to the identification, and eventual prosecution or punishment of the perpetrator of an unlawful killing, the authorities are under an obligation to take further investigative measures". It is clear in this case that the new facts arising in relation to the advancement of fire science and pathology, and the discredation of Dr Skuse, is relevant to the identification of the perpetrator of an unlawful killing, which revives the article 2 procedural obligation to investigate the deaths of the proposed applicant's loved ones.

5.3.6.4. Ultimately, the AG has determined that in applying the UKSC jurisprudence in *Re McQuillan, McGuigan and McKenna* [2021] UKSC 55 the obligations under Article 2 ECHR cannot be revived, applying the temporal limits imposed by the Human Rights Act 1998. This however applies the wrong test in this context. McQuillan et al (just like Finucane, Keyu and others) were cases to which considered whether the Court can direct action under Section 6 of the Human Rights Act 1998.

5.3.6.5. There is however a different test which must ultimately be applied by the AG, as the respective legal officer for the state, in exercising its obligations under the European Convention on Human Rights. The key question for the AG in this context is whether or not these applicants would ultimately succeed in bringing such an application before the European Court of Human Rights under their respective rights pursuant to Article 34. The Isle of Man provided for the right of individual petition to the ECtHR on 12th September 1967. The case of Re Keyu (as before the UKSC) and latterly described as Chong (before the ECtHR) makes clear that the right of individual petition to the ECtHR under Article 34 is the correct starting

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date when considering the genuine connection test as before the ECtHR. Therefore, in this context, there is no dispute that these applicants fall within the genuine connection temnporal limit before the ECtHR.

5.3.6.6. To that end, the approach that the AG seeks to deploy is one which puts a cart and horses through the 'mirror principle' as long established in the House of Lords decision in *Ullah*. The mirror principle makes clear if an applicant would win before the ECtHR then they ought to win before the domestic Courts or domestic decision maker. The approach here as applied by the AG is one which ultimately seeks to apply two different temporal limits under the ECHR (even before turning to the HRA consideration under Section 6).

5.3.6.7. As the State's respective legal officer in this context to whom bears an international law obligation to ensure that the state complies with its international law obligations under the ECHR, the AG must correctly apply the mirror principle and deliver the same rights to which these applicants could avail of before the ECtHR Court.

5.3.6.8. Applying this approach, the AG has misdirected himself in accordance with his Article 2 obligations as imposed under the ECHR.

5.3.7. *Misdirection in law: 'responsibility' or 'accountability' on a factual basis*

5.3.7.1. The proposed applicant's application for fresh inquests observed that those fresh inquests may identify those responsible for the fire, which could lead to civil or criminal penalties. There is a clear distinction between the findings at an inquest and what they can lead to.The AG appears to have conflated 'accountability' and 'responsibility' on the facts of an inquest with civil or criminal liability at paragraphs 95-100

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of the refusal letter. This is a misdirection in law which poisons his consideration of whether fresh inquests are desirable in seeking that those responsible for the Summerland fire disaster are held to account by fresh inquests.

5.3.8. *Irrationality: the wishes of the bereaved as a relevant consideration*

5.3.8.1. In the 32-page refusal letter, the AG dedicates the following two sentences to the wishes of the proposed applicant as representative of the families of the deceased:

> "*I have borne in mind that a large number of the bereaved are aligned with your client and so support your client organisation's position, wishing for fresh inquests to be held. This is a relevant but not a determinative point in favour of this application.*"[18]

While recognising that the wishes of the proposed applicant are a point in favour of this application, it is starkly clear that insufficient weight was given to them in your consideration of whether fresh inquests would be desirable. For your ease of reference, turning again to Lord Justice Coulson's judgment in *the Matter of the Inquest into the Death of Michael Vaughan [2020] EWHC 3670 (Admin)* states that "[o]n any application for a further inquest the court will always give <u>considerable weight</u> to the views of the family involved."[19] [*emphasis added*].

5.3.8.2. The proposed applicant found the original findings at the inquests into its loved ones deaths to be offensive because a finding of misadventure implies that the deceased deliberately embarked in an activity from which the circumstances of their death ought to have been foreseeable. It is the proposed applicant's position that no reasonable

[18] Paragraph 75 of the refusal letter.
[19] Paragraph 10 of *The Inquest into the Death of Michael Vaughan* [2020] EWHC 3670 (Admin).

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human being could possibly deduce that by merely attending the Summerland leisure complex on 2 August 1973, there was a foreseeable risk that they would die there in a fire. The AG advised "I do agree that it would be offensive if there were any suggestion made that those who died at Summerland were in any way responsible for their own deaths, but a verdict of 'misadventure', properly understood, does not suggest this."[20]. Given the AG's misdirection as to the meaning of 'misadventure' in Coronial Law, this quote affirms his otherwise amenability to the proposed applicant's submission on this point and exemplifies why fresh inquests in this case are desirable.

5.3.8.3. The principle and strongest determining factor of the desirability of fresh inquests is the wishes of the deceased's family. Whether the fresh inquest sought by the family of Michael Vaughan ought be directed turned on whether the inquests were desirable under section 13(1)(b) of the Coroners Act 1988, because the Court was not satisfied that the inquest was necessary. This fact distinguishes judgment in *the Matter of the Inquest into the Death of Michael Vaughan [2020] EWHC 3670 (Admin)* from *Attorney-General v HM Coroner of South Yorkshire (West)*. The latter, solely relied upon by the AG in the refusal letter, does not specify which of the "necessary" or "desirable" criteria were satisfied – notwithstanding that even a casual observer can deduce that the quashing order was made because fresh inquests were found to be necessary and desirable in that case. The former isolates the "desirability" test in a way that better mirrors Manx law, and the success of the application is based almost exclusively on the wishes of the family alone. In this case, the AG ought to have given the

[20] Paragraph 60 of the refusal letter.

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wishes of the proposed applicant adequate weight in considering whether fresh inquests are desirable.

6. The details of the action that the respondent is expected to take

6.1. Confirm that the impugned decision is immediately set aside and quashed;
6.2. Confirm that fresh inquests will be immediately directed; and
6.3. Confirm that the AG will pay the proposed applicant's costs in preparing this application.

7. The details of the legal advisers, if any, dealing with this claim

Mr Darragh Mackin
Phoenix Law
92 High Street
Belfast
BT1 2BG

8. The details of any interested parties

N/A

9. The details of information sought

N/A

10. The details of any documents that are considered relevant and necessary

10.1. All documents which may be potentially relevant to the question of which would be required in accordance with the AG's duty of candour.

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11. Costs

11.1. If an appropriate response is not received from you within 10 days hereof then a claim form for petition of doleance will be issued against you and this correspondence will be used to fix you with the costs of all parties to such proceedings.

12. The address for reply and service of court documents

Mr Darragh Mackin
Phoenix Law
92 High Street
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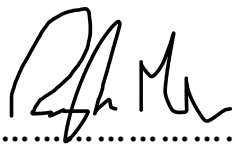
13. Proposed reply date

If an appropriate response is not received from you on or before **1700 on 11th August 2025**, then proceedings for judicial review will be issued against you and this correspondence will be used to fix you with the costs of such proceedings.

Yours faithfully,



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Darragh Mackin
Harry Robinson
info@phoenix-law.org
Phoenix Law Solicitors