

**REPORT OF THE ASSESSMENT INTO NEW  
AND UPDATED EVIDENCE INTO THE  
CAUSE OF THE FIRE AT THE STARDUST,  
ARTANE, DUBLIN ON 14<sup>TH</sup> FEBRUARY 1981**

# Contents

1.	Summary	2
2.	Outline	4
3.	Keane Tribunal	5
4.	Coffey Review	7
5.	Assessment of New Evidence	19
	• Geraldine Foy's Qualifications	21
	• Outline of New Evidence	22
	• Brenda Kelly	24
	• Storeroom	27
	• Lamp Room wall	33
	• Electrical Fault	35
	• Phelim Kinahan	36
	• Bodies in North Alcove	38
	• Michael Norton	41
	• Dr Robert Watt	41
	• David Mansfield Tucker	43
	• Dr Sile Willis	43
	• Paragraph 6.119 Keane	44
	• External Witnesses	45
	• Chapter 7 Keane	45
	• Melted Glass	46
	• PJ Murphy	47
6.	Conclusion	47
7.	Appendix	48

## EXECUTIVE SUMMARY

- I.1. On 7<sup>th</sup> March 2017, the Government established this Assessment to evaluate new and updated evidence uncovered by the Stardust Relatives and Victims Committee.
- I.2. This is the third assessment of evidence into the Stardust Fire. The first was the original Tribunal of Investigation chaired by Mr Justice Keane in 1981. The second, an independent examination of the Stardust Victims Committee's case for a re-opened inquiry, was carried out by Mr Paul Coffey in 2008. He submitted a report to the Department of Justice in December 2008 and a revised report in January 2009.
- I.3. A dossier representing the case for a new enquiry was delivered to this Assessment on 6th July 2017, followed by two further files of attachments on 13th July 2017. The dossier and attachments were compiled by Ms Geraldine Foy, researcher and proof read by Paul O'Sullivan, solicitor. This material comprised the totality of new evidence gathered by the Committee. The Assessment met with Ms Foy and Mr O'Sullivan on 17th, 18th and 21st August 2017 to discuss the contents of the dossier.
- I.4. The dossier was rambling, argumentative, disorganised and at times incoherent. It was only at the end, on page 358, that there was any statement of what the new evidence was. Even there it is very difficult to understand what items of evidence this Assessment was being asked to examine.
- I.5. The principle findings of this Assessment are:
  - While there were differences between the first and second version of the Coffey Report, those differences did not “water down” Mr Coffey’s findings in any way.
  - This Assessment drew up a list of 17 issues that needed to be examined.
  - Much of the material presented to this Assessment involved proposing a theory as to the cause of the fire. It is only if the Committee could produce new or updated evidence as to the cause of the fire could there be grounds for a new enquiry.
  - Only one of these issues could be considered new or updated evidence. This is the possibility that Ms Brenda Kelly, an external eye witness, called

the Fire Brigade at 1:43am. If this is correct then the fire was in the roof space at an earlier time than found by the Keane Report. Mr Coffey in his review made the same conclusion.

- It is evident that the fire was in the roof space at a stage earlier than that fixed by the Keane Report. But it does not explain the cause of the fire and at this remove it is not likely the cause of the fire can ever be established. Even Ms Kelly did call the Fire Brigade at 1:43am, this is not of sufficient moment to warrant a further inquiry.
- The Foy dossier sets out at length how the Keane Tribunal and Coffey Review were misled about the layout of the Stardust. The Assessment did not find any evidence to support this theory. No-one who was in the Stardust was in any doubt but that the maps produced by the Keane Report and the Coffey Review were accurate. None of the experts involved in the Keane Tribunal expressed any confusion or misunderstanding about the layout of the Stardust.
- None of the other issues raised in the dossier amount to new or updated evidence within the meaning of this Assessment.

1.6. As a result of the foregoing, this Assessment concludes that no new enquiry is warranted.

1.7. This Assessment would like to acknowledge the grief and trauma experienced by all those affected by the Stardust tragedy, especially the families and friends of those who died in the fire. This grief must be compounded by the failure of anyone to explain the cause of the fire. Due to the passing of time it is much harder today to find such an explanation and this Assessment must conclude that the cause of the fire may never be known.

## **ACKNOWLEDGEMENT**

This Assessment would like to thank Mr Gary Fitzgerald BL for his assistance in researching and writing this report. Any errors are the responsibility of this Assessment.

## OUTLINE

- 2.1 On the evening of 14<sup>th</sup> February 1981 the Stardust Ballroom was devastated by fire. Forty eight people died and a further one hundred and twenty eight were seriously injured.<sup>1</sup> The victims were mostly aged between 18 and 25 and came from the local areas of Artane, Kilmore and Coolock. It is one of the greatest disasters in the history of the Irish state and holds a uniquely tragic place in Irish life. It had a devastating impact on survivors, friends and family members of those killed and injured.
- 2.2 On 7<sup>th</sup> March 2017 the Government appointed this Assessment to examine any new and updated evidence uncovered by the Stardust Relatives and Victims Committee (“the Committee”) with a view to recommending whether a Commission of Investigation should be established into the Stardust Tragedy.
- 2.3 It is necessary at the outset to have regard to the original Tribunal of Investigation, chaired by Mr Justice Ronan Keane. This Tribunal produced a very comprehensive report, totalling 633 pages (“The Report”). While it concluded that it was not possible to know the cause of the fire, it nonetheless found that the most probable cause was arson. This finding proved very controversial and distressing to the survivors of the fire, and to the family and friends of those who died. This assessment will examine some aspects of the Keane Report that are relevant to the evaluation of new and updated evidence.
- 2.4 In 2008 the Government responded to pressure from the Committee for an independent review of the evidence before the Keane Tribunal. The process was initially chaired by John Gallagher SC. Mr Gallaher withdrew at an early stage as he had represented An Garda Síochána at the inquest of one of the victims of the disaster.<sup>2</sup> Paul Coffey SC was appointed to carry out the review and did so on a *de novo* basis. He found that Mr Justice Keane erred in finding that the most probable cause was arson. Mr Coffey stated that the cause of the fire was not known and would most likely never be known. He invited the Government to find a way to remove the arson conclusion from the public record. This assessment will examine in detail certain aspects of the Coffey Review (“The Review”). In particular, it has been repeatedly stated by the Committee that the Department of Justice Equality and Law Reform (the Department) intervened to amend Mr Coffey’s conclusions and make them less effective.

---

<sup>1</sup> Keane Report paragraph 5.3

<sup>2</sup> Coffey Report paragraph 1.10

- 2.5 The Committee and their advisors, Geraldine Foy and Paul O'Sullivan, solicitor, received the transcripts of witness testimony from the Keane Tribunal in 2008. It is by examination of these transcripts that they say they have uncovered new and updated evidence. In an article in the Irish Times published on 23<sup>rd</sup> January 2017 the families refer to this as "significant new evidence" and say that it "cannot be ignored". Mr O'Sullivan is quoted as saying that the evidence is "*utterly compelling*."<sup>3</sup> The core of this Assessment is an examination of this evidence to see if it warrants the establishment of a Commission of Investigation. Naturally any assessment of this evidence must be done in the context of what was examined by the Keane Tribunal and the Coffey Review. If the evidence to be presented by the Committee to this Assessment was before either inquiry and fully considered by that inquiry then it cannot be said to be new evidence.

## THE KEANE TRIBUNAL

- 2.6 On 20<sup>th</sup> February 1981, the Oireachtas passed a resolution calling for the creation of a tribunal on inquiry into the disaster and the Minister for the Environment duly made an Order setting up the Tribunal and appointing Mr Justice Keane as its sole member. The Tribunal was tasked with, *inter alia*, inquiring into the causes of the fire.
- 2.7 Three Assessors were appointed to the Tribunal:
- Professor David Rasbash, University of Edinburgh
  - Gunnar Haurum, Chief Inspector of Fire Services, Denmark
  - Mr Peirce Pigott, MSc, C Eng, An Foras Forbartha<sup>4</sup>
- 2.8 The Tribunal authorised four parties to appear before it represented by counsel or solicitor:
- The Attorney General
  - Dublin Corporation
  - The next of kin of the deceased and persons who suffered injury; and
  - The owners of the building Scotts Food Ltd and Silver Swan Ltd<sup>5</sup>

---

<sup>3</sup> <https://www.irishtimes.com/news/social-affairs/stardust-families-have-found-significant-new-evidence-1.2948280>

<sup>4</sup> At paragraph 3

<sup>5</sup> At paragraph 9

2.9 According to the Report, the Gardaí took statements from over 1,600 individuals in relation to the fire.<sup>6</sup> Three hundred and sixty three witness gave evidence at the Tribunal, of whom 161 were present in the Stardust on the night of the fire.<sup>7</sup> The Tribunal sat for 122 days and reported on 30<sup>th</sup> June 1982.

2.10 The Report deals with the cause of the fire in Chapter 6. It considered two broad possibilities, that the fire was started deliberately or accidentally. In each of these headings it considered a number of different possibilities. It reached a factual conclusion at paragraph 6.193:

*“The cause of the fire is not known and may never be known. There is no evidence of an accidental origin: and equally there is no evidence that the fire was started deliberately.”*

2.11 However, the Report then examined the various hypotheses in relation to accidental or deliberate origin of the fire and drew a conclusion which of these was most likely. It listed six different hypotheses:

1. The fire was started accidentally by a smoker;
2. it was started by a smouldering bag of rubbish, coat or other object;
3. it was started by a fault in the immersion heater;
4. it was started by an accidental fire in the roof space;
5. it was started deliberately in the roof space; or
6. it was started deliberately in the West Alcove.<sup>8</sup>

2.12 Having found that the cause of the fire was not known and may never be known, the Report concluded that the more probable cause of the fire was that it was started deliberately, and probably in the West Alcove. The Report then summarised its key factual findings in the next chapter:

1. The fire started in the north west corner of the West Alcove; and
2. The fire was probably started deliberately.

---

<sup>6</sup> At paragraph 14

<sup>7</sup> At paragraph 15

<sup>8</sup> At paragraph 6.194-6.205

- 2.13 Thus it appears that a hypothesis, deemed to be merely the most probable of a non-exhaustive list of hypotheses, was elevated to a finding of fact in the Report.<sup>9</sup>

## THE COFFEY REVIEW

- 3.1 On 10<sup>th</sup> July 2008, the government appointed Paul Coffey SC to examine the Committee's case for a new inquiry into the Stardust fire. Mr Coffey was to make a recommendation to Government on the need for a further inquiry. Mr Coffey's terms of reference were:

*"1. Reflecting the Government's commitment to an open and independent consideration of the Victims Committee's case for a renewed inquiry the Government has appointed Mr Paul Coffey, S.C. to consider the case for a further inquiry.*

