Neutral Citation Number: [2017] EWHC 2039 (Admin)

Case No: CO/675/2017

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/08/2017

Before:

MR JUSTICE HOLROYDE

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Between:

THE QUEEN on the application of
DONALD MAGUIRE
KERRY-ANN MAGUIRE
EMMA-JANE MAGUIRE
ANDREW POOLE
DANIEL POOLE

Claimants

- and -

THE ASSISTANT CORONER FOR WEST YORKSHIRE (EASTERN AREA)
Defendant

- and -

WILLIAM CORNICK
MS S CONNOR AND D COURTNEY
LEEDS CITY COUNCIL
WEST YORKSHIRE POLICE
LEEDS SAFEGUARDING CHILDREN BOARD

Interested Parties

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Mr N Armstrong & Ms K Sjovoll (instructed by **Irwin Mitchell**) for the **Claimants**
Ms C McGahey QC (instructed by **the City Solicitor, Wakefield Council**) for the **Defendant**
Mr O Campbell QC (instructed by **Nicola Murphy, Solicitor, Leeds City Council)** for the **Interested Party** (Leeds City Council)

Hearing dates: 12 July 2017

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Judgment Approved**Mr Justice Holroyde:**

1. Mrs Ann Maguire was a caring, committed and much-loved teacher of outstanding ability, who had devoted 40 years of her life to teaching at Corpus Christi Catholic College in Leeds. On 28th April 2014, in a classroom at Corpus Christi, she was the victim of a truly shocking murder. She was repeatedly and fatally stabbed by William Cornick, then aged 15, who was armed with a long-bladed knife which he had brought into the school for the purpose of attacking his teacher. The loss and anguish suffered by Mrs Maguire's family cannot adequately be expressed in words. They have, of course, the sympathy of the court.

2. An inquest was opened into the death of Mrs Maguire. It was suspended while the criminal prosecution of William Cornick took its course. He pleaded guilty to murder, and was sentenced to the form of life imprisonment appropriate for one of his age. The gravity of his crime is shown by the fact that, not withstanding his youth, a minimum term of 20 years' detention was set by the sentencing judge and subsequently upheld by the Court of Appeal Criminal Division.

3. At a Pre-Inquest Review on 25th January 2016 the Senior Coroner for West Yorkshire (Eastern Area) decided to resume the inquest. By virtue of paragraph 8 of schedule 1 to the Coroners and Justice Act 2009, that decision carries with it the determination that there was sufficient reason for resuming the inquest. The Senior Coroner gave a number of directions. He reserved the court's position as to whether Article 2 of the European Convention on Human Rights was engaged.

4. Conduct of the inquest subsequently passed to Assistant Coroner Kevin McLoughlin, who gave further directions at Pre-Inquest Review hearings on 21st November 2016 and 13th January 2017. The hearing of the inquest has now been listed to commence on 13th November 2017.

5. Mrs Maguire's husband Donald, and their children, are the claimants in this application for judicial review. They were aggrieved by two of the decisions made by the defendant, the Assistant Coroner, on 13th January 2017. Permission to apply for judicial review was granted by Mrs Justice Lang on 18th May 2017, but was limited to challenging one of those decisions - namely, the decision of the Assistant Coroner not to hear evidence from former pupils of Corpus Christi who had had contact with William Cornick in the period leading up to the murder of Mrs Maguire. Leave was refused in relation to the other challenge which had been advanced, and I need say no more about it.

6. The issue which I have to resolve is whether the decision of the Assistant Coroner not to call evidence from former pupils of Corpus Christi was lawful. The claimants contend that it was not.

7. There are a number of interested parties: William Cornick; Leeds City Council, the Local Education Authority which provides funding and support services to Corpus Christi; the West Yorkshire Police; Leeds Safeguarding Children Board, which commissioned an independent Learning Lessons Review of the murder; and Mrs Maguire's two sisters. In this hearing, I have been assisted by written and oral submissions by counsel on behalf of the claimants, the defendant and Leeds City Council, and further assisted by their additional written submissions filed at my invitation after the hearing. I am grateful to all counsel. Leeds Safeguarding Children Board has acknowledged service and filed summary grounds for contesting the claim, but was not represented before me. Understandably, the other interested parties have not taken an active role in the proceedings.

