JUDICIARY OF ENGLAND AND WALES

IN THE CROWN COURT AT PRESTON

THE QUEEN V GRAHAM MACKRELL

Sentencing remarks of Sir Peter Openshaw DL

1. Last month, at the end of a ten-week trial, the jury failed to reach a verdict on Count 1, which charged David Duckenfield with manslaughter of the 96 victims who died in the Hillsborough disaster. The prosecution now seek a re-trial of that charge. I remind the press, and indeed all users of social media, that there are reporting restrictions in place to prevent publication of anything that might prejudice the viability or fairness of that proposed re-trial. These sentencing remarks may however be reported in full.

2. Following a defence submission, the prosecution accepted that there was no case for the defendant, Graham Mackrell, to answer on count 2, and he was therefore was acquitted upon that charge but he was convicted count 3 of an offence contrary to section 7 of the Health and Safety at Work Act 1974, the particulars being that he 'failed to take reasonable care, as the Safety Officer, in respect of the arrangements for admission to the Hillsborough Stadium and particularly in respect of turnstiles

being of such numbers as to admit at a rate whereby no unduly large crowds would be waiting for admission'. He now falls to be sentenced for that offence.

3. If committed today the offence would carry a maximum prison sentence of 2 years, but the defendant must be sentenced according to the sentences available in 1989, when the offence was committed. Then, the only sentence available was a fine. Therefore, the sentence that I can pass today is limited by law to a fine.

4. In accordance with section 164 of the Criminal Justice At 2003, whilst the fine must reflect the seriousness of the offence, I must also take into account the financial circumstances of the offender (which are essentially modest, as I will later set out).

5. The definitive guideline of the Sentencing Council for health and safety offences strictly only applies to offences committed after 6 April 2010; therefore, I am not legally bound by those guidelines. However, as both counsel submit, the law requires me to 'have regard' those guidelines, as I must – and will - do. Therefore, my sentencing options are very limited.

6. Before turning to apply the guidelines, I must set out the relevant facts. I start with the background. Mr Mackrell is an accountant by training. In December 1986, then aged 39, he was appointed secretary of Sheffield Wednesday Football Club. He had previously been secretary at the football clubs at Bournemouth and then Luton.

7. The company then trading as Sheffield Wednesday Football Club has long ceased to exist; it has no officers and no assets; consequently, criminal proceedings could not be taken against the club.

8. Shortly after his appointment as club secretary, Mr Mackrell was formally appointed to be the club's Safety Officer. 30 years ago, the role of Safety Officer at football clubs was not defined, indeed it was scarcely even recognised; no other club in the country then had a dedicated professional Safety Officer. The Green Guide, which gives guidance upon the design and management of sports grounds, then said nothing about the duties of the Safety Officer. Before the disaster at Hillsborough there was no national training for such a role; there was no professional organisation for Safety

Officers to identify and to spread best practice; there was, as Mr Beer QC put it on his behalf in the trial, no industry standard to guide him.

9. Mr Mackrell has no previous convictions but over and above that during the trial, we heard a good deal of evidence of his character, reputation and professional standing. All the senior police officers who had previously had dealings with him at Hillsborough, held him in the highest regard, variously describing him as being competent, cooperative, professional, reliable, conscientious and diligent. The Football Association also held him in high regard. Mr Beer read many testimonials from persons holding responsible positions within the world of football commending him to like effect. I reviewed this evidence in detail in the summing up, I need not repeat it here.

10. I should make clear that I have not overlooked evidence from one witness (whom I need not here name) to the effect that Mr Mackrell had what he called a 'flippant attitude' to health and safety matters. For reasons, which I detailed in the summing up, I do not think that this evidence withstood challenge in cross-examination and I think it only right and fair to sentence Mr Mackrell by disregarding this particular fragment of evidence, as I do.

11. Before I come to the 1989 FA Cup semi-final, I should refer to the semi-finals in 1987 and 1988, both of which were played at Hillsborough. During the trial, we heard a good deal of compelling evidence from the police, from the local authority (Sheffield City Council) who issued the Safety Certificate for Hillsborough, they considered that both those matches to have been conducted entirely satisfactorily by the club in general and by Mr Mackrell in particular. Often in health and safety cases there is a long history of non-co-operation with the relevant authorities and sometimes even of ignoring warnings or turning a blind eye to obvious faults and failings but here the evidence points very emphatically to the defendant being thought to be highly competent and conscientious in the discharge of his duties and in arranging the matches played at the stadium. This, I consider to be relevant when I come later to consider the mitigating circumstances.