*2. To this end, Mr Paul Coffey, S.C., the said appointed person, shall:*

- consider the "Report of the Tribunal of Inquiry on the Fire at the Stardust, Artane, Dublin on the 14th of February, 1981;*

- consider all the issues which are raised by the Stardust Victims Committee, as are summarised in the submission "Nothing But The Truth" and in the supplemental submission to "Nothing But The Truth" (delivered on the 4th of May, 2007), and all the evidence and submissions as may be presented on their behalf as he considers necessary and relevant to the case for a further inquiry.*

- In the course of a private examination of the issues,*

- a. meet such people and secure such advice as he considers necessary to ensure complete understanding of the matters and issues.*

- b. facilitate a detailed presentation by the Victims Committee of the case for renewed inquiry as they see it.*

- c. have such regard to as he thinks appropriate to submissions, if any, as may be made by other persons/parties including any Government Departments or Agency or the owners of the Stardust together with any observations on or response thereto from the Stardust Victims Committee.*

---

<sup>9</sup> At paragraph 7.2



- *carry out such inquiries or investigations that he, in his sole discretion, considers necessary for clarification of the issues raised by the victims of the Stardust Victims Committee, but he shall not initiate any further investigations into the cause of the fire.*

*3. Following his assessment of the issues raised by the Stardust Victims Committee and related matters, as set out above, Mr Coffey shall, without undue delay, report to the Government and shall therein make a recommendation as to whether a new inquiry should be established and may make such other recommendations as he considers appropriate.”*

3.2 Mr Coffey had no power to find facts and any issues he determined were on a provisional basis by reference to whether the Committee had established a prima facie case for a new inquiry. Mr Coffey appeared to adopt a test from two pieces of legislation, the Railway Safety Act, 2005 and the Merchant Shipping (Investigation of Marine Casualty) Act, 2000. These acts provide for the reopening of inquiries where the relevant Minister is satisfied that there is “new evidence available which could materially alter the findings of the Inquiry and that the purpose of the Inquiry would be served by reopening it”<sup>10</sup>

3.3 The issues raised by the Committee with Mr Coffey were set out by Counsel acting on their behalf as follows:

*“(1) that the Tribunal’s finding of fact that the fire was probably caused deliberately is based on hypothesis and not established by evidence and is for that reason inherently unsatisfactory;*

*(2) that the hypothesis upon which the Tribunal’s finding is based is itself demonstrably flawed because it cannot be reconciled with the known facts of the fire including evidence accepted by the Tribunal;*

*(3) that new expert and factual evidence establishes as a probability that the fire began in the Lamp Room and spread via the Store Room to the West Alcove;*

*(4) that the “methodology” used by the Tribunal was flawed insofar as insufficient scrutiny or examination was given to the possibility that the fire originated in the roof space having regard to the very considerable quantity of*

---

<sup>10</sup> At paragraph I.16

*combustible material that was contained in the Store Room and the fact that the Store Room was effectively in the roof space;*

*(5) that only the very considerable fuel load in the Store Room could have provided the basis for the rapid development of the fire which engulfed the Stardust within minutes.”<sup>11</sup>*

3.4 The Review sets out a summary of the evidence given at the Keane Tribunal. It describes the layout of the Stardust, relying on a modern 3-dimension map showing all the main rooms and their levels. It then examined the origins and spread of the fire and the accounts of the various eye witnesses, both inside and outside the building and the views of the various experts.

3.5 The Review then dealt with the Keane Tribunal finding that the fire was more probably started deliberately in the West Alcove. Mr Coffey concluded on this point:

*3.13 Arising from the foregoing, the conclusion is inescapable – whatever else may sustain it, the finding is not demonstrated by any evidence that the fire was started deliberately.*

### *(3) CONCLUSIONS*

*(1) the Tribunal found that there was no evidence capable of establishing the cause of the fire;*

*(2) prima facie the Tribunal’s finding of fact that the fire was probably started deliberately is on its face a mere hypothetical explanation for the probable cause of the fire and is not demonstrated by any evidence that the fire was started deliberately.*

3.6 Mr Coffey then examined evidence before the Keane Tribunal that contradicted the hypothesis on the cause of the fire. Firstly, he placed particular emphasis on the testimony of two witnesses, Mr PJ Murphy and Mr Leo Doyle, who were present in the West Alcove at the start of the fire. They experienced intense heat from the ceiling that was out of all proportion to the fire they witnessed. Mr Coffey summarised the evidence of Mr Murphy and Mr Doyle as follows:

---

<sup>11</sup> At paragraph 1.13

*“The first person to observe the fire at close range from behind the partition was PJ Murphy who said the fire was very small and only on the back rest of the seating of Rows A, B and C (he had initially seen it only at the back of Row A). He said that he was about 30 seconds on his own before he was joined by anybody else. Prior to this and after about 10 seconds of applying the extinguisher to the fire, he had to retreat because of intense heat from the ceiling. He said that he felt this intense heat despite the fact that neither the character of the fire had changed nor had it spread to the wall carpet tiles or the ceiling. It was his impression that the heat came from behind the false ceiling and that the ceiling had been burning a long time before the seat. His evidence was that the fire he observed was not big enough to “constitute” the heat that came from the ceiling nor did he think that the heat from the fire was trapped by the ceiling. The fire appeared to him to be very small at all stages. He retreated not because of the fire but because of the heat from the ceiling. He said that even as he retreated back down the aisle the heat remained more or less very intense. His evidence was that the heat singed his hair, burnt his forehead, nose, cheeks and the backs of his hands. He was concerned that the ceiling would collapse. He also gave evidence that the ceiling appeared to him to start to melt and then to collapse initially in the north west corner (a small part of the ceiling) and then behind him in the north east corner beside the shutter (a more general portion of the ceiling).*

*There is support for the evidence of PJ Murphy in the testimony of Leo Doyle who was the second doorman to approach the fire in the north west corner of the Alcove. He also gave evidence that before the wall carpet tiles caught fire, he felt intense heat coming not only from above him but also from behind him. It was so intense that he felt that he was getting sunstroke. His evidence was that there was a “slight bit of heat” from the fire but that the heat from the ceiling was “20 or 30 times greater or more”.<sup>12</sup>*

- 3.7 Secondly, he placed significance on the early collapse of the ceiling in the West Alcove before there was any or any appreciable flame impinged upon it:

*“The evidence relating to the early collapse of the ceiling is of particular, if not crucial, importance because it prima facie affords evidence of the existence of a fire in the roof space and arises from an established fact of what occurred*

---

<sup>12</sup> At paragraphs 3.29 -3.30

*and is not based on a subjective impression of fire above the ceiling (as is the evidence of PJ Murphy and Leo Doyle).’’<sup>13</sup>*

- 3.8 In addition to this, the Committee provided a new fire expert, Mr Tony Gillick. His unsworn testimony was that a minor fire in the West Alcove as observed by the witnesses could not have caused the collapse in the ceiling.

- 3.9 All of this allowed Mr Coffey to conclude:

*“Arising from the absence of any evidence that the fire was started deliberately together with the new expert evidence of Mr Gillick, I am satisfied that the Committee has established a prima facie case that the Tribunal’s conclusion as to the cause of the fire cannot be demonstrated to be objectively justifiable.”<sup>14</sup>*

- 3.10 Mr Coffey then examined the contention of the Committee that the fire started due to an electrical fault in the Lamp Room, spreading to the Store Room and from there to the West Alcove. According to the Committee, the Store Room was effectively in the roof space and contained a considerable amount of combustible material.

### **The fire starting in the Lamp Room**

- 3.11 Mr Coffey did not consider that the Committee had any actual evidence that the fire started in the Lamp Room:

*“Even taking the Committee’s case at its highest, it is based on the hypothesis that the fire could have started in the Lamp Room but not upon evidence that it did. Accordingly, it is merely a theory as to how the fire started and does not afford actual evidence as to the origin and cause of the fire.”<sup>15</sup>*

- 3.12 Mr Coffey was of the view that the Committee’s theory was not supported by actual evidence. In particular, he focused on the unchallenged evidence of

---

<sup>13</sup> At paragraph 3.59. The subsequent paragraph goes into detail about the evidence in relation to an early collapse.

<sup>14</sup> At paragraph 3.63

<sup>15</sup> At paragraph 4.5

Phelim Kinahan, a door man. Mr Kinahan watched the fire in the West Alcove for two to three minutes before running to the Lamp Room to turn on the lights:

*“If Mr Kinahan was able to observe the fire in the West Alcove for two minutes before going to the Lamp Room to switch up the lights, the conclusion is inescapable that wherever else it may have started, the fire did not start in the Lamp Room. Although it is true to say that the Tribunal treated with reserve the evidence of Phelim Kinahan and the doorman relating to the locking of exit doors, it expressly stated that the same did not necessarily apply to their evidence as to the fire itself.”<sup>16</sup>*

- 3.13 In addition to Mr Kinahan’s evidence, two Garda detectives gave evidence that there was a glazed timber partition between the Lamp Room and the North Alcove:

*“If there was a fire in the Lamp Room of sufficient intensity to burn its way into the Store Room (as the hypothesis demands) it would be surprising if not remarkable that it had not been noticed by anyone in the Ballroom.”<sup>17</sup>*

### **The Store Room**

- 3.14 The Committee contended that there was a large amount of combustible material in the Store Room. A new witness, Catriona Ross, gave evidence to this effect. Ms Ross worked as a waitress in the Stardust until 3 weeks before the fire. Mr Coffey found her evidence convincing but not material in that it did not assist in understanding the cause of the fire. Mr Coffey noted that the Keane Report had accepted that there was a considerable amount of fuel in the Store Room. There are differences in the precise contents on the Store Room in Ms Ross’s testimony and Keane Tribunal but this was not considered by Mr Coffey to be new evidence as to the cause of the fire. It appeared to be accepted by all sides before Mr Coffey that the Store Room was open to the roof space in that the ceiling over the Ballroom did not fully extend over the Store Room. The Store Room was elevated, at a first floor or mezzanine level. The level of the Store Room is clearly shown in the 3d map in the Coffey Report, replicated here in the Appendix.