The relevant facts:

8. It is necessary for me to summarise some of the facts. I shall do so only very briefly, and make it clear that I express no view, one way or another, as to how issues of fact may ultimately be resolved at the inquest.

9. Corpus Christi has some 950 pupils. It teaches them to GCSE level. It has no sixth form. Many of its pupils who wish to go on to study for A levels do so at Notre Dame Sixth Form College.

10. Following the murder, the police interviewed pupils who could provide relevant information about the murder of Mrs Maguire, and about the days leading up to it. In particular, the police conducted detailed interviews with about 9 pupils who knew William Cornick and could speak of what he said and did before the murder. It is clear that great care was taken to ensure that the pupils' accounts of relevant events were obtained by trained officers using the Achieving Best Evidence ("ABE") procedures best suited to interviewing young witnesses. The ABE interviews were recorded and have been transcribed. For convenience, I shall refer to this group of pupils as "the interviewed pupils". The claimants are particularly, though not exclusively, concerned that the interviewed pupils should give evidence to the inquest.

11. Mrs Maguire had taught Spanish to William Cornick. It appears that he did not like her, but it also appears that he disliked a number of other teachers. From accounts given by his fellow students when they were interviewed by the police, it appears that William Cornick at times behaved strangely, making morbid or sick jokes and speaking of his wish to inflict severe pain and suffering on various persons whom he disliked. He had expressed a wish to kill Mrs Maguire and certain other teachers. On Friday 25th April 2014 William Cornick spoke several times of killing Mrs Maguire during his Spanish lesson on Monday 28th April 2014. On that Monday morning, he repeated those threats and spoke to a number of his fellow-pupils about having knives or sharp implements in his bag, together with a bottle of alcohol. Three of the students saw at least a glimpse of something in the bag.

12. In their ABE interviews, the interviewed pupils for the most part indicated that they did not take William Cornick's threatening remarks seriously. They did not report him to a teacher because they assumed that, once again, he was merely showing the odd side of his character and/or showing off. One who did take the remarks seriously told William Cornick that he would report him to a teacher. William Cornick's response was to the effect that if anyone grassed on him, he would kill Mrs Maguire and then kill the student or students concerned. The pupil who had spoken of making a report to a teacher was understandably frightened by this: he told the police that his concern was that, if he told a teacher and a knife was found in the bag, the result would be that William Cornick would be suspended from school for a time but would then be able to return to school and take revenge on the student concerned. He was also concerned that

if a teacher demanded to look in William Cornick's bag, that might in itself provoke an attack by William Cornick. He went on to reflect –

> "People doing these memorials and stuff, it just makes you think about how many people cared about her, and it's like I could have stopped it. I did nothing."

13. In the event, one pupil did report William Cornick's behaviour to a teacher. When he did so, however, he was in a different classroom from William Cornick and – unbeknown to him - the murder had just been committed.

14. The claimants wish the interviewed pupils to give evidence to the inquest, and argue that the Assistant Coroner was wrong to exclude that evidence. Mr Armstrong on their behalf emphasises, and I accept, that the claimants do not wish or seek to ascribe any blame or criticism to any pupil or pupils. They recognise that any questioning about the events surrounding the murder may cause renewed distress. They are however motivated by an entirely understandable wish that the inquest into Mrs Maguire's death should enable lessons to be learned so as to minimise the risk of any similar horror occurring in the future. As Mr Maguire puts it in a witness statement, he and his children feel that if such a terrible crime could be committed against Mrs Maguire, "it could happen to anyone". That view is, as I say, entirely understandable, particularly at a time when there is much public concern about knife crime generally. I readily accept the claimants' explanation of why they want the students' evidence to be heard.