12. In both the semi-finals of 1988 and 1989, so as to separate them from the rival Nottingham Forest supporters, the Liverpool supporters were allocated to the Leppings Lane end of the Stadium, where there were 23 turnstiles. The case against Mr Mackrell was based upon changes which he made between 1988 and 1989 to the allocation of those turnstiles.

13. In 1988, the 14,565 spectators (being a total of 4,465 spectators for the west stand and 10,100 spectators with tickets for the west and north-west terraces) had to pass through 13 turnstiles, at an average rate of 1,120 spectators per turnstile.

14. The Green Guide (at paragraph 47) advised that it was unlikely that more than 750 spectators could pass through each turnstile in an hour. Given that some spectators arrived earlier than one hour before the game was due to start, in 1988 the crowd did manage to get in before the kick-off. There was some congestion outside the grounds but nothing that was out of the ordinary, let alone dangerous.

15. But for the semi-final the next year, in 1989, the defendant re-arranged the turnstile allocation, so that the 10,100 spectators, allocated to the west and north-west terraces, had to pass through just seven turnstiles (designated A – G); that is to say an average of 1,443 spectators had to pass through each turnstile. The turnstiles opened at 12 noon, fully three hours before kick-off. Although some spectators, anxious to secure the best vantage points directly behind the goal posts arrived early, the evidence plainly established that many spectators arrived much later.

16. If the defendant had properly considered the consequences of this change of turnstile allocation which he made in 1989, he should have realised that there was an obvious risk that the so many spectators simply could not pass through just seven turnstiles in time before the kick-off; that being so, he should have realised that would cause a crowd to build up outside the turnstiles and he should have realised that that might present a risk of harm to those spectators waiting outside the grounds to pass through the turnstiles.

17. That is exactly what happened. By half past 2 at the latest, the turnstiles could not deal with so many spectators. The crowd waiting outside to get in became congested, and then compacted and eventually compressed, as the CCTV footage plainly shows. I need not replay any of this now, because we saw it many times during the course of the trial but if it becomes necessary for my sentence to be considered elsewhere, I think that a suitable short compilation tape should be prepared: the point can readily be made in a clip just, say, 15 or 20 minutes long.

18. A good general account of what happened was given by Inspector Purdy, as he was at the time. He was on duty outside the ground. At first, he said, all was well. By 2 o'clock, it was busy, but the police and the turnstiles were coping. But from about 2.30 onwards; he said it became significantly busier. Things became progressively more difficult, as there was a dramatic increase in the numbers of people who arrived. The turnstiles were overwhelmed by the numbers of people who arrived, so that people were trapped at the turnstiles, which could not turn fast enough.

19. At 14.39, which can be timed accurately from the CCTV, a young lad, suffering from the effects of the crushing, was passed overhead by the crowd and Mr Purdy, who had climbed up onto some railings, pulled him to safety, and others took him away through Gate C. He realised then that the police were losing control. Crushing at the turnstiles increased; people were screaming for help. Some of those at the front were trying to push back against the pressure, but with little effect. He thought that the situation outside the turnstiles was then life threatening; people were at risk of serious injury or death. I have no doubt that he was right.

20. During the trial evidence was given by a number of spectators, who were caught in the press. They variously described the crowd as a seething mass of people being compressed ever tighter and tighter. At about 10 to 3, some young men sufficiently agile to do so, climbed onto the roof of the turnstile shed to get away from the developing crush.

21. Inspector Purdy realised that something had to be done to deal with the emergency presented by the crushing outside the ground, and so he urgently asked that the exit

gates be opened to release the pressure. That was eventually done, the crowds surged through the open gates and the pressure outside the turnstiles was eased and, in fact, no serious injuries were caused outside the turnstiles. It is not necessary, or indeed appropriate, as I pass sentence on Mr Mackrell to go further than that in my findings of fact, which a jury may again have to consider if there is to be a re-trial of count 1.

22. I turn then to the relevant guideline. I am required first to identify the culpability of the defendant. Both the prosecution and the defence contend that the appropriate category of culpability is 'medium', this being - to quote the guidelines – an 'offence committed through act or omission which a person exercising reasonable care would not commit'. I accept that submission, which is plainly correct.

23. Mr Beer QC, on behalf of Mr Mackrell, submits that within that broad bracket there is a range of culpability. He reminds me that the evidence established that most, if not all, the very experienced senior police officers then in charge of the match arrangements (which did not include Mr Duckenfield who had not then been appointed) knew of these changed arrangements at the turnstiles and raised no objection; plainly they did not foresee the risks either. He suggests that this reduces Mr Mackrell's blame. But the principle responsibility for devising a system to ensure that the spectators entered the stadium in safety rested with the club and with its officers, in particular this defendant; I am not persuaded that the fact that he told the police of the new turnstile arrangements reduces his culpability.

