Neutral Citation Number: [2024] EWHC 2007 (Admin)

Case No: AC-2024-LON-000558

IN THE HIGH COURT OF JUSTICE
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 July 2024

Before :

LORD JUSTICE STUART SMITH
MRS JUSTICE MAY

- -

Between :

HM SENIOR CORONER FOR THE COUNTY OF THE EAST RIDING OF YORKSHIRE AND THE CITY OF HULL	**Applicant**
- and -	
HM ASSISTANT CORONER FOR THE COUNTY OF THE EAST RIDING OF YORKSHIRE AND THE CITY OF HULL	**Respondent**

- -
- -

Janine Wolstenholme (instructed by **Hull City Council Legal Services and Partnership Directorate**) for the **Applicant**

The Respondent was not represented

Hearing date: 20 June 2024

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JUDGMENT

MRS JUSTICE MAY :

This is the judgment of the court.

Introduction

1. On 5th February 2019 David Rosenburg, Assistant Coroner for the county of the East Riding of Yorkshire and City of Kingston upon Hull ("the relevant area") conducted an inquest into the death of Michael Conboy ("the 2019 inquest"). In the circumstances and for the reasons which we shall set out, Professor Paul Marks, His Majesty's Senior Coroner for the relevant area, now applies to the court for an order under section 13(1)(b) of the Coroner's Act 1988 ("the 1988 Act") quashing the 2019 inquest and for a fresh one to be heard.

2. A Part 8 Claim Form making this application was issued on 7 December 2023 supported by the witness statement (signed but undated) of Professor Marks. At the hearing counsel for the Applicant, Ms Wolstenholme, informed us that MC's family were supportive of the application but she was unable to confirm that they had been formally served, as required by CPD 49E (see further below). Accordingly we decided to adjourn and made an Order extending time for service of the application on the remaining members of Mr Conboy's family, in case any of them should wish formally to object to it. Having received confirmation by email to the court office dated 18 July 2024 that the family have been served and have raised no objections, we have proceeded to determine the application without a further hearing.

Background

3. On Monday 20 April 2009 Michael Conboy ("MC"), then aged 80, disappeared. In the months prior to this he had had a viral infection requiring him to be hospitalised for a short time. On discharge he appeared somewhat confused. He was unmarried and lived alone. His older sister, who lived close by, had begun to have concerns about her brother's mental state, in particular whether he was developing a form of dementia. She rang him on Sunday evening 19 April 2009 and was sufficiently concerned by what he said in that conversation to arrange to go and see him the next morning to take him to the doctor. When she arrived at his house the lights were on

but her brother was not there. The police were informed and a missing persons enquiry set up. MC's family delivered posters around the local area. However nothing was heard of his whereabouts then or later.

4. On 2 November 2018 the then Chief Coroner, HHJ Lucraft KC, having received a report into MC's disappearance, authorised an investigation into his death under section 1(5) of the 1998 Act. An inquest was held on 5 February 2019 presided over by the Defendant. Box 3 of the Record of Inquest recorded that

> "There is evidence to suggest that, on the balance of probabilities, [MC] died on the 20th April 2009. The whereabouts and circumstances of his death are unknown"

Box 4 recorded an "OPEN CONCLUSION"

5. Nearly four years later, on 7 December 2022, a dogwalker discovered skeletal remains near to the railway line at Brackley Park, Brackley Close, Kingston upon Thames. A pathology examination of the remains took place during which DNA samples were obtained for the purpose of radiocarbon dating and DNA profiling. A report dated 1 March 2023 by Cellmark Forensic Services compared these samples with a sample taken from a surviving sister of MC, concluding that the remains discovered in Brackley Park were those of MC.

6. It is the discovery of remains, and their subsequent identification as those of MC, which has prompted the present proceedings seeking a fresh inquest.

The law

7. If a coroner has reason to suspect that a death was violent or unnatural he or she must conduct an investigation in the death (section 1(1) of the Coroners and Justice Act 2009 ("CJA 2009"). That investigation must include an inquest (section 6 of the CJA 2009).

8. The inquest must seek to ascertain who the deceased was, and when, where and how (s)he came by their death (section 5 CJA 2009), to be recorded in Box 3 of the Record of Inquest. The coroner should then reach a conclusion, recorded in Box 4, which should best reflect the findings of fact in any given case.

9. An open conclusion is a decision by the coroner that the evidence does not fully or further disclose the means whereby the cause of death arose, that is to say where the evidence is insufficient to satisfy any of the other conclusions. An open conclusion is essentially a declaration that the exact circumstances of the death are unknown. Such a conclusion is to be discouraged save where strictly necessary: see Kay LJ in *R(Howlett) v HM Coroner for the County of Devo*n [2006] EWHC 2570 (Admin) at [14] citing Simon Brown LJ in *Tabarn* [1998] EWHC (Admin) 38 at [50].

10. Section 13 of the 1988 Act provides relevantly 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—
> …
> or
> (b) where an inquest 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, 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;
> …
> and
> (c)where an inquest has been held, quash any inquisition on, or determination or finding made at that inquest."

