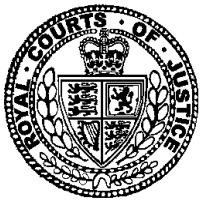

Neutral Citation Number: [2015] EWHC 3666 (Admin)

Case No: CO/2417/2015

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/12/2015

Before :

LORD JUSTICE McCOMBE

AND

THE CHIEF CORONER
(His Honour Judge Thornton QC,
sitting as a Judge of the High Court)

- -

Between :

SUSAN FLOWER	**Applicant**
- and -	
HER MAJESTY'S CORONER FOR THE COUNTY OF DEVON, PLYMOUTH, TORBAY AND SOUTH DEVON	**Respondent**
-and-	
(1) THE CHIEF CONSTABLE OF DEVON AND CORNWALL POLICE	
(2) INDEPENDENT POLICE COMPLAINTS COMMISSION	
	Interested Parties

- -
- -

Jude Bunting (instructed by **Stephensons**) for the Applicant
Alison Hewitt (instructed by **the Respondent**) for the Respondent
Catriona Hodge (instructed by **Devon and Cornwall Police Legal Department**) for the First Interested Party

The Second Interested Parties did not appear and was not represented.

Hearing date: 17 November 2015

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

Lord Justice McCombe:

(A) Introduction

1. This is an application under section 13 of the Coroners Act 1988 (as amended) for:

> "a. A mandatory order quashing the original inquest findings into the death of Keith Brian Dance;
>
> b. A mandatory order directing that fresh inquest [sic] be conducted into the death of Keith Brian Dance…"
>
> (and other relief) .

2. I set out the claim, as formulated in the Claim Form, to illustrate immediately the preliminary question of this court's jurisdiction, identified by my Lord, the Chief Coroner, in the course of preparation for the hearing of this case, and addressed at our request by counsel for the applicant and for the respondent in their helpful additional written and oral submissions.

3. The short problem is that there has been no concluded inquest, and there are, therefore, no original inquest findings to quash.

4. Section 13 of the 1988 Act was amended by the Coroners and Justice Act 2009 (Consequential Provisions) Order 2013/1874. As amended it provides as follows:

> "Order to hold [investigation]
>
> (1) This section applies where, on an application by or under the authority of the Attorney-General, the High Court is satisfied as respects a coroner ("the coroner concerned") either—
>
> (a) that he refuses or neglects to hold an inquest which ought to be held; or
>
> (b) where an inquest [or an investigation] has been held by him, that (whether by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, the discovery of new facts or evidence or otherwise) it is necessary or desirable in the interests of justice that [an investigation (or as the case may by [sic] another investigation] should be held.
>
> (2) The High Court may—
>
> (a) order an [investigation under Part 1 of the Coroners and Justice Act 2009] to be held into the death either—
>
> (i) by the coroner concerned; or
>
> (ii) by [a senior coroner, area coroner or assistant coroner in the same coroner area];

> (b) order the coroner concerned to pay such costs of and incidental to the application as to the court may appear just; and
>
> (c) where an inquest has been held, quash [any inquisition on, or determination or finding made at] that inquest."

5. The authority of the Attorney-General was given for the bringing of this application by fiat dated 28 April 2015, in these terms:

> "**IN PURSUANCE** of the Attorney General's powers under the Coroners Act 1988, and **IN ACCORDANCE WITH** section 1(1) of the Law Officers Act 1997, **I HEREBY AUTHORISE Susan Flower** to make an application to the High Court of Justice for an order under section 13(1)(b) of the Coroners Act 1988, quashing the original inquest and directing a fresh inquest to be held into the death of Keith Brian Dance."

6. To explain the jurisdiction issue it is necessary to set out a little of the background and procedural history of this case.