---

<sup>16</sup> At paragraph 4.8

<sup>17</sup> At paragraph 4.11

- 3.15 Mr Gillick gave evidence that the fire might have started in the Store Room and spread to the ceiling from there. Mr Coffey stated that this was not evidence of the cause of the fire but a new theory as to how it started. Much like all the other theories, it has certain evidential difficulties.<sup>18</sup>
- 3.16 Mr Coffey then concluded that the Committee had not identified “*new or any evidence capable of establishing the cause of the fire wheresoever it arose.*”

## CONCLUSIONS OF THE COFFEY REVIEW

- 4.1 Mr Coffey made a number of very important conclusions:
1. The Keane Tribunal did not have any evidence that the fire was started deliberately and therefore this is a mere hypothesis;
  2. This hypothesis cannot be demonstrated to be objectively justifiable;
  3. Neither the Committee nor the Tribunal have identified any evidence which established the cause of the fire.
- 4.2 At its highest the new evidence of the Committee established that the fire started in the roof space but does not establish the cause of the fire.
- 4.3 Mr Coffey did not think that the establishment of a further inquiry would be in the public interest. Any such inquiry could only establish the probable cause of the fire:
- “However, it seems to me that in the absence of any identified evidence capable of establishing the cause of the fire, such an inquiry can only at best produce a hypothetical finding neither capable of proof or disproof and therefore of no obvious or any forensic value.”<sup>19</sup>*
- 4.4 He identified what he says was a significant failing with the Keane Report. It found that “*the cause of the fire is unknown*”. But it then elevated a hypothesis

---

<sup>18</sup> At paragraphs 4.19 - 4.21

<sup>19</sup> At paragraph 5.11

of arson to a finding of fact, in the absence of any evidence that the fire was stated deliberately:

*“In so concluding and in the absence of any evidence that the fire was started deliberately, the Tribunal has placed on the public record a finding of probable criminal wrongdoing which is prima facie speculative and fraught with evidential and logical difficulties. Moreover, insofar as it is stated to be a “finding of fact”, the finding is so phrased as may well give the mistaken impression to a reasonable man or woman in the street that it is a finding established by evidence that the fire was started deliberately and not a mere hypothetical explanation for the probable cause of the fire.”<sup>20</sup>*

- 4.5 According to Mr Coffey it was a matter of great importance for survivors and bereaved that the public record of the Stardust fire is factually accurate and recorded in evidence. The question then became how to correct the public record:

*“It seems to me that as the Tribunal was established by the Oireachtas, the Government should consider whether it can correct the public record by placing on the record of the Dáil and Seanad an acknowledgement of the Tribunal’s findings that there is no evidence that the fire was started deliberately and that the cause of the fire is unknown. If such an acknowledgement cannot be made whether by this method or any other appropriate method of the Government’s devising, this of itself would prove the need for a further limited inquiry to clarify the public record.”<sup>21</sup>*

- 4.6 His recommendations were as follows:

*“(1) that the Government should consider whether it can by the method suggested or by any other appropriate method of its own devising place on the public record an acknowledgement of the Tribunal’s findings that there is no evidence that the fire was started deliberately and that its cause is unknown;*

*(2) in the event that this cannot be done, there should be a further inquiry for the limited purpose of establishing the cause of the fire;*

---

<sup>20</sup> At paragraph 5.12

<sup>21</sup> At paragraph 5.14

*(3) the inquiry should be expressly prohibited from trawling for a hypothetical explanation for the fire;*

*(4) in the first instance, the inquiry should be asked whether there is any evidence which can by the standard of proof it considers to be appropriate establish the cause of the fire. It is only if the inquiry finds that such evidence exists that it should be asked to proceed further;*

*(5) the Inquiry should be in private and have available to it the sworn evidence given to the Tribunal, the unsworn evidence given to this Examination together with such further unsworn evidence as the inquiry considers to be necessary or relevant;*

*(6) the Inquiry should involve the bereaved and survivors whether through the Committee or its legal representatives together with all other interested persons and parties;*

*(7) the Inquiry should carry out its work without undue delay and should make its finding in respect of the preliminary issue not later than four months from the date of its establishment.”<sup>22</sup>*

4.7 Dáil Éireann duly passed a motion in the following terms on 3<sup>rd</sup> February 2009:

*“That Dáil Éireann:*

*notes the report of the independent examination by Mr. Paul Coffey SC of the concerns of the Stardust Victims Committee in relation to the investigation of the cause of the fire disaster;*

*acknowledges that the cause of the fire is unknown, the original finding of arson is a mere hypothetical explanation and is not demonstrated by any evidence and that none of the persons present on the night of the fire can be held responsible for it;*

*accepts the view of Mr. Coffey that to establish a new Tribunal to investigate the cause of the fire in the absence of any identified evidence would not be in the public interest;*

*supports the Government in establishing a Committee to monitor the counselling and medical needs of the survivors and bereaved; and*

*expresses its continuing and deep sympathy with all of the victims and bereaved of the Stardust Fire tragedy.”*

---

<sup>22</sup> At paragraph 5.15



## **The first draft of Mr Coffey's Report**

- 4.8 Before examining the evidence presented, it is important to deal with one final issue about the Coffey Report. There are two versions of the report in the public domain. The first is dated 8<sup>th</sup> December 2008 and was submitted to the Department on 10<sup>th</sup> December 2008 with a cover letter (the first report). In that letter Mr Coffey said:

*"I have completed my examination of the Stardust Victim's Committee's case for a reopened inquiry into the Stardust Fire Disaster and enclose herewith a Report of my findings. Conclusions and recommendations"*

- 4.9 On 7<sup>th</sup> January 2009 Mr Coffey submitted a second version of his report (the second report) with a second cover letter in which he said:

*"I have completed my examination of the Stardust Victim's Committee's case for a reopened inquiry into the Stardust Fire Disaster and further to my previous enclosure of the 8<sup>th</sup> December 2008, I enclose herewith my final report"*

- 4.10 It appears that there was some communication between the Department and Mr Coffey about the contents of his first report and he made some amendments before submitting his second and "final" report. The Committee and/or their representative have said that there are "*dramatic*" differences between these two reports, with over 70 changes being made. They believe that these changes were made at the behest of the then government to neuter the Report's findings. The Committee and/or their experts maintain that the first report called for a new public inquiry while the second report did not.<sup>23</sup> This idea was raised in Dáil Éireann during the debate on the motion in January 2017.

- 4.11 This Assessment examined both reports in detail and found approximately 27 paragraphs changed from the first report to the second. Most of these are changes in the wording of certain sentences that have little or no impact on the findings. For example, on four different occasions the phrase "*prima facie*"

---

<sup>23</sup> <https://www.irishtimes.com/news/social-affairs/stardust-tragedy-families-claim-review-of-fire-neutered-1.2953468>

was changed to “arguable”.<sup>24</sup> On one occasion the word “sic” was added to show a typographic error in a quotation.<sup>25</sup>

- 4.12 The most significant change was in the overall conclusion. In both reports Mr Coffey found that neither the Tribunal nor the Committee had any actual evidence of the cause of the fire. Yet the hypothetical findings of the Tribunal that the fire was most probably caused by arson in the West Alcove was presented in the Report as a finding of fact and was on the public record. Mr Coffey wanted to find a way to remove this from the public record. In his first report he invited the Government to devise a way to correct the public record:

*“At bottom, the real issue is not so much the absence of new evidence as an absence of any evidence to establish the cause of the fire. As the Tribunal found that there was no evidence to establish the cause of the fire, a further inquiry may not be necessary if the Government can by a method of its own devising place on the public record an acknowledgment (whether arising from the Tribunal’s own finding to that effect or otherwise) that there is no evidence to establish the cause of the fire and that its cause is unknown. If this cannot be done it seems to me that the Committee has made out a good case for a further inquiry to establish the cause of the fire”*<sup>26</sup>

- 4.13 It is clear from this that Mr Coffey did not recommend another inquiry. He tasked the Government with changing the public record to reflect the finding of the Keane Report that the cause of the fire was unknown. It was only if this was not possible that a further inquiry should take place to determine the cause of the fire. But implicit in Mr Coffey’s reasoning was that this subsequent inquiry would not be able to conclude as to the cause of the fire, leading to a finding on the public record that the cause of the fire was unknown.

- 4.14 In the second report this paragraph was changed to the following:

*“The new and other evidence relied on by the Committee at its highest establish that the cause of the fire is unknown, a finding already made but not properly*

---

<sup>24</sup> At paragraph 3.19 subsection 1, 2, 3 and 6

<sup>25</sup> At paragraph 3.41

<sup>26</sup> At paragraph 5.14

*acknowledged and recorded by the Tribunal. What should be done? It seems to me that as the Tribunal was established by the Oireachtas, the Government should consider whether it can correct the public record by placing on the record of the Dáil and Seanad an acknowledgement of the Tribunal's findings that there is no evidence that the fire was started deliberately and that the cause of the fire is unknown. If such an acknowledgement cannot be made whether by this method or any other appropriate method of the Government's devising, this of itself would prove the need for a further limited inquiry to clarify the public record."*<sup>27</sup>

- 4.15 All that happened between the first and second reports is that the Department found a way to correct the public record and asked that this be specifically mentioned in the second report. Mr Coffey duly did so.
- 4.16 It is vital to state clearly that at no point did Mr Coffey ever recommend a new inquiry into the cause of the fire without qualification. He recommended a new inquiry if it was not possible to change the public record about the cause of the fire in any other way. The Government complied with his findings in the first report and merely asked that this specific mechanism for correcting the public record be expressly mentioned in his second report.
- 4.17 Naturally, if after the delivery of his second report with this express mention of placing on the Dáil and Seanad record an acknowledgement of the unknown cause of the fire, it transpired that this would not correct the public record, then the Government was tasked with finding an alternative method. It was only if such an alternative method was not found that a further inquiry was recommended.
- 4.18 As set out above, the Houses of the Oireachtas passed a motion correcting the public record. The legal validity of this action has never been challenged or questioned. Therefore, it is clear that the recommendations of the first and second report were met in full in this regard and that neither the Department nor the government "watered down"<sup>28</sup> Mr Coffey's conclusions.

