JUDICIARY OF ENGLAND AND WALES

**Secretary of State for Foreign & Commonwealth Affairs**

**v**

**Assistant Deputy Coroner for Inner North London**

**High Court (Administrative Court)**

**27 November 2013**

**SUMMARY TO ASSIST THE MEDIA**

**The High Court (Lord Justice Goldring, Lord Justice Treacy and Mr Justice Mitting) has today quashed part of a PII ruling by the Coroner in the Alexander Litvinenko Inquest. In light of the Court's decision it did not have to consider an application by the Coroner for a witness summons requiring the Secretary of State to produce documents.**

## Introduction

There were two issues before the court. An application by the Secretary of State for judicial review and an application by the Coroner for a witness summons against the Secretary of State.

***The judicial review:***

"By a Certificate dated 7 February 2013 the Secretary of State for Foreign and Commonwealth Affairs claimed public interest immunity (PII) in respect of a number of documents selected by agreement between counsel to the Inquest and counsel acting on behalf of the Secretary of State as a representative sample in the possession and control of Her Majesty's Government (HMG) of relevance to the issues identified in the Provisional List of Issues to which the inquest of Alexander Litvinenko gives rise. As he set out in an open ruling of 17 May 2013, the Deputy Assistant Coroner (the Coroner) in part upheld the Secretary of State's PII claim, in part rejected it. The Secretary of State challenges that part of the Coroner's decision which rejected his claim for PII and his subsequent ruling regarding disclosure of the subject matter of the documents which are the subject of the Certificate." (para 1)

***The witness summons:***

"There was also before the court an application by the Coroner under CPR 34.4(1) by which the Coroner requires the Secretary of State to produce to him those documents that he has decided should be disclosed by means of a gist. Given our decision we did not have to consider that application." (para 4)

**The background**

This to the case before the Court is set out in paragraphs 8 – 17.

**The Coroner's open ruling on PII**

This is discussed in paragraphs 18 – 25.

**The application for judicial review**

This application is considered in paragraphs 26 - 53.

**Lord Justice Goldring sets out the grounds:**

**"Before us the argument concentrated on three closely connected grounds. It was submitted by the Secretary of State, first, that the Coroner failed to accord adequate respect to the assessment of the Secretary of State as to how the balance of the competing public interests should be struck; second, he failed properly to undertake the balancing exercise of the competing public interests by treating his desire to conduct what he considered to be a 'full and proper' inquest as a 'trump card' which overrode all other considerations and third, that he reached a decision on the merits of the claim which no reasonable coroner properly applying the correct legal principles to a decision of this nature, could have reached. A fourth submission which suggested that the Coroner mischaracterised the nature and extent of his duty in conducting the inquest and, as a result, accorded too much weight in the *Wiley* balance to objectives identified in the exercise of his discretion, was hardly pursued. Given our conclusions on the first three submissions, it was not necessary to deal with the fourth." (para 26)**

Lord Justice Goldring goes on to consider the authorities, the Secretary of State's submissions, counsel to the Inquest's submissions, and the submissions of the Properly Interested Persons.

**Conclusion**

In coming to his conclusion, Lord Justice Goldring explains the balancing exercise the Court had to undertake (paras 54 – 62) before considering the Coroner's decision (paras 64 – 69).

**Lord Justice Goldring concluded:**

**"The task which faced the Coroner was a very difficult one. There was the inherent difficulty of balancing two dissimilar interests. The argument as advanced to us by the Secretary of State was different from that advanced to the Coroner. …. Importantly, he was never asked at the time to re-consider the balancing exercise in the light of his subsequent PII rulings.**

**"The Coroner did not really explain the reasoning which drove him to decide that the need for "a full and proper inquiry" outweighed the real risk of damage to national security.** There is nothing to suggest he had in mind such observations as those of Lord Neuberger (see paragraph 135 above) to the effect that it would be very rare for a court, especially regarding such issues as national security, to question the view of the Secretary of State that disclosure would be contrary to the public interest. **While it is plain that the decision was one for the court, not the Secretary of State, I am**

**driven to the conclusion that the weight the Coroner gave to the views of the Secretary of State was insufficient and amounted to an error of law.**

"Moreover, there was the further problem that the Coroner did not re-consider his first decision in the light of his subsequent ones. (As I have said, he was never asked to). The outcome of the subsequent PII hearing, in which PII was upheld in respect of Russian State responsibility and preventability, with the consequent view of the Coroner as to whether justice could in any event be done, was relevant to the balancing exercise he initially carried out. In broad terms, given that due to his later rulings the Coroner was of the view that "a full and proper investigation" could not take place anyway, it did in my view become correspondingly more difficult to justify a real risk of damage to national security on the grounds of such an investigation.

"It was clear that the narrative of the inquest would be adversely affected by non-disclosure, although that could to some extent be ameliorated. Although this is not satisfactory, the essential issue is not whether or not the process of the inquest would be prejudiced by non-disclosure; plainly it would be. The question is whether that prejudice outweighs the real risk of significant damage to national security.

**"I had no doubt about the answer. Had the Coroner approached the balancing exercise in accordance in the way I have summarised, he would have been bound similarly to have found. No coroner could reasonably have done otherwise. That is why we quashed the Coroner's decision and declined to remit the matter." (paras 64 – 68)**

**<u>Conclusion</u>**

**In his concluding observations, Lord Justice Goldring said:**

**"Finally, I would wish to emphasise a number of things.**

**"First, the exercise we have carried out was a conventional PII exercise. It has been recognised by the law for many years. It has nothing to do with recent, controversial changes in the law.**

**"Second, the issues which we have been considering concerned the risk of significant damage to national security. Had it been otherwise, different considerations might well have applied. The outcome could well have been different.**

**"Third, these were difficult issues, both for the Coroner and us. In his case, he did not have the benefit of the arguments which were made to us. Nothing we have decided reduces the importance of open justice. However, no court can fail to take into account issues of national security, whatever the litigation before it." (paras 71 – 74)**

**Lord Justice Treacy and Mr Justice Mitting agreed with Lord Justice Goldring. (para 75)**

-ends-

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.**