(B) Factual and Procedural Background

7. The applicant is the mother of the deceased, Mr Keith Dance, who died on or about 12 March 2013. He met his death in violent circumstances and on 25 March 2013, prior to the entry into force of the material provisions of the Coroners and Justice Act 2009, the coroner opened and adjourned an inquest into the death. On 21 August 2013, in the Crown Court at Plymouth, a man called Ian Gollop pleaded guilty to the murder of the deceased and, after trial in the same court ending on 5 February 2014, a woman called Jacqueline Cooke was also convicted of the murder. Gollop and Cooke were each sentenced to life imprisonment, with specified minimum custodial terms of 17 ½ years and 15 years respectively.

8. On 21 October 2013, the coroner had suspended his investigation into the death pending the outcome of the criminal proceedings, pursuant to section 11 of, and paragraph 2 of schedule 1 to, the 2009 Act. By certificate of 29 November 2013, the coroner had informed the Registrar of Births, Marriages and Deaths of the suspension of the investigation. By notice dated 7 February 2014 from the Crown Court the coroner was sent notice of the result of the criminal proceedings.

9. Paragraph 8(1) of Schedule 1 to the 2009 Act provides that,

> "8 (1) An investigation that is suspended under paragraph 2 may not be resumed unless, but must be resumed if, the senior coroner thinks that there is sufficient reason for resuming it."

10. By certificate (Form 121) "issued in accordance with Schedule 1 to the Coroners and Justice Act 2009" dated 17 February 2014, addressed to the Registrar for the Plymouth sub-district, the coroner stated that,

> "In respect of the investigation into the death of Keith Brian DANCE at…Flat 5, 128 Molesworth Road, Stoke, Plymouth

> which was suspended under Schedule 1 to the Coroners and Justice Act 2009 on the Twenty-First day of October 2013
>
> I hereby certify as follows…
>
> The investigation has not been resumed.
>
> Criminal proceedings were instituted on a charge of Murder
>
> As a result of those proceedings the defendant [sic: defendants] was Convicted of Murder…".

11. The question that now arises in these circumstances, therefore, is whether (for the purposes of section 13(1)(b) of the 1988 Act as amended (which I have quoted above)), "…an inquest or an investigation has been held…" so that, if appropriate, this court may order (under section 13(2)) a fresh investigation to be held. Quite apart from the query as to this point which we raised with counsel, we have been informed that it is a point upon which the views of coroners differ and that it would be of assistance to them for the court to decide the matter.

12. The words "…or an investigation…" were added to section 13(1)(b) by the Coroners and Justice Act 2009 (Consequential Provisions) Order 2013. In its unamended form the Act provided in clear terms that for that provision to apply an inquest had to have been held. It was tolerably clear that that meant that the inquest had to have been carried through to completion. Does the change mean that if an investigation has been started, but not completed (for whatever reason), it has been "held" and that, therefore, the court can decide whether "an investigation (or as the case may be), another investigation should be held" (s.13(1)(b)) and so (under s.13(2)) "order an investigation under Part 1 of the Coroners and Justice Act 2009 to be held…"?

13. Section 6 of the 2009 Act provides that,

> "6. A senior coroner who conducts an investigation under this Part into a person's death must (as part of the investigation) hold an inquest into the death.
>
> This is subject to section 4(3)(a)"

14. Section 4 of the 2009 Act is in these terms:

> "Discontinuance where cause of death revealed by post-mortem examination
>
> (1) A senior coroner who is responsible for conducting an investigation under this Part into a person's death must discontinue the investigation if-
>
> (a) an examination under section 14 reveals the cause of death before the coroner has begun holding an inquest into the death, and

(b) the coroner thinks that it is not necessary to continue the investigation.

(2) Subsection (1) does not apply if the coroner has reason to suspect that the deceased-

(a) died a violent or unnatural death, or

(b) died while in custody or otherwise in state detention.

(3) Where a senior coroner discontinues an investigation into a death under this section-

(a) the coroner may not hold an inquest into the death;

(b) no determination or finding under section 10(1) may be made in respect of the death.