---

<sup>27</sup> At paragraph 5.14

<sup>28</sup> <https://www.irishtimes.com/news/social-affairs/stardust-families-have-found-significant-new-evidence-1.2948280>

## ASSESSMENT OF NEW EVIDENCE

- 5.1 The 2016 Programme for Government contains the following commitment in the Crime Prevention, Justice and Equality section:

*“Full regard will be had to any new evidence which emerges which would be likely to definitely establish the cause of the fire at Stardust.”<sup>29</sup>*

- 5.2 Arising from this Dáil Éireann passed a motion on 25<sup>th</sup> January 2017. The original motion was proposed by 12 TDs<sup>30</sup> and called for the immediate establishment of a Commission of Investigation. The amended motion states:

*“That Dáil Éireann:*

*notes that, 35 years following the Stardust tragedy in which 48 people died and 214 people were injured, families, relatives and victims of the tragedy have never received full and complete answers as to what occurred on the night of 14th February, 1981;*

*further notes that:*

*the Stardust Relatives’ and Victims Committee have continually attempted to liaise with the Department of Justice and Equality and the Taoiseach regarding misgivings around previous investigations; and*

*there has been important work conducted by individual researchers on a voluntary basis over many years into the causes of the tragedy; and*

*the Programme for a Partnership Government specifically states that ‘full regard will be had to any new evidence which emerges which would be likely to definitely establish the cause of the fire at Stardust’;*

*calls on the Government to meet with the Stardust Relatives’ and Victims Committee regarding the new and updated evidence they have uncovered since reviewing Judge Keane’s Report of the Tribunal of Inquiry on the fire at the Stardust, Artane, Dublin in 2006, to have that new and updated evidence assessed urgently by an independent person who has the trust of the families; and*

---

<sup>29</sup> “A Programme for a Partnership Government” May 2016 page 107

<sup>30</sup> Thomas P. Broughan, Catherine Connolly, Clare Daly, Joan Collins, Mick Wallace, Thomas Pringle, Richard Boyd Barrett, Gino Kenny, Brid Smith, Mick Barry, Paul Murphy, Ruth Coppinger

*if the independent assessment confirms the existence of new evidence, calls on the Government to immediately establish a Commission of Investigation into the Stardust Tragedy of 1981.”*

- 5.3 As a result the Government established this Assessment to evaluate any new evidence. The terms of the assessment are:

*“To meet with the Stardust Relatives’ and Victims Committee regarding any new and updated evidence they have uncovered;*

*To assess any new and updated evidence that has been identified;*

*To seek submissions from any party identified in or directly affected by that evidence;*

*To recommend, within 90 days of this process commencing, whether, in the circumstances, the evidence identified is sufficient to warrant establishing a Commission of Investigation into the Stardust Tragedy of 1981.”*

- 5.4 At the outset the Committee refused any contact with the Assessment arising out of ongoing discussions with the Department relating to matters not within the ambit of the terms of this assessment. A first meeting took place with the Committee on the 3<sup>rd</sup> of May 2017 and eventually a dossier representing the case for a new enquiry into the Stardust Disaster was delivered by The Committee on the 6<sup>th</sup> July 2017. Two further files of attachments were provided on the 13<sup>th</sup> July 2017. The dossier comprised the entirety of the new evidence and it was compiled by Ms Geraldine Foy. Due to the delay in receiving the dossier it was necessary to ask the Government for an extension of time to carry out the assessment. An extension of four months was duly granted until 26<sup>th</sup> October 2017.

- 5.5 Having examined the material in the dossier, meetings were held with Ms Foy and Mr O’Sullivan on 17<sup>th</sup>, 18<sup>th</sup> and 21<sup>st</sup> August to discuss the contents with them. The dossier was drafted primarily by Ms Foy but was proof read by Mr O’Sullivan. At the first meeting on 17<sup>th</sup> August Mr O’Sullivan confirmed that it contained the totality of the new evidence gathered by the Committee and there were no additions or amendments to it.

## **Ms Foy's Qualifications**

- 5.6 Ms Foy has been described in the Dáil debates as a distinguished local scientist. She described herself in the dossier as a horticulturalist. She advised the Assessment that she received a diploma qualification in horticulture from an institute in Termonfeckin, Co Louth. She acknowledges in the dossier that she is not a fire expert. She does not have any medical, engineering or other scientific qualification that would make her an expert and allow her to give a professional view on matters relevant to the cause, spread or impact of the Stardust fire.
- 5.7 While such qualifications are not necessary to uncover new evidence, they are vital if someone is purporting to give an opinion on the cause of a fire, the spread of a fire or the cause of death of an individual as a result of fire.
- 5.8 In her own words in the dossier, she became involved with the Committee only in 2002:

*“The families I met for the very first time on the 21/2/2002. I became aware of their situation just by chance. I had no insight or interest in the case. But on a Thursday prior to that date I was in the dentist’s surgery and he had a copy of the Northside people (sic) paper. I started to read it as I waited to be seen and came across a picture of a lady in a red jacket planting a tree. As a horticulturalist I was engrossed in the article and read that the tree was being planted and the women in the picture prays [sic] for someone to help them make sense of the Keane tribunal report.*

*That evening I was visiting friends and asked them about the Stardust case. I discussed the article. They handed me a small make up mirror and told me the person in the mirror would be the best in the world to help the families. Two days after I rang the paper to pass my phone number onto the families.”<sup>31</sup>*

## **Outline of the new evidence**

- 5.9 This Assessment was presented with a large volume of material which, as already indicated, was compiled by Ms Foy and proof read by Mr O’Sullivan. In general the dossier was very badly structured and difficult to read. It was not clear what the new evidence was. The dossier contained large extracts

---

<sup>31</sup> At page 309

from the Keane Report, the Coffey Review and the transcripts of evidence before the Keane Tribunal. It also contained correspondence between Ms Foy and individuals involved in the original inquiry, such as David Mansfield Tucker. The dossier was rambling, argumentative, disorganised and at times incoherent. It was only at the end, on page 358, that there was any statement of what the new evidence was. Yet even there it is very difficult to understand what items of evidence this Assessment was being asked to examine.

- 5.10 A clearer statement of the Committee's position was set out in a letter from Mr O'Sullivan dated 23<sup>rd</sup> August 2017:

*"I have to say the Committee has done more than enough to justify a new enquiry with the evidence that has been adduced as to the fire in the roof space and the confusion over the floor levels evident in the Keane report, the evidence of the huge, highly flammable fuel load stored in breach of planning and fire safety requirement, the prior five dead in the north alcove, the lack of a glass wall, the perjured evidence, the evidence of Patrick J Murphy which is most striking and rings true, the Kelly phone call to the fire brigade and more."*

- 5.11 From analysing the dossier and attachments, meeting with Ms Foy and Mr O'Sullivan and the contents of Mr O'Sullivan's letter, it appears that the new evidence to be assessed includes:

1. Ms Brenda Kelly, an exterior witness, called the Fire Brigade at 1:43am, putting the fire in the roof space at an earlier stage than that found in the Keane Report. Her call was not recorded in the Keane Report timeline.
2. There existed a second store room in the Stardust that was not shown on the maps before either the Keane Tribunal or the Coffey Review. This storeroom was full of combustible material and was open to the roof. Neither the Keane Tribunal nor the Coffey Review knew of the existence of this room.
3. The Keane Tribunal was mistaken about the nature of the wall between the Lamp Room and the Ballroom.
4. The fire started in the Lamp Room as a result of an electrical fault and moved to this second store room;
5. Mr Phelim Kinahan gave incorrect evidence before the Keane Tribunal about what he saw and did when he entered the Lamp Room;
6. Five males were killed by toxic fumes in the North Alcove before the fire was observed in the West Alcove and their bodies were in exactly

the same place after the fire subsided. The only explanation for this is that the fire was well advanced at a much earlier stage in the roof space.

7. The incorrect evidence of Michael Norton.
8. The incorrect evidence of Dr Robert Watt.
9. The incorrect evidence of David Mansfield Tucker.
10. The incorrect report of Dr Sile Willis.
11. The inaccuracy of paragraph 6.119 in the Keane Report.
12. The evidence of 36 external witnesses who report a fire in the roof space before the fire on the seat in the West Alcove is first observed.
13. The inaccuracy of Chapter 7 of the Keane Report dealing with the spread of the fire.
14. The melted panes of glass in the roof.
15. Pathological evidence of the victims not properly assessed by the Keane Tribunal,
16. The evidence of injuries found on the deceased victims.
17. Dripping material on the shirt of PJ Murphy.

- 5.12 These are set out in the dossier at pages 359 - 361 and were repeated verbatim by Ms Foy at our first meeting to set out the new evidence uncovered in the dossier by her and the Committee.

### **Evidence or theory?**

- 5.13 There is a very important difference between information that amounts to new *evidence* and information that supports a new *theory* as to the cause of the fire. It is only if it is found that there is new *evidence* as to the cause of the fire that a new inquiry can be recommended. Both the Keane Report and the Coffey Review concluded that there was no evidence establishing the cause of the fire. It was unknown and potentially would never be known. In the limited way that Mr Coffey made a recommendation for a new enquiry, he expressly stated that any such enquiry should only seek to establish the cause of the fire and not trawl for hypothetical explanations. The Keane Report set out six possible explanations and concluded which one was the most probable. This led to years of controversy until it was set aside by resolution passed by the Houses of the Oireachtas. Giving support to any other hypothetical explanation of the cause of the fire would simply recreate this problem. In the absence of actual proof of the cause of the fire, there is nothing to be gained by commenting on the different possible hypothetical explanations in this Assessment.
- 5.14 Much of the material in the Foy dossier involves proposing a *theory* as to the cause of the fire. It started due to an electrical fault in the Lamp Room, spread



to the Store Room and from there to the roof space. This is the same theory that was advanced by the Committee before Mr Coffey. He concluded that this was not proof of the cause of the fire but just a hypothesis.<sup>32</sup> Mr Coffey then looked at evidence before the Keane Tribunal, in particular the testimony of Phelim Kinahan, which disproved this theory.<sup>33</sup> Unless the Committee can produce new evidence that was not before either the Keane Tribunal or the Coffey Review, or evidence that was not properly considered by either process, there can be no grounds for holding another inquiry.

### **Brenda Kelly's evidence**

- 5.15 Brenda Kelly lived in 55 Maryfield Crescent, Artane and the back bedroom of her house overlooked the Stardust. She gave evidence that she went to bed at about 12:30am on the night of the fire and fell asleep sometime after that, only to be awoken by the fire. She heard a noise like the sound of “*children kicking boxes*” and eventually got up. She saw flames but did not hear the fire brigade. She called the operator:

*“A: I thought for a big fire like that I had not heard the fire brigade. I rang the operator and he told me – I didn’t know it was the Stardust – I said I didn’t know – he said it was the Stardust and the fire brigade are on the way.*

*Q: When you looked out the window first did you see flames or a glow?*

*A: Flames.*

*Q: Some time after you first looked out the window did you hear the fire brigade?*

*A: Shortly after I rang the operator”<sup>34</sup>*

- 5.16 Ms Foy contends that this call was taken by George Glover and logged at 1:43am.<sup>35</sup> Mr Glover was a fireman working in the Emergency Services that evening. In his evidence to the Tribunal he said:

*“Having received this call and conveyed it on to sub officer Hughes what was the next telephone call you received?*

---

<sup>32</sup> At paragraph 4.5

<sup>33</sup> At paragraphs 4.3-4.11, discussed in detail below

<sup>34</sup> Transcript book 64, questions 874- 906

<sup>35</sup> At page 5

*A; When I took that call I handed that call over to Sub Officer Hughes. When the phone rang again I got another call again. I got a call from a lady to say she thought there was a fire in the Stardust. She wasn't sure. It could be McMahon's Timber yard. I can see light in the sky.*

*Q That was a call at 1:43?*

*A: I handed that docket when I received the other call."*

- 5.17 The Keane Report found that Laurence Neville, a barman, made the first call to the fire brigade at 1:43am. He rang 999 and was asked which service he needed. He said "fire brigade" and was put through to Mr Glover in a matter of a second. He told Mr Glover that there was a large fire in the Stardust and it was getting out of control.<sup>36</sup>
- 5.18 The Keane Report also found that John Fitzsimons, a doorman, made a further call and also spoke to Mr Glover at 1:45am.
- 5.19 Ms Foy contends that the call from the lady referred to by Mr Glover in the extract from the transcript reproduced above was made by Ms Kelly. Ms Foy says that this is very significant in that it puts the fire in the roof space at 1:43am, earlier than allowed for by the timeline in the Keane Report. The Keane Report sets out a summary of the findings of fact at the start of chapter seven:

