



Neutral Citation Number: [2023] EWHC 62 (Admin)

Case No: CO/4070/2021

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
DIVISIONAL COURT

Manchester Civil Justice Centre
1, Bridge Street West, Manchester M60 9DJ

Date: 18/01/2023

Before :

Lord Justice Dingemans
Vice-President of the King's Bench Division
Mr Justice Fordham
His Honour Judge Teague KC
Chief Coroner

Between :

REX on the application of WILLIAM LEESON	<u>Claimant</u>
- and -	
HIS MAJESTY'S AREA CORONER FOR	<u>Defendant</u>
MANCHESTER SOUTH	
- and -	
Donald McPherson	<u>1st Interested Party</u>
Scottish Widows	<u>2nd Interested Party</u>
Country Wide Assured	<u>3rd Interested Party</u>
Vitality Life Insurance	<u>4th Interested Party</u>
LV	<u>5th Interested Party</u>
Aviva	<u>6th Interested Party</u>
Zurich	<u>7th Interested Party</u>
AIG	<u>8th Interested Party</u>
Aegon	<u>9th Interested Party</u>
Royal London	<u>10th Interested Party</u>

Sophie Cartwright KC (instructed by **Holborn Adams Solicitors**) for the **Claimant**
The Defendant did not appear and was not represented
Louis Browne KC (instructed by **Draycott Browne Limited**) for the **First Interested Party**

The other interested parties did not participate in the hearing

Hearing date: 20 December 2022

Approved Judgment

This judgment was handed down remotely at 13.00 hrs on 18.1.23 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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LORD JUSTICE DINGEMANS

Lord Justice Dingemans :

Introduction and issues

1. This is the hearing of an application for judicial review to quash a ruling about the scope of an inquest made on 18 August 2021 and sent to the parties on 24 August 2021 by His Majesty's Area Coroner for Manchester South ("the Coroner") following a Pre-Inquest Review ("PIR") on 9 August 2021. The inquest is into the death of Paula Leeson ("Ms Leeson"). Ms Leeson was aged 47 years at the date of her death on 6 June 2017. The application for judicial review is made by the claimant, Ms Leeson's father.
2. Ms Leeson had drowned in an indoor swimming pool in remote holiday accommodation in Denmark where she had holidayed with her husband, the first interested party, Donald McPherson, after arriving in Denmark on 3 June 2017. Mr McPherson had married Ms Leeson in 2014.
3. The medical evidence showed that Ms Leeson had drowned, but also showed blunt force injuries on Ms Leeson's body. These injuries were consistent with being caused either by unlawful force being applied to Ms Leeson to cause her to drown, or by attempts at rescue and resuscitation made by Mr McPherson after he had found Ms Leeson in the swimming pool.
4. Mr McPherson was prosecuted for the murder of Ms Leeson. Mr McPherson was acquitted after Mr Justice Goose upheld a submission of no case to answer on 18 March 2021. The second to tenth interested parties are insurers who had provided life insurance policies to Mr McPherson in respect of the life of Ms Leeson.
5. In the criminal proceedings, the case for the prosecution was that Mr McPherson was the beneficiary of excessive life and travel insurance policies which he had taken out on the life of Ms Leeson in the sum of about £3.5 million. Although the medical evidence was consistent either with accident or the unlawful killing of Ms Leeson, the fact of the excessive life insurance policies, and other circumstantial evidence, meant that the jury could be sure that Ms Leeson had been murdered. The case for Mr McPherson, as appeared from his interview with Danish police, was that Ms Leeson had drowned accidentally while he had been asleep in the bedroom resting before they started their journey back home, and that the injuries on Ms Leeson's body were caused by his attempts to resuscitate her.
6. The prosecution case concluded after 12 days of trial. A submission of no case to answer was made on behalf of Mr McPherson. The submission was upheld on 17 March 2021 by Goose J. He said: "There are two available possibilities on the evidence: - firstly, that the defendant physically restrained the deceased under water or otherwise overcame her in a struggle or pushed her to cause her to drown; secondly, that the deceased drowned by an accident, whether by a trip, fall or a faint, causing her to fall into the water to drown. Whilst the first of those alternatives is clearly more likely, that does not mean that a jury, on the face of the pathological evidence alone, could be sure of it."
7. The Coroner resumed the inquest into Ms Leeson's death. The Coroner then considered the scope of the inquest and sent provisional views about this to the Leeson family and

Mr McPherson. Submissions were made about the scope of the inquest. The material part of the ruling given by the Coroner was:

“In terms of temporal scope ... the inquest should consider evidence as to Ms Leeson’s general health and relevant medical history, but will consider events from her arrival on holiday in Denmark until the day of her death, with particular emphasis placed on that day itself.’