This subsection does not prevent a fresh investigation under this Part from being conducted into the death.

(4) A senior coroner who discontinues an investigation into a death under this section must, if requested to do so in writing by an interested person, give to that person as soon as practicable a written explanation as to why the investigation was discontinued."

15. It is clear that in the present case there was no discontinuance of the investigation under section 4 of the 2009 Act but only a suspension under Schedule 1 of the Act and a later decision not to resume. Accordingly, it seems to me that the investigation, which, as section 6 provides, requires an inquest as a constituent part, has not been completed. Further, in this case, an inquest was opened and adjourned. It seems to me, therefore, that on the ordinary meaning of the convoluted (and somewhat puzzling) provisions of the two Acts, for an investigation to have been "held", it has to have been completed; a part investigation is no more an investigation that has been "held" than a part inquest is an inquest that has been held. Without the completion of the inquest, required by section 6 on the facts of this case, as it seems to me, the investigation has not been completed and, therefore, has not been "held" for the purposes of section 13(1)(b) of the 1988 Act.

16. I accept that this view of the statute makes it difficult to understand why Parliament chose to insert the new words, "or an investigation", into section 13(1)(b), save that there seems to have been a desire to use the phrase whenever the word inquest had appeared on its own in the unamended Act. It seems to me that it is impossible to say that an investigation has been "held" when an integral part of it, the inquest, as required by section 6 has not taken place. The reason for the amendment is, however, explained perhaps by the points made by Judge Thornton QC in his judgment which follows, with which I agree.

17. If this is correct, the court has no jurisdiction to order an investigation in the present case. The old investigation is still in being and the coroner can be invited to resume it

in the light of the new evidence now relied upon by the applicant. Any new decision would be amenable to challenge on judicial review, if appropriate.

18. The current 13th edition of Jervis on Coroners (2014) at §18-06 supports this view in a very short passage:

> "A fortiori, a coroner who signs 'Pink Form A' to inform the registrar of deaths that he or she does not propose to conduct an investigation or hold an inquest, is not functus officio either. 'Pink Form A' is an administrative convenience for the registrar of deaths, and not a substitute for a coronial inquiry. There is no authority on the point, but the position is analogous where the coroner, after suspending an investigation because of criminal proceedings or a public inquiry, firstly decides not to resume, but then subsequently becomes aware of facts constituting sufficient reason for doing so.[1] If any of these cases would otherwise satisfy the criteria, except that the body is by then no longer be [sic] in the coroner's area, the coroner cannot inquire without first obtaining from the Chief Coroner a direction to conduct an investigation, but must then do so."

19. Mr Bunting for the applicant recognised before us that this question of jurisdiction had not been decided previously and, if my note of his oral submissions is correct, he said it was a difficult point which "could go either way". Recognising, however, that the point was very much open, he advanced arguments that might point away from the provisional conclusion that I have expressed above, based on the language of the statutes alone.

20. Mr Bunting argued that, at the time when the coroner reached his decision not to resume his investigation, he did not have before him any part of the new evidence relied upon by the applicant to found the case for a "new" inquest under section 13. The purposes of his investigation, as set out in section 5(1) of the 2009 Act, was to ascertain (a) who the deceased was; (b) how, when and where the deceased came by his death; (c) the particulars (if any) required by the…[Births and Deaths Registration Act 1953]…to be registered concerning the death". Those purposes, Mr Bunting argues, had been fulfilled at that time and there was no reason at the relevant time for him to think that section 5(2) of the Act had been triggered[2]. Thus, Mr Bunting said, the non-resumption of the investigation amounted in all but name to the holding of an inquest, thus completing the investigation for the purposes of section 6.

21. Mr Bunting referred us to a number of cases, recognising (as we have said) that none of them was decisive of our point.