11. The material considerations for the court to consider on an application to quash made under section 13 of the 1988 Act were identified by Moses LJ *in R(Sutovic) v Northern District of Greater London Coroner* [2006] EWHC 1095 (Admin) as follows (at [54]):

(1) The possibility, as opposed to probability, of a different conclusion;

(2) The number of shortcomings in the original inquest;

(3) The need to investigate matters raised by new evidence, which had not been investigated at the original inquest;

(4) The lapse of time since death, which is generally a factor against ordering a new inquest, though not always;

(5) A new inquest can be ordered, even where it appears to the court that there is a high probability that the original verdict would remain unchanged.

12. In *HM Attorney-General v HM Coroner of South Yorkshire; HM Coroner of West Yorkshire* [2012] EWHC 3783 (Admin) the Divisional Court (Lord Judge, LCJ, sitting with Burnett J (as he then was) and His Honour Judge Peter Thornton QC, then Chief Coroner) considered an application by the Attorney-General for fresh inquests into the deaths of the 96 supporters at Hillsborough in April 1989. Lord Judge said this (at [10]):

> "The single question is whether the interests of justice make a further inquest either necessary or desirable. The interests of justice, as they arise in the coronial process, are undefined, but, dealing with it broadly, it seems to us elementary that the emergence of fresh evidence which may reasonably lead to the conclusion that the substantial truth about how an individual met his death was not revealed at the first inquest, will normally make it both desirable and necessary in the interests of justice for a fresh inquest to be ordered. The decision is not based on problems with process, unless the process adopted at the original inquest has caused justice to be diverted or for the inquiry to be insufficient. What is more, it is not a pre-condition to an order for a further inquest that this court should anticipate that a different verdict to the one already reached will be returned. If a different verdict is likely, then the interests of justice will make it necessary for a fresh inquest to be ordered, but even when significant fresh evidence may serve to confirm the correctness of the earlier verdict, it may sometimes nevertheless be desirable for the full extent of the evidence which tends to confirm the correctness of the verdict to be publicly revealed. Without minimising the importance of a proper inquest into every death, where a national disaster of the magnitude of the catastrophe which occurred at Hillsborough on 15 April 1989 has occurred, quite apart from the pressing entitlement of the families of the victims of the disaster to the public revelation of the facts, there is a distinct and separate imperative that the

community as a whole should be satisfied that, even if belatedly, the truth should emerge."

13. Procedural requirements for making an application under section 13 of the 1988 Act are currently set out in Practice Direction 49E, paragraph 20, which provides that

(1) The application must be heard and determined by a Divisional Court (para 20.1)

(2) Unless made by the Attorney-General, the application must be accompanied by the Attorney's fiat (para 20.2)

(3) The claim form must be served upon all persons directly affected by the application within six weeks of the grant of the Attorney's fiat (para 20.3)

Submissions made on this application

14. Ms Wolstenholme, for whose detailed and clear written submissions we are most grateful, submits that where, as here, further evidence has come to light, it ought to be investigated. There is no suggestion that the process of the previous inquest was in any way flawed, it is simply that it took place in the absence of any body, at a time when MC was presumed dead by reason of his long disappearance. The subsequent discovery of MC's remains, and the further evidence flowing from that, are highly relevant to the statutory fact-finding process. Ms Wolstenholme argues that different findings of fact and a different conclusion may very well be made/reached at a fresh inquest, and recorded on the face of the Record of Inquest. She says that as an open conclusion is a conclusion of last resort, it is desirable, in the light of the new evidence, that there be a fresh investigation and inquest into MC's death. Whilst the 5-year delay since the 2019 inquest might militate against ordering a fresh one, the circumstances of the delay here, namely the fact that MC's body lay undiscovered for

several years, ought not to weigh against making an order under section 13 in this case.

Decision

15. Section 13(1) provides for an application to be made by "or under the authority of" the Attorney General. The necessary authority, known as the Attorney General's "fiat" is dated 14 November 2023. As set out above, CPD 49E requires that the application be served "on all persons directly affected" within six weeks of the grant of the Attorney's fiat. Since this requirement had not been met by the time of the hearing it was necessary for us to adjourn and to extend time for the family to be served. That has now been done.

16. Professor Marks makes the present application in reliance on "the discovery of new facts or evidence". As he says at paragraphs 25 of his statement:

> *"..there is absolutely no criticism of the learned Assistant Coroner who conducted the inquest on the 5th of February 2019. At that time, the Assistant Coroner, based on information/evidence available to him at the time, was correct in recording what he did in boxed 3 and 4 of the Record of Inquest. However new significant information/evidence has come to light, a fresh inquest is desirable in the interests of justice now that Mr Conboy's body has been discovered and now that histopathological and other investigations have been carried out on his remains."*

17. In the present circumstances it is evident to us that we have the necessary jurisdiction and that we should exercise it. It is not suggested, nor could it be, that there was any irregularity in the 2019 inquest conducted by the defendant, the then Assistant Coroner Mr Rosenburg. At that time no trace of MC had been discovered; since then remains have been found which have now been conclusively determined to be those of MC. It is both necessary and desirable that a fresh inquest be conducted at which there will be the opportunity for the coroner to receive evidence relating to the finding of the remains and the results of their subsequent examination.

18. For these reasons there will be an order quashing the 2019 inquest and for a fresh inquest to be held, with no order for costs.