8. The practical effect of the Coroner’s ruling is that evidence of the taking out of life insurance policies by Mr McPherson and much of the other circumstantial evidence relied on in the criminal proceedings will not be heard. This is because most of those relevant events, including matters relating to the insurance policies, pre-dated Ms Leeson’s arrival on holiday in Denmark or post-dated her death.
9. The case on behalf of Mr Leeson is that the decision of the Coroner to restrict the scope of the inquest to the temporal period of 3 to 6 June 2017 was irrational and unlawful. This is because its effect was to exclude much of the circumstantial evidence and the evidence about Mr McPherson taking out the excessive insurance policies. This means that evidence critical to the determination of how Ms Leeson died (whether accident or unlawful killing) would be left out of account, thereby frustrating the statutory purpose of the Coroners and Justice Act 2009 (“CJA 2009”). In effect the Coroner would have to return an open conclusion and the fundamental purpose of the Coroner’s inquest, to establish the truth of how Ms Leeson died, will not be performed. Although there were a number of grounds set out in the claim form Ms Cartwright KC accepted that they were essentially making the points set out above. The claimant’s case was also supported by written submissions from the insurer interested parties.
10. The case on behalf of Mr McPherson is that the coroner exercised his discretion properly and lawfully. Any wider and broader inquiry would be disproportionate and unlawful. The Coroner has sufficient information to determine whether to return a conclusion of unlawful killing or accident. No examination of the insurance policies would assist the Coroner in determining the circumstances of Ms Leeson’s death or answering how Ms Leeson came to her death. The Coroner has a wide discretion as to how to conduct the inquest and the Court had no proper basis to review his ruling as to scope.
11. I am very grateful to Ms Cartwright KC and Mr Browne KC, and their respective legal teams, for their helpful written and oral submissions.

Respective cases in the criminal proceedings

12. It is necessary to set out some detail about the evidence in the Crown Court to understand the effect of the Coroner’s ruling on the scope of the inquest. The circumstantial evidence relied on by the prosecution was summarised by Goose J. in paragraph 14 of his ruling on the submission of no case to answer. This evidence was relied on by the prosecution to show that the jury could be sure that this was not an accidental drowning. The evidence was: “a. The deceased did not complain to her family of feeling unwell whilst in Denmark, when she contacted them; she was very close to her family and would be expected to have told them. b. The defendant has repeatedly told lies about his background growing up in New Zealand; that he had been

brought up in foster care when he had lived with his birth family until the age of 19; also that he had lied about owning 5 properties in New Zealand in order to support greater life insurance cover. c. The disproportionate level of life insurance amounting to £3.5 million, compared with his own debts from property investment. d. Obtaining joint life insurance cover on his and the deceased's life for substantial amounts which the deceased appears to have been unaware of; she didn't mention it in the handwritten statements of her assets in the event of her death, all of which were intended for her son. e. The defendants repeated checking with the insurers that the joint life policies would pay out directly to the surviving life; the most recent of these was within two months of the trip to Denmark. f. Some life policies and the deceased's second Will, made in 2014, bore false witness signatures. Some of these, however, also bore the correct signature of the deceased. g. The defendant caused some insurance documents to be sent to another address he owned, apparently in an attempt to hide them from the deceased. h. In 2016, the year before the deceased's death, the defendant lied to his financial advisor as to the extent of his mortgage debts on property investments, in order to support further life insurance. i. By the time of the deceased's death, his personal financial position had deteriorated substantially. j. The defendant's repeated lies in life insurance and travel insurance forms when asked if he had other insurance for the same risks. k. In some of the trust documents for the life insurance on the deceased's life, the defendant forged witness signatures; he did not forge the signature of the deceased, however. l. The defendant complained of a shoulder injury when he said that he was unable to lift the deceased out of the pool, but there was evidence that on other occasions, before the trip to Denmark, he appeared to have no injury and had full use of his shoulder. m. In the hours before the emergency services were called, the personal devices of the defendant and the deceased showed periods of movement by both, possibly inconsistent with the defendant's account to the police. n. In the days after the deceased's death, the defendant transferred approximately £20,000 from their joint bank account into the defendant's other, overdrawn accounts and unpaid credit card debts. Against this particular point, however, is the fact that he had paid over £70,000 into that account after the sale of one of his investment properties. o. Evidence that during this time the defendant deleted from the deceased's iPhone some call, SMS, Chat and image records. p. The defendant's use of an alias email address after the deceased's death, in which he discussed his plans for expensive travel once he had sold some properties. q. The defendant's failure to provide the passwords necessary to open an ACER laptop seized from his home."