22. The first case was *Terry v East Sussex Coroner* [2002] QB 312. In that case, the deceased had worked as an asbestos moulder. On his death, a post-mortem report concluded that he had died from natural causes. As a result the coroner, being satisfied that an inquest was unnecessary issued a certificate under section 19 of the

[1] Coroners and Justice Act 2009 s.11, Sch.1 para.8; see 10-84.

[2] "(2) Where necessary in order to avoid a breach of any Convention rights (within the meaning of the Human Rights Act 1998 (c.42)), the purpose mentioned in subsection (1)(b) is to be read as including the purpose of ascertaining in what circumstances the deceased came by his or her death."

1988 Act confirming the cause of death as being that disclosed by the post-mortem. The deceased's family contended that he had died of an asbestos related disease, not being a natural cause and requested the coroner to hold an inquest. The coroner refused to do so on the basis that there were no grounds for thinking that the deceased had died an unnatural death and that, in any event, having issued his certificate, he was *functus officio*. The deceased's widow applied to the court under section 13(1)(a) of the 1988 Act for an inquest to be held. This court dismissed the application and an appeal from that decision to the Court of Appeal was dismissed. The court held that the issue of the section 19 certificate did not take the place of an inquest and the coroner was not *functus officio*.

23. In giving the lead judgment in that case (with which May and Dyson LJJ agreed), Simon Brown LJ (as he then was) said,

> "10. Given that plain scope and rationale of section 19, I have difficulty in understanding why the coroner's position at the end of stage 2 – assuming he decides that an inquest is unnecessary – should be any different from his position in an ordinary section 8 case when he simply decides at the outset that there is no reasonable cause to suspect that the case falls within any of the paragraphs of section 8(1).
>
> 11. What, then, do the legal commentators say? Jervis on Coroners, 11th ed (1993), pp.326-327, reads:
>
> '18-05 There is a question mark as to when exactly a coroner becomes functus officio. Before 1927, there was no power to dispense with an inquest where the statutory criteria were satisfied. Nowadays, however, there is a procedure whereby in the case of a sudden death the cause of which is not known, the coroner may order a post mortem examination to be made and may thereafter dispense with an inquest (the so-called 'Pink Form B' procedure). It is not clear whether utilising that procedure renders the coroner thereafter functus officio in relation to that particular death or whether if he thereafter discovered further evidence bringing the case within the other criteria for holding an inquest he could so do without an application to the court having to be made.
>
> 18-06 The Attorney General has in the past refused his fiat to an application to the High Court to set aside a 'Pink Form B' on the ground that it is unnecessary, as the coroner was not functus officio. This does not sit easily with the fact that, by statute, the post mortem examination and the coroner's decision taken upon the report thereof take the place of the inquest which (if held) would have made the coroner functus officio.
>
> 18-07 On the other hand, a coroner who signs 'Pink Form A' to inform the registrar of deaths that he does not propose to hold an inquest, so as to permit registration of the death, does not in any event become functus officio, because no inquiry

> equivalent to an inquest has taken place. Consequently, if information subsequently comes to light and the coroner considers he would otherwise have jurisdiction, he is not prevented from acting merely because of his earlier decision not to hold an inquest. 'Pink Form A' is an administrative convenience for the registrar of deaths, and not a substitute for a coronial inquiry.'
>
> 12. *Halsbury's Laws of England*, 4th ed reissue, vol 9(2) (1998), para 948 reads:
>
> 'Where a coroner has ordered a post-mortem examination and decided that an inquest is unnecessary, the issue of the appropriate certificate to the registrar of deaths does not constitute an inquest; and the Attorney General may thus refuse a coroner's request for a fiat to apply to the court for an order to hold an inquest on the ground that, as no inquest had been held, the coroner is not functus officio.'
>
> 13. It is Mr Hough's submission on behalf of the coroner, founded to some extent on para 18-06, p.326, of *Jervis*, that the section 19 procedure where it leads to a decision that an inquest is unnecessary and results therefore in the coroner's certificate to the registrar of deaths, takes the place of an inquest. Mr Hough argues that: 'Like an inquest, this procedure is based upon a medical investigation and a coronial decision. Like an inquest, it results in the death being registered on the basis of an ascertained and certified cause.'
>
> 14. I would reject this argument. I cannot accept that the section 19 procedure takes the place of an inquest. No doubt the registration of the death on the basis of an ascertained and certified cause following a statutorily bespoken post mortem examination provides a firmer foundation for the decision not to hold an inquest than a mere decision to that effect taken under section 8. It does not, however, follow that in the former case the coroner is functus officio when in the latter he plainly is not. Nor to my mind does this conclusion in any way undermine the obvious value of the section 19 procedure which in many cases will continue to eliminate the need for an inquest. In short, I prefer the view expressed by Dr Burton as the editor of *Halsbury's Laws* to that expressed in *Jervis*."