*"At the end of the period just referred to, the fire, which was not in the roof space broke through the roof in the form of flames, sparks, and smoke."*<sup>37</sup>

- 5.20 This puts the fire in the roof space only after 1:46am. According to Ms Foy this means that the fire could not have started in the West Alcove as it was already very well established in the roof by the time it was first observed in the West Alcove.
- 5.21 Similarly, the Keane Report concluded that there were two possible points of origin of the fire, the West Alcove and the roof space (including the Store Room).<sup>38</sup> The Report stated:

---

<sup>36</sup> At paragraphs 2.66-2.68

<sup>37</sup> At paragraph 7.2(7)

<sup>38</sup> At paragraph 6.175

*“The evidence of those witnesses who saw the fire from outside the building is of importance in determining whether the fire began in the roof-space of the West Alcove. However, while some of the witnesses recalled hearing or seeing the fire at times which were significantly earlier than the time at which it was first seen in the ballroom – in one case as early as 01.21 – the Tribunal is satisfied that it would not be safe to draw any inference as to the possible point of origin of the fire from such evidence. In the first place, a significant number of the witnesses placed the fire at around 01.40, i.e. approximately the same point of time as the first observation in the ballroom. In the second place, as has already been pointed out, where these estimates of time were given without reference to a watch or clock they must obviously be treated with caution.”<sup>39</sup>*

- 5.22 The Keane Report further considered the evidence of several of the external eyewitness and concluded:

*“There are undoubtedly inconsistencies in the eye-witness evidence which are difficult to reconcile. The Tribunal is nonetheless satisfied that the evidence as a whole points clearly to the fire having originated in the West Alcove rather than the roof space.”<sup>40</sup>*

- 5.23 This Assessment is not able to confidently conclude that the second call referred to by Mr Glover was the one made by Ms Kelly. It may have been a different call and Ms Kelly may only have spoken to the 999 operator as opposed to being transferred to the Fire Brigade. Her evidence is that she spoke to the operator. This Assessment is of the view that a determination on this issue is not necessary.
- 5.24 It is noted that no steps were taken to clarify with this witness, who is still alive, the matters left in some doubt. It would have been helpful to know, if at this remove, she can recall who she spoke to in making her phone call.
- 5.25 Taking the contention of Ms Foy at its highest, and accepting that Ms Kelly did see flames from the roof of the Stardust at 1:43am it would suggest that the fire started somewhere other than the West Alcove.
- 5.26 It supports a conclusion that there was a fire in the roof space at an earlier stage than found by the Keane Report. Other pieces of evidence also support

---

<sup>39</sup> At paragraph 6.176

<sup>40</sup> At paragraph 6.184

that conclusion, such as the evidence of PJ Murphy and Leo Doyle of intense heat from the ceiling in the West Alcove, or the heat surge felt by Linda Bishop at 1:33am. These latter pieces of evidence were fully reconsidered by Mr Coffey.

- 5.27 However, the fact that the fire might have been in the roof space at an earlier stage than found by the Keane Report does not explain the cause of the fire. Because it is not possible to determine if Ms Kelly made the call, it is not new or updated evidence. It is not of sufficient moment to warrant a further inquiry into the cause of the fire.

### **The Location of the Storeroom**

- 5.28 Ms Foy advanced the theory that the Keane Tribunal was mistaken about the location of the Store Room and this theory is central to the Committee's case for a new inquiry. It is necessary to look at the findings of both the Keane Report and the Coffey Review in relation to the layout of the Stardust before then looking at how Ms Foy suggests they are wrong.
- 5.29 The Keane Report and the Coffey Review agreed on the layout of the Stardust and the location of the Store Room. The families and victims were represented before the two processes and do not appear to have made any issue with the maps showing the layout of the Stardust or the description of it by witnesses giving evidence. In particular, the Coffey Review contains a 3D layout of the Stardust, showing the levels of the various rooms.<sup>41</sup> These designs do not appear to have been contested by the Committee until recently.
- 5.30 The Keane Report and the Coffey Review show the Store Room as being next to the Lamp Room and raised up from the main Ballroom. As such it is described as being either over basement, a mezzanine or at first floor level. In the view of this Assessment the best description is that the Store Room and the Lamp Room were on a mezzanine level, but nothing turns on the precise language used. It was uncontested before the Keane Tribunal, and accepted in the Coffey Review, that the suspended ceiling covering the main Ballroom did not cover the Store Room, leading to a conclusion that it was "*in the roof space*"<sup>42</sup>. This language is not ideal. The Store Room was open to the roof space but it was not in the roof space in the way that an attic room would be in the roof space. The floor levels of the Store Room and

---

<sup>41</sup> See the Appendix

<sup>42</sup> At paragraph 2.15

Lamp Room were raised up from the Ballroom. Both rooms were accessible only from the passageway leading to Emergency Exit 1.

- 5.31 Common to both the Keane Report and the Coffey Review was the finding that the Store Room contained a large amount of combustible material, though there was a difference in the precise contents of the room. Agnes Pearse, described in the Keane Report as a cleaner, stored cleaning products in the Store Room. Brian Peel, the manager, stored glasses there.<sup>43</sup> It was common to both the Keane Report and the Coffey Review that cooking oil was stored there, but again there was a difference in the quantities. Catriona Ross gave evidence to the Coffey Review and did not appear before the Keane Tribunal. She worked in the Stardust until three weeks before the fire. She gave unsworn evidence about the contents of the Store Room and said that it held more material than was determined in the Keane Report.
- 5.32 Underneath the Store Room was a room that is described as the Silver Swan office. This was shared by Brian Peel and Agnes Pearse. It was described by Brian Peel as a secure store room for keys and spirits.<sup>44</sup> Next to this was a cold room. The map maker Detective Garda Maurice F. Garde explained in a subsequent interview that the two rooms “*were at a lower level than the main floor of the complex. He says he could have described the store room and lamp room more accurately as mezzanine over sub-basement level i.e. sub-floor level*”. This is borne out by Map Plan no. 4 which indicates the Store and Lamp rooms being at “high level”. The cross-sectioned plan of the building part of Map Plan no. 2 shows no sub ground floor section. The height of the two upper rooms can be gauged by the photograph Plate 23 at page 116 of The Keane Report as this exit was at the end of the passage which ran along the north wall of the two rooms. The passage was also described as being at a “*high level*” and was three steps lower than the level of the two upper rooms.
- 5.33 In her evidence Ms Pearse said the following about the Store Room:

*“Q: if I could come up to the store room and ask you what is kept there?”*

*A: On one side Brian has all his glasses and on the other side I have all my cleaning stuff.*

....

---

<sup>43</sup> Transcript book 65, questions 153-155

<sup>44</sup> Transcript book 57, questions 265 and 944

Q: Anything else you can think of up there?

A: in the store?

Q: What is in the room, anything else in the roof?

A: Brian had glasses on one side. At the back there was (sic) two garbage cans, dustbins big ones. There was a lightening fixture thing. It wasn't plugged up. It was belonging to the disco at one time, a big square board with sockets out of it. There was a bag of plastic glasses, a couple of boxes of plastic glasses. There was a frame of a bike belonging to me up there. That is about it.

Q: The store, is also, has the same type of false ceiling, suspended ceiling?

A: It was supposed to have but the ceiling was gone. I think there was one or two tiles on the ceiling.

Q: Otherwise you were looking up at the asbestos roof?

A: Yes"<sup>45</sup>

- 5.34 The witnesses who worked on the premises and those employed to inspect the premises after the fire were familiar with the layout. No one throughout the entire hearing, when the maps were available and in use, suggested they were misled or misunderstood the layout. No one suggested that a basement, being an area below ground floor level existed. Mr Tucker in his letter dated 8th October 2013 to Ms Foy dealt with this proposition in relation to his evidence:

*"As regards me being misled by the plan showing the lamp room and store room as 'over basement', this is ridiculous. I went into both rooms and was fully aware as to what level they were on."*<sup>46</sup>

- 5.35 The fact that no one was misled about the position of the Store Room is possibly best illustrated by the evidence of the owner Mr Eamonn Butterly.<sup>47</sup> When asked where the keys of the premises were normally kept when a performance was not on, he stated in Mr Peel's office:

---

<sup>45</sup> Transcript 65 page 14

<sup>46</sup> At page 91

<sup>47</sup> Transcript 110, page 89 (dossier page 48).

*“Mr Butterly: “The office underneath the corridor of the exit of No. 1, beside the Cold Room. Will I point it out...The office itself is not shown on the map because this is the first floor area, and so is this, but the office was directly underneath this here, from there down to there (indicating)”.*

*Judge Keane: “Just where the measurement 6’6” is given, down as far as inner door 1”.*

*Mr Butterly “Correct, my Lord”.*

5.36 Both witnesses were referring to a map that did not show the lower level room. Both understood this and were not being misled. None of the parties present and represented suggested that this was wrong, misleading or misunderstood.

5.37 The Keane Report deals with the layout in the area at para 1.33:

*“Below the high level corridor there was a corridor at ground level which was extended by a door immediately underneath the fire escape stairs and which led to a small office and cool room under the store room and lamp room”.*

5.38 Therefore there were two rooms shared by Ms Pearse and Mr Peel. The Silver Swan office was on the ground floor. It was used to store valuables, such as spirits and keys. Above it was the general Store Room, used to store cleaning and catering material. Both rooms are accurately described in the two reports.

5.39 Again, it is important to state that there was no dispute before the Keane Tribunal or the Coffey Review about this layout. No one who was in the Stardust raised any issue with this description. None of the employees, independent technical experts, patrons or lawyers raised a single objection or point of controversy about the layout of the Stardust as determined by the Keane Tribunal and reaffirmed by the Coffey Review.

5.40 Ms Foy contends that the Keane Tribunal was in serious error about the level of the Store Room and that this had a profound and misleading impact on the evidence of witnesses at the hearings. The assertion is made that the Keane Tribunal conducted its entire work without knowing of the upper level Store Room believing all along that the combustible materials were at ground level i.e. far removed from the roof space. For this reason she believes the Tribunal

was “botched”<sup>48</sup> in that it could not have properly addressed the fact of the fire travelling over the roof space to the West Alcove and not in the other direction.