15. Other parties however oppose this challenge to the Assistant Coroner's decision. They argue that the Assistant Coroner was entitled to decide that the interviewed pupils could provide little assistance to the inquest and could be harmed if they were required to give evidence.

16. The interviewed pupils were all aged about 15 or 16 at the time of the murder. They are now young adults aged 18 or 19. Clearly they, and their fellow-students, experienced an awful event. Some were eye witnesses to the murder. Others learned of it shortly afterwards and/or saw the murder weapon. The evidence shows, as one would expect, that throughout the school a number of pupils were badly affected and some required counselling or other assistance.

17. There is no specific evidence in this regard about the interviewed pupils, but evidence of a general nature is given in a statement made by Mr Dominic Kelly, the Vice Principal of Notre Dame Sixth Form College. This is relied upon by the defendant and by Leeds City Council as showing the effect of the murder upon pupils in the school, individually and collectively. It is also relied on to illustrate the fear that questioning at an inquest would cause at the very least real distress to the students concerned. Mr Kelly was writing in 2016, and therefore with the experience of having worked with students of his college who had been pupils of Corpus Christi at the time of the murder. He described the range of issues which the students had faced, including –

> "General bereavement issues – Over the course of the two years we have seen students present with major issues as they feel ready to deal with them. These included: anger, at the perpetrator, the school, the press and other people who were prominently involved in the case, concern that they could have prevented the tragedy, guilt that they had failed to protect their teacher, etc."

18. Mr Kelly has subsequently written an updating report (dated 9th May 2017, and not before the Assistant Coroner at the time when he made the challenged decision), which he concluded as follows:

> "I am, of course, happy to provide examples of how individuals have progressed over the three years if required, but would like to stress that in my opinion as the person with the overall responsibility for the pastoral care of our students at Notre Dame, the risk of formally and publicly asking the students involved questions that they have been asking themselves for three years is far greater than any perceived benefit that could be gained. There is, in my opinion as the person who worked with the majority of the most affected children, a major risk that work done over the previous three years could be undone, setting the young people and their families back to where they were in 2014."

19. I was provided during the hearing with a copy of a witness statement dated 6th February 2017 by PC Toes (also not before the Assistant Coroner at the time when he made the challenged decision). PC Toes has since 2009 been the Safer Schools Officer for Corpus Christi and another school. In that role she has been a visible, uniformed presence at Corpus Christi on (usually) two days each week. She indicated that she had recorded only two occasions when she had been made aware of an issue relating to a knife. In December 2009, a pupil was said to have brought a knife into school, but he denied the allegation and nothing was found when he was searched. In January 2013 PC Toes spoke to and warned a pupil who had brought a Stanley knife blade into school and cut his own fingers.

The decisions of the Assistant Coroner:

20. At the first hearing to which I referred, on 25th January 2016, the Senior Coroner indicated that the scope of the inquest could only be determined after publication of the report of the Learning Lessons Review. He made no decision about which witnesses would be called, but did make an order pursuant to section 39 of the Children and Young Persons Act 1933 imposing a prohibition against "the naming and disclosing of the identity of young witnesses to the attack on Ann Maguire and who have made statements in respect thereof".

21. The Learning Lessons Review was published on or around 8th November 2016. Its author was an independent reviewer with long experience of working in education and local government at senior levels. The Review expressly excluded from its consideration questions about "whistleblowing" by pupils. At paragraph 12.3.3 the author said:

> "With the benefit of hindsight, there is an opportunity to ask young people to reflect on any concerning behaviour or statements made by their friends and classmates in person or through social media and to share and discuss them with a trusted adult.
>
> 12.3.4 I have deliberated on this issue at great length. Will's friends and classmates did not share his social media postings or tell a member of school staff about the knives in Will's bag on that Monday morning. I have highlighted that a lack of awareness of their significance at the time may account for this but also the possibility of misplaced loyalty or a fear of retribution for some of the children.
>
> 12.3.5 The question 'how can children be encouraged and supported to share concerns with trusted adults?' goes beyond the scope of this review, but perhaps locally, through the LSCB [Leeds Safeguarding Children Board], research can be undertaken on children and young people's confidence and approach to disclosure of this type, and indeed this is likely to be a subject worthy of better understanding nationally."