24. Mr Bunting submitted that *Terry* is to be distinguished here because no investigatory duty had been triggered in that case, whereas here the duty had been triggered but had been suspended pending the outcome of the criminal proceedings, and had not resumed. It was argued that the situation was more akin to a completed inquest than was the situation in *Terry*.

25. Miss Hewitt, in her note on the jurisdictional question, acknowledged that the court could take a view of the present facts similar to that taken by the Court of Appeal in

Terry. But, she argued that, in contrast to cases where Form A or Form B had been issued, no inquest is opened. Here the coroner did undertake an inquest process, albeit truncated; the inquest was opened, but it was decided that there was no sufficient reason to resume it. The decision must be taken to have implied that all the statutory questions under section 5 of the Act had been answered and were included in the Form 121 certificate issued to the Registrar. Further, the decision must have included a decision by the coroner that he had no power to resume within the meaning of paragraph 8(1) of Schedule 1 to the Act.

26. Mr Bunting also referred us to the decision of this court in *Fraser v HM Coroner for North West Wales* [2010] EWHC 1165 (Admin) in which the procedural circumstances were precisely those to be found in this case. There had been criminal proceedings arising out of the deceased's death. The inquest had been suspended and not resumed. An application for a new inquest under section 13(1)(b) was brought by the deceased's daughter. (Mr Hough of counsel, who had appeared for the coroner in *Terry*, also appeared for the coroner in *Fraser*.) In giving the lead judgment (with which Pill LJ agreed), Rafferty J (as she then was) said, "It is not in issue that the only mechanism for achieving this [i.e. modifying the entry in the Register in the manner sought by the applicant] is a new inquest." The point now before us, therefore, was not taken. Mr Bunting argued that tacitly no one considered that there was any objection to jurisdiction.

27. In contrast to the *Fraser* case we were taken to the decision of Silber J in *R (Medihani) v HM Coroner for Inner South District of Greater London* [2012] EWHC 1104 (Admin). There, following criminal proceedings, on 3 June 2009 the coroner was informed of the result of those proceedings and decided not to resume his inquest. As in the present case, following a report by the Second Interested Party to our proceedings, a request was made to the coroner to reconsider the decision and to resume the inquest. The coroner refused to do so, not on the basis that she was *functus officio*, but "on the merits". The decision was challenged by judicial review. It was not suggested that the only mode of challenge was under section 13. (Mr Hough of counsel again appeared for the coroner.)

28. As counsel recognised, none of these cases decide the issue that now arises and I find nothing in them that displaces my view taken upon the words of the statutes and the scheme of them which I have sought to explain above. Further, I find my thinking very similar to the views expressed by Simon Brown LJ in *Terry*. It does not seem to me that the procedure that follows the non-resumption of an investigation, by the provision of a Form certifying the result of criminal proceedings, replaces an inquest.[3] No doubt the finding in the criminal court provides a basis of an ascertained and certified cause of death and provides a still firmer foundation for not continuing an investigation than the certification at an earlier stage following a post-mortem. However, I do not see that this should be seen as a substitute for a completed