13. Goose J. also summarised the contents of Mr McPherson's interview by the police in Denmark. Mr McPherson told the police that he had been in bed for most of the day when she died. He could not remember when he awoke but that they had spent time together in the bedroom. He could not remember precisely what they did, but that he had put their suitcases in the hire car, ready for their departure later in the day. He had been tired and had returned to the bedroom where he slept further, before having a swim. Both the defendant and the deceased rested further. The deceased had complained of stomach ache and toothache and she had been sick, using a toilet next to the indoor swimming pool. She returned to the bedroom and they both slept. When he awoke, the defendant saw that the deceased was no longer in the bedroom. He went to look for her, finding her face down in the swimming pool. She was fully clothed and not moving. The defendant jumped into the pool and attempted to lift her out of the pool, which was 1.2 metres deep. He was unable to do so because, he said, she was taller and heavier than him and he had pain from a previous injury to his right shoulder.

Mr McPherson also said that he had left the house briefly, to seek help from two neighbouring properties, but they were unoccupied. He returned and managed to pull the deceased out of the pool and then called the emergency services. Following the advice he was given on the telephone, he attempted CPR until the paramedics arrived. They took over attempts to resuscitate until she was declared to have died.

The Coroner's ruling as to the scope of the inquest

14. The Coroner set out the history of the start of the inquest, the police investigation, the adjournment of the inquest, the decision to resume the inquest and the decision to have a PIR.
15. The Coroner related that he had set out a provisional agenda to the effect that the temporal scope of the inquest would be from the time of Ms Leeson's arrival on holiday in Denmark on 3 June 2017. The Agenda went on to set out a provisional witness list of some 18 potential witnesses, ranging from those who could give evidence as to Ms Leeson's background health, Mr McPherson, family members who had contact with Ms Leeson whilst she was in Denmark, together with the Danish paramedics who sought to assist her. The provisional witness list also proposed adducing evidence from a number of pathologists, a Crime Scene Surveyor and the Senior Investigating Officer from Greater Manchester Police.
16. The Coroner then noted relevant statutory provisions and principles of law. The Coroner recorded that it was not the function of an inquest to have a trial of a person's responsibility for a murder, and that the historic function of investigating homicides and committing for trial those that a jury thought responsible had been abolished by section 56 of the Criminal Law Act 1977.
17. The Coroner recorded that a modern inquest was concerned with establishing certain facts relating to a death, with nothing more but nothing less. The Coroner acknowledged that the decision of the Supreme Court in *R(Maughan) v HM's Senior Coroner for Oxfordshire* [2020] UKSC 46; [2021] AC 454 was relevant, and that had been the reason he had resumed the inquest.
18. In paragraphs 53 to 57 of his ruling the Coroner recorded that he accepted the submissions made on behalf of Mr McPherson as to the scope of the inquest. He accepted that the central issues could be distilled down to an examination of how Ms Leeson came to be in the swimming pool on 6th June 2017, and how her death by drowning subsequently occurred.
19. The Coroner recorded the argument on behalf of the Leeson family that to properly discharge the functions of an inquest, the Coroner needed to examine matters which evidenced the motive for an unlawful killing of Ms Leeson and Mr McPherson's credibility. The Coroner noted that article 2 of the European Convention on Human Rights and Fundamental Freedoms ("ECHR") was not engaged, meaning that the Coroner could not make any direct findings of fact as to financial and other such matters. As to the argument that the financial matters needed to be carefully and fully examined so as to enable a proper conclusion to be drawn as to how, meaning by what means, Ms Leeson came by her death, the Coroner said "I do not accept that this proposition is correct. Whilst the wide range of financial and circumstantial matters considered in the course of the criminal trial were obviously relevant in the context of

a prosecution which sought to establish Mr McPherson's guilt as to a charge of murder, I am not persuaded that such matters go any significant way to assisting a Coroner or Jury in determining by what means Ms Leeson came by her death from drowning in a swimming pool by drowning on 6th June 2017".