22. At each of the subsequent Pre-Inquest Review hearings, Mr Armstrong made submissions on behalf of the claimants seeking a direction that the interviewed students should attend to give evidence at the hearing of the inquest. The application was opposed by the other parties. Leeds City Council submitted that the events of the day of the murder were already clearly established, and that no further inquiry was needed. In a skeleton argument dated 16th November 2016 Mr Armstrong referred to the fact that, with one exception, none of the pupils reported what they had heard William Cornick say, or what they had seen in his bag. He identified five issues which arose from that fact. The five issues included –

> "(e) What did students understand about not evaluating themselves the risk represented by an individual, and whether those risks were genuine?"

23. On 21st November 2016 the Assistant Coroner determined that the following matters were relevant and would be within the scope of the inquest:

> a) all policies pertinent to the issue of weapons being brought into the school;
>
> b) any records held by the school relating to the issue of weapons being brought into school or found in the possession of a pupil;
>
> c) the policies and procedures prevailing at the school for matters to be reported in confidence by pupils to staff members;
>
> d) whether such policies and such procedures had been communicated to the pupils, and if so, how;
>
> e) the rules of the school concerning the risks associated with knives in particular and the need to report anything known or seen to staff members.

24. The Assistant Coroner again deferred a decision as to whether Article 2 was engaged. He ruled that the scope of the inquest would not extend to the circumstances of the murder, as that had been investigated thoroughly by the police. He also decided that the interviewed pupils would not be called. His reasons for that decision were expressed as follows at paragraph 11 of the Minutes of the hearing:

> "11.1 The submission made on behalf of Mr Maguire is that relevant pupils should be called to give evidence as to why they did not report the matters revealed to them either on Facebook or in the period before the incident. It was contended this had not been fully explored in the interviews conducted by the police. It was necessary to establish what they understood to be the school rules on 'whistleblowing.' This was opposed by Mrs Maguire's sisters (themselves teachers with several decades of experience) who were concerned about the effect on pupils who might be called to give evidence. LCC submitted that the facts regarding the morning of the incident were clear due to the investigation which had been carried out and did not require a duplication of inquiry. As there was no evidence suggestive of a 'bad atmosphere' or toxic culture at the School it was not necessary to investigate something which was not there.
>
> 11.2 The Coroner concluded that it was important to be proportionate and fair to all involved in this tragic incident, when setting the bounds of the inquiry. As it was often said 'no-one is on trial at an inquest' there was a legitimate concern that calling potentially vulnerable young people to question them in a way which may connote blame on their part for not having reported matters within their knowledge, ran the risk of exacerbating the trauma which all IPs recognised had

been experienced by the pupils involved. The information which the pupils could provide had been assembled in the investigation carried out by the police (albeit that further questions could always be asked). The balance of benefit and risk was such that, in his judgment, the risk of inflicting psychological harm on the pupils to be called was foreseeable, whereas the benefit was small. As the pupils were now at least 10% older, their recollections of their own reasoning, impressions and decisions in April 2014 are likely to be different in the wake of the tragedy and their subsequent developing maturity. On top of this, the relevance to an Inquest focused upon how the deceased came by her death (and possibly – but not certainly - the circumstances in which this occurred) did not necessitate pupils being called. It was sufficient to extract relevant material from their police interviews. The Coroner accepted that it was pertinent to establish what the pupils understood to be the School rules relating to 'whistleblowing.' This could (in so far as it was possible to establish the position in April 2014, rather than now) be established by calling one or more pupils who had no involvement in the incident, from the 950 children at the School."

25. The Assistant Coroner then went on to include, in his list summarising the witnesses who were likely to be called, "sample pupils to talk about their understanding of school policies".