24. I move on to consider the risk of harm created by changing the allocation of turnstiles. Again, I accept the submissions to the same effect made separately by the prosecution and the defendants that there was a low likelihood that spectators might sustain death or serious injury by being crushed outside the gates (Level A harm as defined in the table set out in the Guidelines); that there was a medium likelihood of the harm set out at level B but a high likelihood of other harm, as set out at level C. Each of these three combinations of risk and harm, gives rise to 'Harm Category 3', as defined in the guidelines.

25. I move onto the next step. No one was in fact injured by crushing outside the grounds. As the prosecution put it, and as I find and emphasise, the defendant's offence was at least one of the direct causes of the crush at the turnstiles outside the grounds but it was not a direct cause of the crush on the terraces inside the grounds, that resulted in the death of the 96 spectators and injury to many more, for which the crush outside the grounds did no more than set the scene. I stress that the defendant does not therefore fall to be sentenced for causing the death of any of the 96 victims; that is not an element of the offence with which he was convicted.

26. Having said that, I accept that any one of the many thousands of spectators who arrived outside the ground after, say, 2.30, intending to pass through any one of the 23 turnstiles in use at the Leppings Lane end, was indeed exposed to some risk of injury. This, I think, requires moving up to 'Harm Category 2', as defined in the guidelines. That, coupled with 'medium culpability', would give a starting point of a fine in 'band F', which - as I understand it - Mr Beer effectively concedes. The guidelines lay down that a fine in Band F, has a starting point of 6 times the offender's relevant weekly income and a range of between 5 and 7 times an offender's weekly income.

27. The defendant has filed a detailed statement of means, which the prosecution has not challenged. He now works as the administrator of the Football League Managers Association; he earns weekly take-home pay of £700, to which should be added his state and private pension of £670 a week, to give a total relevant weekly income of £1,370. A Band F fine of between 5 and 7 times his weekly income, would therefore lie somewhere between £6,800 and £9,500, with a median figure in the region of £8,000. I should perhaps also point out that he has a realisable capital of £5,000, which was again accepted by the prosecution.

28. The guidelines list a number of aggravating factors, which Mr Beer went through but - quite rightly, as it seems to me - the prosecution does not contend that any of the factors there set out apply to the circumstances of this case, neither do they put forward any other aggravating factor.

29. Mr Beer argues that there are however a number of mitigating circumstances which I will set out. I have already referred to the defendant's age and good character and indeed to his good health and safety record.

30. He does not have the mitigation of pleading guilty but Mr Mackrell has always cooperated with the various investigations into the disaster. He gave evidence before Lord Justice Taylor's Inquiry. He gave evidence at the first inquest. He gave extensive evidence to the second inquest held before Sir John Goldring. He did not give evidence at this trial nor did he answer questions to the police, but he gave a prepared statement stressing that he had made his position very clear right from the very beginning and he could add nothing to what he had already said. Whilst this can hardly be said – on its own - to amount to mitigation, it is relevant when considering the next point, which deals with the delay in bringing the proceedings.

31. All this happened fully 30 years ago, during which time – as I have just explained - he has done nothing to conceal his involvement in what happened, which he has always admitted. Therefore the delay in this case is to be distinguished from the delay in from many other cases which are brought to the courts years after the event, where the defendant has kept silent and may even have encouraged or procured the silence of others, sometimes even by threats. Indeed, the charge of which he was convicted was only quite recently identified by the prosecution. So here, I think that the passage of time is a substantial point in mitigation.

32. Furthermore, as he has made clear to me in the letter that he has written, throughout that time he has been exposed to a good deal of public vituperation. Some of the comments on social media have been grossly offensive and ill-informed. He does not suggest that his distress and anxiety is to be compared with those who lost family and friends, but I do not doubt that the campaign of vilification has caused him, and his family, considerable anguish. I accept therefore that the disaster and its aftermath has had a serious and lasting effect upon him and his family and I also accept that is not irrelevant when I come to fix the level of the fine.

33. The guidelines then require me to stand back and review the starting point. In all the circumstances as I have found them to be, and applying the guidelines, as best I can, the defendant will be fined £6,500. I must fix sentence in default of payment. I will invite submissions upon the time to pay.

34. I also order him to pay £5,000 towards the cost of the prosecution.

35. I will arrange for these sentencing remarks to be sent to the Judicial Communications Office and to be uploaded onto the DCS to be available to interested parties.