- 5.41 To back up this point the Foy dossier relies on a map of the premises<sup>49</sup> with a handwritten note reading “New evidence not on public record”. This map, unlike the maps included in the Keane Report, has an insert of a “First floor plan.”<sup>50</sup> It correctly shows the ground floor layout of the Stardust as opposed to the mezzanine level. However, it transpires that this is a map and insert produced by Ms Foy and is not new evidence. No accreditation is added to indicate this and the reader is left uncertain as to its origin. This map is simply an unprofessional graphic representation of Ms Foy’s theory and cannot be considered to be new evidence.
- 5.42 Ms Foy did indeed retrieve a map of the Stardust from Professor Rasbash’s papers in Edinburgh. As stated earlier at paragraph 2.2 he was appointed to act as a forensic advisor to the Tribunal. That map is similar to the Plan no. 2 in the Keane Report and no new evidence argument was advanced based on this map.
- 5.43 The plan of the premises relied upon by the Tribunal certainly goes nowhere to support the assertions that:

*“Chapter seven is seriously botched by the tribunal map because this photograph is clear evidence that a fire took place above the ground floor level. This storeroom was on the first floor level next door to the lamp room which was a switch lightening control room. The first floor level of this area was taken from the first floor level of the factory next door. Tribunal understanding of fuel at roof level unaware this area existed at this level.”*

*“Paragraph 6.119 is totally incorrect and has removed twenty minutes of evidence that accounts for a massive fire through the stardust roof viewed since 1.20am burning on the first floor level storeroom.”<sup>51</sup>*

---

<sup>48</sup> See for example page 35 and 38.

<sup>49</sup> At pages 42 and 116

<sup>50</sup> The map is reproduced in the Appendix for ease of reference

<sup>51</sup> At page 38



- 5.44 Ms Foy asserted in her dossier that there was confusion about the location of Agnes Pearse's store room:

*"This first floor level was not on or displayed on the tribunal map. There is a concrete floor and underneath this concrete floor is Ms Agnes Pearse storeroom 'Silver swan office' she shared with Mr Brian Peel."*

- 5.45 The dossier pursues this matter further at page 102 and suggests that The Keane Tribunal knew nothing about the store room at first floor level. It repeats the proposition that Agnes Pearse's storeroom was at the lower level:

*"This means the Stardust had two store rooms in this area: the store room on the ground floor was the store room known as the Silver Swan office not shown on the map. This store room Agnes Pearse shared with Brian Peele (sic). Directly over their store room was the first floor level store room the tribunal knew nothing about. This store room was next door to a switch light room and not the lamp room that the tribunal map displayed."*<sup>52</sup>

- 5.46 Both of these contentions are clearly wrong and are not borne out by the evidence and the conclusions of the Keane Report. They are also contrary to the cause being pursued by the Committee. A further confusion is created by the suggestion there is a difference between "a switch light room" and the "lamp room" when they are clearly the same room at the high level of the maps as drawn.

- 5.47 This confused argument is highlighted in the chapter heading of Tab 10 entitled "Ms. Catriona Ross new evidence of a first floor level store room directly covered over Agnes Pearse ground floor storeroom."

- 5.48 In her evidence given to Mr Coffey on the 23<sup>rd</sup> of September 2008 Ms Ross does not refer to two store rooms and makes no reference to Agnes Pearse at all. She places dining items and cleaning bleaches and floor wax in the upper level store room together with freezers containing burgers and chips. She was shown a letter from Kevans Solicitors dated 1<sup>st</sup> September 1981 and she did not dispute the contents including cleaning materials. She did say that mops and brushes would be left elsewhere and closer to their area of use.

---

<sup>52</sup> At page 102

She referred to two rooms and a passageway and neither of them included the room identified beneath the store room on the Tribunal's map.

- 5.49 In summary, Ms Foy asserted that the Keane Report and the Coffey Review made serious errors about the layout of the Stardust. No-one who was actually in the Stardust was in any doubt but that the maps produced by the Keane Report and the Coffey Review were accurate. None of the experts involved in the Keane Tribunal expressed any confusion or misunderstanding about the layout of the Stardust. These issues cannot be considered as new as they were fully covered in the evidence before the original tribunal. Judge Keane was entitled to draw conclusions based on the evidence before him. The Tribunal was not misled. Nor was Mr Coffey misled in any way and his findings on the layout of the Stardust rightly concur with those of the Keane Tribunal.

### **The wall between the Lamp Room and the North Alcove**

- 5.50 Ms Foy contends that this wall was not made completely of glass.<sup>53</sup> This is significant, according to Ms Foy, as David Mansfield Tucker, was going to conclude that the fire started in the Lamp Room but the existence of a glass wall stopped him from doing so. If the wall was fully or partially glass then any fire in the Lamp Room at an early stage would have been visible in the West Alcove and be noticed by staff and patrons.<sup>54</sup>
- 5.51 According to Mr Coffey:

*“Unchallenged evidence was given to the Tribunal to the effect that the wall of the Lamp Room next to the North Alcove consisted of a low level wooden partition into which was slotted sheets of glass which ended at roof level.”<sup>55</sup>*

- 5.52 This is a reference to paragraph 1.24 in the Keane Report which states:

*“[The North Alcove’s] western boundary includes a flight of four steps leading to a corridor which in turn lead to a fire-escape stairs, a glazed partition which*

---

<sup>53</sup> At page 160

<sup>54</sup> Foy dossier page 108

<sup>55</sup> At paragraph 2.14

*separated it from the Lamp Room and a portion of concrete block wall which enclosed the Main Bar”<sup>56</sup>*

- 5.53 Ms Foy contends that this finding was based on the investigation and evidence of Detective Inspector Seamus Quinn, which she suggests was “bad.”<sup>57</sup> She concludes that:

*“We have established D.I. Quinn (sic) glass wall he found does not exists [sic] and his reason to support this by explaining the base of the glass was littered with frosted broken glass at best is an untruth because Mr Tuckers [sic] photograph does not back up or support this theory.”<sup>58</sup>*

- 5.54 The photograph referred to is one taken by David Mansfield Tucker and sent to Ms Foy by email in October 2013 and included in the dossier. In that email Mr Tucker states:

*“The wall separating [the Lamp Room] from the North Alcove had been destroyed by fire and the activity of persons before my visit, but some debris remained. This debris included burnt timber but not blockwork. I do not recall who told me that the wall had been glazed but it might well have been DS Quinn. Having a glazed wall made sense as I understood that the room had contained equipment for controlling the lighting in the stage area, as well as projecting onto the stage. Similar rooms in theatres, etc, are always open or have a glazed wall so that the lighting operator can see what is happening on the stage”<sup>59</sup>*

- 5.55 The only evidence Ms Foy produces for the claim that the wall does not contain glass is an examination of the photograph emailed to her by Mr Tucker. It is not possible to determine the makeup of debris from this photograph.
- 5.56 This is not sufficient new or updated evidence within the meaning of this Assessment. It rests entirely on the opinion of Ms Foy of what may or may not be seen in the photograph referred to.

---

<sup>56</sup> At paragraph I.24

<sup>57</sup> At page 108

<sup>58</sup> At pages 108-109

<sup>59</sup> At page 168-169

## **Evidence of an electrical start to the fire**

- 5.57 Ms Foy admits to not having any expertise as an electrician or electrical engineer. This area of the dossier is again based on the opinion of Ms Foy who has relied on advice given to her by an anonymous electrical engineer. She states:

*“I got advice from an electrical engineer on how to write this part but would strongly urge the Judge to examine this further but with electrical experts. I am a researcher and I give the conclusion for my research it is then up to others to take the questions further.”<sup>60</sup>*

- 5.58 This Assessment cannot consider this as evidence. Expert testimony is to be given first hand and based on proper examination. The terms of this Assessment do not allow for further investigation; it is to assess new and updated evidence produced or uncovered by the Committee. No reliance can be placed on second hand anonymous observations used by a researcher to present as fact.

- 5.59 The index title at tab 2 of volume I of the attachments states:

*“Electrical evidence interfered with....Arcing and overheating cables for months prior to fire which were never fixed by electrical qualified expert.”*

- 5.60 The contents of the folder do not contain any evidence to support these assertions. The Keane Tribunal addressed the possibility of an electrical fault causing the fire. It had available to it a number of experts who clearly had such a possibility in mind given the nature and history of the premises. An electrical fault must have loomed large in the concerns of any expert involved in the aftermath of such a catastrophe. No evidence was found to support an electrical fault. The overall work was generally considered good and no arcing was found to suggest poor or substandard connections.<sup>61</sup>

---

<sup>60</sup> At page 174

<sup>61</sup> Keane Report paragraph 6.129

## **The evidence of Phelim Kinahan**

- 5.61 Mr Kinahan was a doorman in the Stardust on the night of the fire. According to the Coffey Review:

*“Phelim Kinahan, a doorman, gave unchallenged evidence to the Tribunal that having watched the fire for about two to three minutes in the West Alcove, he pushed his way through the crowd and ran up via the North Alcove to the Lamp Room where he turned up the lights in the Ballroom (in an attempt to assist his colleagues who were at the same time attempting to put out the fire in the West Alcove).”<sup>62</sup>*

- 5.62 Mr Kinahan then ran back into the Ballroom to warn people about the fire and tell them to leave. Ms Foy placed a great deal of emphasis on the fact that Mr Kinahan was not asked by Mr Justice Keane what fire he was referring to. Did he mean the fire he saw in the West Alcove, or one that he witnessed in the Lamp Room? This Assessment is of the view that if he had seen fire in the Lamp Room he would surely have said so. His job in turning on the lights would have been all the more dangerous or difficult, if not impossible. It is inconceivable that he would not have mentioned fire in the Lamp Room, if he had encountered fire there.

- 5.63 In any event if the theory argued for by the dossier is correct, the Lamp Room could not have been accessible, let alone the lighting system. The dossier claims the fire by now in the West Alcove had come from an electrical fault in the Lamp Room, burned through the wall to the adjoining Store Room, ignited the combustibles there to cause a fire of sufficient magnitude to travel up and along the roof space to the West Alcove where it had been burning for two minutes and more. The dossier also contends for a fire blast from the Store Room in the direction of the stage area to explain the impact fire injury on Robert Kelly there. In the summary of New Evidence in the final three pages of the dossier it is observed:

*“If Mr Kinahan had not opened the door and allowed oxygen to mix with the combustion, which seconds later caused flash over; Robert Kelly at the stage area would not have got the horrible death he received when the ball of flame from above his head whacked him.”*

---

<sup>62</sup> At paragraph 4.7

5.64 If any of this had taken place Mr Kinahan surely would have given direct evidence of it or have been questioned by Counsel for the Relatives who elsewhere sought to pursue the possibility of the roof space allowing the fire to spread from the Store Room with expert witnesses.<sup>63</sup>

5.65 This did not happen and it is no argument to lay blame on the Tribunal for not asking for evidence that clearly did not exist. Again, it is remarkable to note that although Mr Kinahan is alive and his whereabouts known to Ms Foy, he has never been approached by her to clarify what she contends to be a glaring omission in the body of evidence available to the Tribunal.