[3] As Mr Bunting notes in his written points on this issue the 2009 Act has not reproduced anything similar to the former section 16(5) of the 1988 Act which provided: "Where a coroner does not resume and inquest which he has adjourned in compliance with subsection (1) above, he shall (without prejudice to subsection (4) above) send to the registrar of deaths a certificate under his hand stating the result of the relevant criminal proceedings". Mr Bunting notes, however, the continuing practice of providing to the Registrar a certificate in Form 121.

investigation under the 2009 Act, particularly now that the potential purpose of an investigation is expanded by section 5(2) of the Act, being the precise provision upon which this applicant relies in seeking (in one way or another) the reopening of the case.

29. In my judgment, therefore, for the reasons given, I would find that this is not a case in which either an inquest or an investigation has been "held" within the meaning of section 13(1)(b) of the 1988 Act, because neither process has been completed. If my Lord agrees, then we are unable to entertain the present application and it must be dismissed. It follows, however, from our decision that it would be open to the applicant to invite the coroner to reconsider his decision.

30. Given that the applicant may well wish to re-approach the coroner for a fresh decision, for my part, I do not think that it would be right for us to express any view as to what such a decision ought to be. For that reason, for my part, I do not consider that we should embark upon deciding whether the section 13 criteria would have been satisfied if the court did have jurisdiction to entertain the application. Any comments that we did make might influence the coroner's decision making. We would not wish that to happen.

His Honour Judge Thornton QC:

31. I agree. This application must therefore be dismissed for the reasons given by McCombe LJ.

32. In my judgment, the addition of the words "or an investigation", by amendment to section 13(1)(b) of the Coroners Act 1988, does not, nor was intended by Parliament to, alter the effect of the unamended provision. It merely reflects the different use of language in the two Acts, namely "inquest" in the 1988 Act and "investigation" in the Coroners and Justice Act 2009 which by virtue of section 6 must include an inquest. Both words remain in the amended provision so as to allow the High Court to consider "inquests" completed before 25 July 2013 and "investigations" (including inquests) completed on and after that date, when the amendment came into force.

33. In short, therefore, an inquest or an investigation has not been "held" for the purposes of section 13(1)(b) until an inquest has been conducted and completed. When that happens the coroner becomes *functus officio* in respect of inquiring into the death (although the coroner may still exercise other powers such as writing a report to prevent future deaths, under paragraph 7, Schedule 5 to the 2009 Act).

34. In the case of an investigation which has been discontinued under section 4 of the 2009 Act, the coroner "may not hold an inquest into the death" (section 4(3)(a)). Therefore no completed inquest or investigation will have been "held" for the purposes of section 13(1)(b) of the 1988 Act (as amended). Nevertheless, the coroner is not powerless to act further where appropriate. Section 4(3) of the 2009 Act provides that section 4(3)(a) "does not prevent a fresh investigation" from being conducted.

35. In this case no inquest was held, therefore the application must fail. It follows that the coroner was not *functus officio* when he suspended the investigation pending criminal

proceedings and decided not to resume the investigation following the outcome of those proceedings.

36. A coroner is not *functus officio* in those circumstances, even though an investigation has been commenced under section 1 of the 2009 Act, because the investigation is not complete; no inquest has been held. Nor is a coroner *functus officio* (where an investigation has not been commenced) when the coroner has notified the local registrar of births and deaths either in Form 100A (no post-mortem examination) or Form 100 B (after a post-mortem examination) that there will be no investigation (and therefore no inquest).

37. In all cases, where the coroner is not *functus officio*, the coroner may revisit the earlier decision not to proceed further. In this case, where the coroner decided not to resume the investigation, he will have to resume the investigation ("must") if he "thinks that there is sufficient reason for resuming it". If he does not so think, he will not have to. That will be a matter for him, not for us, should he be invited to reconsider his decision not to resume.