20. The Coroner continued "In a criminal trial, issues of motive are inevitably highly relevant, where the prosecution is required to prove all the elements of the offence charged (including mens rea) to the requisite standard. In the context of a fact-finding inquiry as to by what means Ms Leeson came by her tragic death, exploration of such matters is unlikely in my view to result in direct additional evidence as to by what means Ms Leeson came by her death."
21. The Coroner then turned to the issue of whether the inquest should be held with a jury. The Coroner concluded that the inquest should be heard without a jury, in part because there were significant questions arising from the medical evidence, including as to the aetiology of various marks, and whether or not there may be any medical explanation connected with her drowning. There is no challenge to this part of the ruling.

The material statutory provisions

22. So far as is material section 5 of the CJA 2009 provides:

"5(1) The purpose of an investigation under this Part into a person's death is to ascertain – (a) who the deceased was; (b) how, when and where the deceased came by his or her death; (c) the particulars (if any) required by the 1953 Act to be registered concerning the death." (underlining added)
23. Section 10 of the CJA 2009 provides:

"10. (1) After hearing the evidence at an inquest into a death, the senior coroner (if there is no jury) or the jury (if there is one) must – (a) make a determination as to the questions mentioned in section 5(1)(a) and (b) (read with section 5(2) where applicable), and (b) if particulars are required by the 1953 Act to be registered concerning the death, make a finding as to those particulars. (2) A determination under subsection (1)(a) may not be framed in such a way as to appear to determine any question of – (a) criminal liability on the part of a named person, or (b) civil liability."
24. Rule 34 of the Coroners (Inquests) Rules 2013 ("the Rules") provides that a Coroner must make a determination under section 10 using form 2, which is the record of inquest. This includes at paragraph 4: "Conclusion of the coroner ... as to the death. The short form conclusions include: "I accident or misadventure ... IV lawful/unlawful killing". The rule therefore gives effect to the statutory provisions set out in the CJA 2009 and means that the "how" Ms Leeson met her death might be answered as either "accident" or "unlawful killing".

Relevant principles of law

25. There was no material dispute between the claimant and first interested party as to the relevant principles of law relating to this claim. First the Coroners Court is a creature of statute. The relevant statute is now the CJA 2009.
26. Secondly an inquest is not a trial. It is an inquisitorial process designed to get at the truth of how a deceased has died.
27. Thirdly, following the judgment of the majority of the Supreme Court in *R(Maughan) v HM's Senior Coroner for Oxfordshire* [2020] UKSC 46; [2021] AC 454, a conclusion of unlawful killing will be determined on the civil standard of the balance of probabilities, which is the same standard which applies to all other conclusions of an inquest. The previous approach, whereby a conclusion of suicide or unlawful killing could only be returned if the Coroner (or jury) were sure of that conclusion, was held to be wrong. Evidence of motive may assist in determining whether a conclusion of unlawful killing should be returned, see *R(Secretary of State for Justice) v HM Deputy Coroner for the Eastern District of West Yorkshire* [2012] EWHC 1634 (Admin); [2012] Inquest LR 76 at paragraph 28.
28. Fourthly, a Coroner must ensure that relevant facts are the subject of public scrutiny, particularly if there is evidence of foul play. This means that an inquest is not restricted to the last link in the chain of causation. However, the determination of the scope of an inquest is a matter for the discretion of the Coroner, see *R v North Humberside Coroner ex parte Jamieson* [1995] QB 1 at 26, *R(Sreedharan) v HM Coroner for the County of Greater Manchester* [2013] EWCA Civ 181; [2013] Med LR 89 at paragraph 18, and *Coroner for the Birmingham Inquests v Hambleton and others* [2018] EWCA Civ 2081; [2019] 1 WLR 3417 at 32, and 46-48.
29. Fifthly, there is a high hurdle in showing that a Coroner's decision as to scope is either unlawful or irrational, *R(Sreedharan)* at paragraph 48.