5.66 In any event this was dealt with in the Coffey Review where he stated:

*“If Mr Kinahan was able to observe the fire in the West Alcove for two minutes before going to the Lamp Room to switch up the lights, the conclusion is inescapable that wherever else it may have started, the fire did not start in the Lamp Room. Although it is true to say that the Tribunal treated with reserve the evidence of Phelim Kinahan and the doorman relating to the locking of exit doors, it expressly stated that the same did not necessarily apply to their evidence as to the fire itself.*

*There is independent support for Mr. Kinahan’s evidence in the testimony of Catherine Darling who said that when she was sitting in the North Alcove she saw “a bouncer” whom she thought was “Phelim” running up the steps in the North Alcove shouting “get out, there is a fire” and pushing open a door after which she lost sight of him.*

*There is also further independent support for Mr. Kinahan’s evidence in the testimony of some patrons in the Ballroom who noticed a momentary increase in light before the lights failed.*

*A further evidential difficulty for the hypothesis arises from the evidence of Detective Sergeant Seamus Quinn and Detective Garda Maurice Garde who gave unchallenged testimony to the Tribunal that there was a glazed timber partition between the Lamp Room and the North Alcove. If there was a fire in the Lamp Room of sufficient intensity to burn its way into the Store Room (as*

---

<sup>63</sup> One example is given where Mr McEntee questioned Dr Watt at Transcript Book 108 dossier page 68.

*the hypothesis demands) it would be surprising if not remarkable that it had not been noticed by anyone in the Ballroom.”<sup>64</sup>*

- 5.67 The issue of the failure to ask a question cannot amount to new evidence. It is a matter for comment based on a point of view and no more. Mr Kinahan’s evidence was heard before the Keane Tribunal and tested fully there. It was reconsidered by the Coffey Review. The fact that he was not asked a particular question or was not recalled cannot amount to new or updated evidence in the meaning of this assessment.

### **The five dead males in the North Alcove**

- 5.68 Ms Foy put forward the argument that five males were seen dead in the North Alcove before the fire consumed that part of the building, and that their bodies were in exactly the same place after the fire. From this she maintained there was another source of fire giving rise to the toxic fumes that killed these five victims. The likely source of this fire was the adjoining Lamp and Store Rooms:

*“It very (sic) important this can be visualized because there exists evidence that there were five males dying in the North alcove before the seat fire in the west alcove.”<sup>65</sup>*

- 5.69 She claimed that a Stardust patron, Valerie Rooney, saw the five dead bodies before she left the building:

*“We know because if they were not dead they would not have been found by the fire brigade in the same place as Valerie Rooney stated they were as if they were sleeping”<sup>66</sup>*

- 5.70 Furthermore, according to Ms Foy, William Redmond, a fireman, puts the bodies in exactly the same place after the fire. It is necessary then to look at the evidence of Valerie Rooney and William Redmond.

---

<sup>64</sup> At paragraphs 4.8 – 4.11. There is an incorrect reference for this quote in the Coffey Report. Ms Darling makes her comments about a bouncer running up the stairs in Book 11 Q 236 and not Q 267.

<sup>65</sup> At page 242

<sup>66</sup> At page 247

5.71 Ms Rooney gave the following evidence under cross examination by Mr Carney:

*“Q: Did you notice people sleeping in that area?”*

*A: I did.*

*Q: How many?”*

*A: There was one fellow up the back with his head on his arms. He appeared to be sleeping, and about two or three more in the F area asleep on the chairs.”<sup>67</sup>*

5.72 In an email to Ms Foy dated 18<sup>th</sup> October 2014 Mr Redmond described what he saw when he entered the Stardust:

*“When I was inside I saw two bodies sat (sic) at the remains of a table. These bodies were burned beyond recognition and in parts burned parts has (sic) broken away. It was an awful sight. The fact that they were still seated and had not made a move to escape, I assumed that they died very quick or did not respond to alarm, reason unknown to me. Two bodies on chairs were six or seven rows down and in to the right. The place was in disarray but I think this would be about three of four tables in. I covered them and saw three bodies against the wall who also had not tried to get out. They were also in a very bad way.”<sup>68</sup>*

5.73 The evidence of Ms Rooney does not place five dead male bodies in the same place as seen by Mr Redmond. She gave evidence of seeing at most four bodies in the North Alcove but does not say where. Mr Redmond’s evidence is more precise, describing seven bodies in this area.

5.74 The Keane Tribunal produced a map entitled:

*“Plan of the building proved in evidence by fire brigade officers showing:*

---

<sup>67</sup> Transcript book 60, questions 1246 and 1247

<sup>68</sup> At page 249



*Location of fire appliances and hoses;*

*Location of bodies”*

It puts the location of at least 12 bodies in the North Alcove, some of which were in much the same positions as described by Mr Redmond. Ms Foy said at our last meeting that the map was inaccurate as bodies were moved and then the places marked “based on impressions left in the debris”. The accuracy of this map was not challenged in the two enquiries as far as this assessment is aware. The Keane Report does criticize the failure to associate particular remains with each location; not the locations themselves.<sup>69</sup>

5.75 It is not correct to say that these two witnesses prove that five males died before the fire started and that the bodies were in exactly the same place after the fire. Ms Rooney saw some persons asleep in this area and Mr Redmond saw up to seven bodies there after the fire. The overall evidence before the Keane Tribunal placed at least twelve bodies in the North Alcove after the fire.

5.76 These matters were dealt with by the Keane Tribunal. They cannot constitute new evidence.

### **Michael Norton**

5.77 Mr Norton was an investigator at the Forensic Science Laboratory. The dossier states that he:

*“claimed no fuel exists at roof level to burn the black duct pipe. In other words no first floor level existed. Was not displayed on the Tribunal map (Eamonn Buttery transcript book 110 pages 87 and 89).”<sup>70</sup>*

5.78 Earlier Ms Foy asserts that Mr Norton is unaware that this fuel (in the upper storeroom) exists.<sup>71</sup> Later Mr Norton is again described as being wrong in his evidence and that as a result his tests designed to replicate the fire were wrong.<sup>72</sup>

---

<sup>69</sup> At paragraph 5.31

<sup>70</sup> At page 130

<sup>71</sup> At page 129

<sup>72</sup> At page 134

- 5.79 This is the opinion of Ms Foy based on her theory of how the fire started and does not amount to evidence.

### **Dr Robert Watt**

- 5.80 Dr Watt is a fire consultant and he is repeatedly accused of giving false evidence. The accusation is set out starkly as follows:

*“Dr Watt took this photograph [of the Store Room area after the fire – explanation added] as an employee for Shields insurance (sic) it clearly tells us he knew since 10/3/1981 (date of photograph) the existence of a first floor level storeroom. Exactly where Brenda Kelly told emergency services a fire was burning through the roof at 1.43am. Yet he tells the Keane tribunal this floor level does not exist and the fuel was superficially burnt at the top. This photograph his camera used to take the picture and his photograph means he committed perjury under oath.”<sup>73</sup>*

- 5.81 Later on he is accused of lying about the nature of the fire:

*“His answer to questions 114-115 as an expert he knows this fire was a liquid fuelled fire so his answers distract away from any liquid fuel that was present before this fire burnt all the liquid fuel evident in his photograph.”<sup>74</sup>*

- 5.82 The accusation is taken further at page 153 where Ms Foy contends that Dr Watt’s photograph:

*“shows us that fuel existed to do just that” (ignite a fire in the roof early enough to allow for the times of the external witnesses viewing of fire) ... “he cannot connect the two. This is the perjury of Dr Robert Watt.”<sup>75</sup>*

- 5.83 Dr Watt did not at any stage state the upper floor level did not exist. Ms Foy wants us to accept he did say so by implication. At one point in the Tribunal hearings, he was being cross-examined by Mr Patrick Geraghty SC, counsel

---

<sup>73</sup> At page 142

<sup>74</sup> At page 151

<sup>75</sup> At page 153

for Dublin Corporation. He expressed his opinion that the fire did not start in the roof space and percolate down to the seating area of the West Alcove as it would have required flammable liquid to be poured onto the ceiling. There was nothing in the false ceiling space that could have produced a large enough fire at an early stage to have allowed for what the external witnesses were describing. Ms Foy has written “*perjury*” on the right of this and the words, “*first floor level storeroom full of 24 gallons of cooking oil*” on the left side. While the Store Room was open to the roof space and accepted by the Tribunal as being in the roof space, the combustible contents needed to be conveyed up from the Store Room to the ceiling by some mechanism. Ms Foy’s theory suggests the lifting of the cooking oil was by some explosive movement caused by fire. This is a suggestion noted in the dossier where Dr Watt is being examined by Professor Rasbash about air circulation possibilities in the roof space to allow for the movement of combustible material there. Ms Foy has noted “*Lies. He knows about 1st floor level storeroom. He knows oxygen add gen flash over.*”<sup>76</sup>

- 5.84 Catriona Ross stated that the cans of oil were packed on top of each other along the wall next to the Main Bar but not above wall height.<sup>77</sup> Dr Watt’s evidence of the absence of flammable liquid in the roof space is a legitimate one and is nowhere near a denial of the existence of the Store Room or its contents. His was a position accepted by counsel for the Corporation who stated in his next question:

*“Because you are not aware on the existence of any flammable liquid in the roof space, **we haven’t found any evidence of this**, in arriving at your conclusions...”*(emphasis added).<sup>78</sup>

- 5.85 This assessment has dealt with the location and contents of the Store Room at an earlier stage. It is not necessary to repeat the matters other than to say there is no basis to any accusation of perjury. Ms Foy has a view that Dr Watt is wrong in his evidence. This is based on her theory of how the fire started and spread. It is no more than that.

---

<sup>76</sup> At page 149

<sup>77</sup> At paragraph 4.14 of the Coffey Report

<sup>78</sup> Question 166

### **Mr David Mansfield Tucker**

- 5.86 Mr Mansfield Tucker was a fire expert employed by Dublin Corporation and liaised on their behalf with the Fire Research Station in the UK where reconstructed and simulated test fires were made.
- 5.87 Ms Foy sets out her concerns about Mr Tucker as he “*has given unsound opinions in his report and these must be removed from the public record.*”<sup>79</sup>
- 5.88 In the report he expresses opinions that include his view that having visited the Stardust on the 10th March 1981 the Store Room was not the seat of the fire and was involved in the fire spreading from the direction of the North Alcove and dancefloor areas. He disputed the presence of drums of cooking oil in the Store Room. Ms Foy believes he is “*wholly wrong having made unsound findings*”.
- 5.89 These are matters of opinion and not being an expert Ms Foy is not in a position to dispute them. The wish to have his opinions removed from public record does not provide the basis for a new enquiry.

### **Dr Sile Willis**

- 5.90 The complaint levelled against Dr Willis is, in short, that she relied upon the evidence of Michael Norton in formulating some observations on Ms Foy’s report of 2004, “*The Investigation into the Stardust Tribunal Report of 1981*” and a further document prepared by a solicitor for the Committee titled, “*Nothing but the Truth*”. The accusations are set out in a letter containing much vitriol.<sup>80</sup>
- 5.91 Complaint is made that Dr Willis:

*“used the perjury evidence given by Dr Robert Watt to the Keane Tribunal. Dr Willis was told of this and she has done nothing to tell the Minister of Justice she used perjury evidence in her report to the Coffey review.*

*[Her] report to the Coffey review is solely reliant on the perjury evidence of Dr Watt and DI Ballistic police Seamus Quinn who also committed perjury.*”<sup>81</sup>

---

<sup>79</sup> At page 160

<sup>80</sup> At pages 136-140

<sup>81</sup> At page 142

- 5.92 Given that in the view of this Assessment there is no ground for saying that the evidence of Mr Norton, Dr Watt or Mr Quinn was incorrect in any way, this is purely a matter of opinion and does not constitute new evidence.

### **The inaccuracy of paragraph 6.119 of the Keane Report**

- 5.93 At various parts of her dossier Ms Foy takes issue with paragraph 6.119 of the Keane Report. For example:

*The Coffey review is also based and wholly dependent on paragraph 6.119 of the Keane Report. The findings contained in paragraph 6.119 of the Keane Report as a statement of facts are wholly untruths based on perjured evidence accepted by the tribunal.<sup>82</sup>*

- 5.94 Paragraph 6.119 states:

*“The evidence established that there was very little combustible materials in the roof space. According to the evidence of the contractor who erected it, however, the suspended ceiling did not extend to the Store Room. The contents of the Store Room included toilet rolls, kitchen towels, paper napkins, plastic cutlery, drums of cooking oil, and aerosols such as cleaning agents and polishes. There was also evidence that members of the kitchen and bar staff were accustomed to going to this room in order to replenish various items that they might need in the course of their work and for that purpose obtain a key from the cellarman, Mr Lennon. Mrs Pearse, the head cleaner who was helping in the Kitchen on the night of the fire went with Mrs Marley, the catering manageress, to the room for that purpose on the evening of the fire. She said that they locked the door when they left. There was no evidence of anyone else having visited the room that evening.*

- 5.95 In the view of this Assessment there is nothing incorrect about this paragraph. It corresponds to the evidence of Ms Pearse, and Ms Ross (before the Coffey Review). Ms Foy contends that it is incorrect in light of the confusion about the various store rooms in the Stardust. It has already concluded that there was no such confusion and that Ms Foy is simply wrong in that contention.

---

<sup>82</sup> At page 119

### **Evidence of 36 external witnesses**

- 5.96 Ms Foy argues that the Keane Tribunal ignored the evidence of 36 exterior witnesses.<sup>83</sup> She does not elaborate on this assertion.
- 5.97 The Keane Report deals with exterior witnesses on a number of occasions. Chapter 2 contains an entire subsection entitled “*Fire as observed from outside the building*”<sup>84</sup> where the evidence of exterior witnesses is clearly set out and considered. This evidence was in turn analysed by the Coffey Review in a section entitled “*The Evidence of the External Eyewitnesses*”.<sup>85</sup>
- 5.98 The Keane Report found that the times given by the exterior witnesses were unreliable and clearly sets out reasons for this in relation to each witness. Mr Keane heard the witnesses give evidence and was entitled to draw conclusions as to the probative value of this evidence. Simply disagreeing with this analysis in not new and updated evidence and is not a ground to hold a new inquiry.

### **The inaccuracy of Chapter 7 of the Keane Report**

- 5.99 Ms Foy further suggests that Chapter 7 was inaccurate. She did not advance any evidence or argument as to how it was inaccurate.
- 15.1 Chapter 7 is entitled “Why the fire spread”. It is here that the Keane Report turned the hypothesis that the fire was probably started deliberately in the West Alcove into a finding of fact.<sup>86</sup> However, the chapter sets out the investigations by the Fire Research Station of the Department of the Environment in the United Kingdom into the cause of the fire. These investigations were done before the Tribunal’s finding of fact and therefore cannot be said to be influenced by it.
- 15.2 No new or updated evidence as to the cause of the fire has been given to this Assessment. This is not a ground for a new inquiry.

### **The melted panes of glass in the roof**

- 5.100 This item appears in a list of issues on page 361 of the dossier but is not examined in detail there. It does appear on a number of occasions in the dossier. Detective Inspector Seamus Quinn said in his report:

---

<sup>83</sup> Page 281

<sup>84</sup> Pages 88- 94

<sup>85</sup> Paragraphs 2.48-2.55

<sup>86</sup> Paragraph 7.2(1) and (2)

*“it can be concluded that this fire was neither of long duration, nor extremely intense, the highest temperatures reaching being in the region of approximately 800°C. Over this temperature the North light glass roof would have melted”<sup>87</sup>*

- 5.101 Ms Foy then presents a photograph from the Keane Report. It is reproduced on page 34 of the Coffey Review that she claims shows that the glass did in fact melt.<sup>88</sup> This photograph shows the some of the glass has melted and some has not.
- 5.102 All this information was before the Keane Tribunal and Coffey Review and cannot be considered new and updated evidence for the purpose of this Assessment

### **Medical Evidence**

- 5.103 Ms Foy places reliance on the evidence of Dr Derek Carson<sup>89</sup> in relation to the medical examination of those killed in the fire. However a difficulty arises in that Dr Carson is described as “recently deceased”. As such his evidence is hearsay. It is not necessary to examine the probative value of such hearsay evidence in a potential civil inquiry as it does not raise any new issue. All the facts were before the Tribunal and conclusions were made based on the evidence presented.

### **Dripping material on the shirt of PJ Murphy**

- 5.104 The Coffey Review sets out the evidence of Mr Murphy in relation to his shirt:

*“PJ Murphy gave evidence which was supported by Michael Kavanagh and accepted by the Tribunal that they saw portions of the ceiling appearing to melt. He gave evidence of particles some of which were flaming falling from the ceiling landing on the tables and seats. He said some fell on the cuff of his shirt, leaving a stain of a strawberry red colour. The flaming particles continued to flame after they landed on the seats and tables but they did not appear to him to actually set fire to either.*

*3.44 Although PJ Murphy gave his shirt to the Gardaí, it is no longer available for forensic testing, so that the nature of the molten globular particles as seen by PJ Murphy and other witnesses is not known.”<sup>90</sup>*

---

<sup>87</sup> At page 105 of the dossier

<sup>88</sup> Plate 54, page 234 of the Keane Report

<sup>89</sup> At page 233

<sup>90</sup> Paragraphs 3.43 – 3.44

- 5.105 No new evidence in relation to this was advanced. The dossier did not make any argument about this dripping material that was not before the Keane Tribunal or Coffey Review and therefore this is not new or updated evidence.

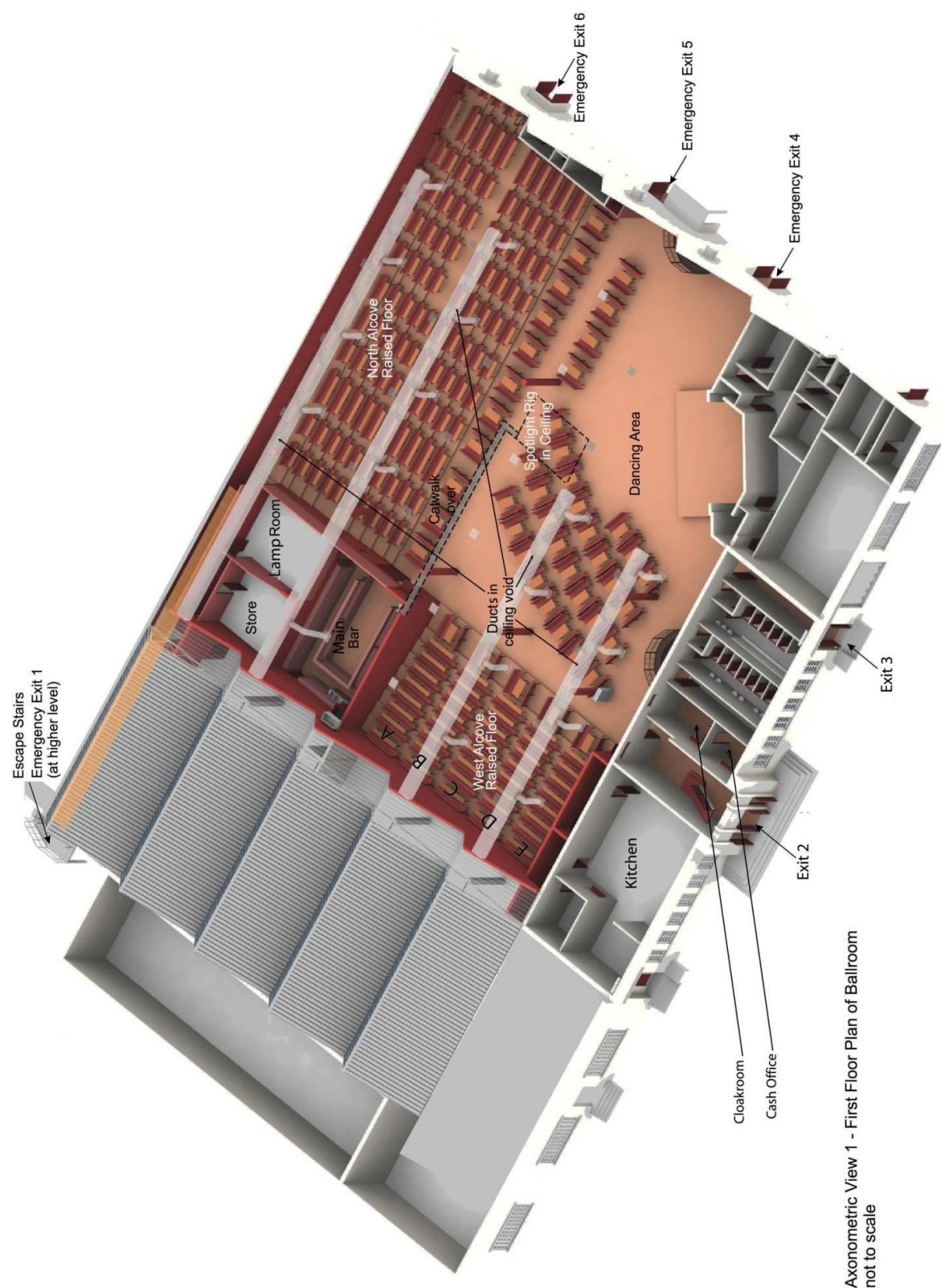
## **CONCLUSION**

- 5.106 Having considered all the material submitted by the Committee there is no new or updated evidence disclosed in the meaning of the terms of this Assessment and no new enquiry is warranted.

Judge Pat McCartan (retired)



Appendix



Map prepared by Geraldine Foy