Impermissible restriction as to scope

30. In my judgment, the Coroner's ruling as to the temporal scope of the inquest into the death of Ms Leeson was not a lawful one. As appears above the Coroner has a statutory duty to carry out an investigation to discover the truth about how Ms Leeson came to die. It is apparent that the Coroner had this obligation in mind because he resumed the inquest after Mr McPherson's acquittal at the conclusion of the criminal proceedings. It is also right to record that it is for the Coroner to decide what evidence is to be adduced at the inquest. However the discretion about which evidence to call must be exercised on a rational basis.
31. In my judgment it was not rational to limit the evidence to be called at the inquest to the period from when Ms Leeson arrived in Denmark until the day of her death. This is because the ruling excluded evidence about matters which had occurred before Ms Leeson's arrival in Denmark, and evidence about matters which had occurred after her death, which was relevant to the issue of whether Ms Leeson had suffered an accidental death or had been unlawfully killed. The evidence was summarised by Goose J. in his ruling on the submission of no case to answer, and in particular included the evidence as to dealings with insurance policies which pre-dated Ms Leeson's arrival in Denmark.

32. This evidence of the insurance policies was relevant to the statutory issue of “how ... the deceased came by ... her death”, see section 5(1)(b) of the CJA 2009. This is because the taking out of the insurance policies on the death of Ms Leeson might (but whether it does will be for the Coroner sitting without a jury) make a conclusion of unlawful killing and not accidental death more likely in circumstances where it seems that the medical evidence might not (but again this will be for the Coroner) enable a determination to be made between accidental death or unlawful killing. This is because whether the taking out of the insurance policies provided a motive or reason for the unlawful killing of Ms Leeson can be appropriately considered when the Coroner decides the statutory question of “how” Ms Leeson came by her death. It follows that in my judgment the Coroner took an impermissibly narrow approach to the financial and circumstantial matters considered in the context of the criminal trial. The Coroner was right to note that those matters were “obviously relevant in the context of a prosecution” for murder, but they were also “obviously relevant” to the issue of whether unlawful killing or accidental death is a more likely conclusion for this inquest given the apparent state of the medical evidence.
33. I agree that Mr Browne KC was right to say that the effect of the Coroner’s ruling made on 18 August 2021 did not exclude the possibility of a determination of either unlawful killing or accidental death, but the ruling did exclude relevant evidence about whether a conclusion of unlawful killing might be more likely than a conclusion of accidental death, for no proper reason. It is established that any determination at the inquest may not be framed in such a way as to appear to determine any question of criminal liability on the part of any named person, see section 10(2) of the CJA 2009, but this does not mean that the Coroner should exclude evidence relevant to the statutory question to be determined at the inquest.
34. Therefore in my judgment the ruling of the Coroner made on 18 August 2021 as to the scope of the inquest should be quashed. It was common ground at the hearing that it would be appropriate to remit the matter to the Coroner to revisit the ruling as to the scope of the inquest in the light of the judgments given by this Court.
35. It will be for the Coroner to determine at the remitted hearing how the relevant evidence summarised by Goose J. in his ruling on the submission of no case to answer might be adduced in a proportionate manner. Reference was made in the course of the hearing on 20 December 2022 to rule 23 of the Rules. Rule 23 provides for the admission of written evidence, and might enable evidence about the insurance policies to be given in a proportionate manner. This is because there does not appear to be much dispute about the underlying facts about the insurance policies, and the relevant dispute is the extent to which those underlying facts make a conclusion of unlawful killing more likely than a conclusion of accidental death. Goose J. summarised evidence already given in the Crown Court trial, so transcripts and documentary evidence will be available. Such an approach would mean that there is no obligation on the Coroner to adduce “rooms full of evidence” to which reference was made in the submissions.

Conclusion

36. For the detailed reasons set out above, I would quash the Coroner’s ruling as to the scope of the inquest made on 18 August 2021 and remit the matter to be determined again by the Coroner in accordance with the judgments of this Court.

Mr Justice Fordham

37. I agree.

His Honour Judge Teague KC (Chief Coroner)

38. I also agree.