26. The matter was raised again at the third Pre-Inquest Review on 13th January 2017. By that stage, Corpus Christi had indicated that it did not wish to take part in any selection of the proposed "sample" students, for fear of being criticised for the process by which the selection was made. Mr Armstrong invited the Assistant Coroner to reconsider his earlier ruling. The Minutes of the hearing summarised the submission in this way:

> "The inquest should hear evidence as to the students' understanding of the school rules relating to weapons in school and whistleblowing. The students who had been shown a knife by Mr Cornick on the morning of the incident must explain who they informed of this. If they had taken no action, they can be questioned as to why they had taken no action."

27. The Assistant Coroner concluded that the proposed evidence from "sample" pupils would not be effective, and abandoned that idea. The Minutes of the hearing do not include any more detailed explanation of his reasons for that conclusion, but it is to be inferred that he accepted there would be difficulties over any process of selection. At the suggestion of Leeds City Council, he decided to write to an Ofsted inspector who had visited the school in June 2013, to see whether she might be "a source of independent evidence regarding the culture in the school and the pupils' understanding of rules relating to weapons and violence". He maintained his previous ruling that the interviewed pupils would not be called to give evidence, indicating that relevant portions from their statements could be extracted from their police interviews.

28. I am not aware of the outcome of the enquiry which was to be made of the Ofsted inspector. In any event, Mr Armstrong submits that nothing she could say would come anywhere near being an adequate substitute for the evidence of the interviewed pupils. The claim for judicial review is reluctantly made by the claimants in their continuing efforts to ensure that the evidence of those students is heard.

<u>The legal framework</u>:

29. There is no dispute about the applicable law. By section 5(1) of the Coroners and Justice Act 2009 –

> "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".

By section 5 (2), the purpose mentioned in 5 (1) (b) is to be read as including "the purpose of ascertaining in what circumstances the deceased came by his or her death" if it is necessary to do so in order to avoid a breach of any Convention rights. In the present case, although a decision as to the engagement of Article 2 has not yet been taken, all parties agree that for the purposes of determining this claim I should assume that Article 2 is engaged.

30. Case law illustrates that the function of an inquest is to ascertain as many of the facts concerning the death as the public interest requires.

31. In R v HM Coroner for North Humberside, ex parte Jamieson [1995] QB 1, a case relating to a death in custody, Sir Thomas Bingham MR, giving the judgment of the court, said at page 26:

> "It is the duty of the coroner as the public official responsible for the conduct of inquests, whether he is sitting with a jury or without, to ensure that the relevant facts are fully, fairly and fearlessly investigated. He is bound to recognise the acute public concern rightly aroused where deaths occur in custody. He must ensure that the relevant facts are exposed to public scrutiny, particularly if there is evidence of foul play, abuse or inhumanity. He fails in his duty if his investigation is superficial, slipshod or perfunctory. But the responsibility is his. He must set the bounds of the inquiry. He must rule on the procedure to be followed."

The phrase "fully, fairly and fearlessly investigated" was frequently emphasised by Mr Armstrong in the course of his submissions.

32. In R v West London Coroner, ex parte Dallaglio [1994] 4 All ER 139, Sir Thomas Bingham MR referred to the decision in ex parte Jamieson and stated that it was of wider application than the context of deaths in custody. He rejected a suggestion that the investigation into the means by which the deceased came to his death should be "limited to the last link in the chain of causation", saying (at p164H) that such a limitation would be inconsistent with the need for "the exposure of relevant facts to public scrutiny" and would "defeat the purpose of holding inquests at all". He said:

> "It is for the coroner conducting the inquest to decide, on the facts of a given case, at what point the chain of causation becomes too remote to form a proper part of his investigation."

33. In R v Inner South London Coroner, ex parte Douglas-Williams [1999] 1 All ER 344, Lord Woolf MR stated (at p348A) that an inquest can provide a bereaved family with the only opportunity they will have of ascertaining what happened, and can have a significant part to play in avoiding the repetition of inappropriate conduct and in encouraging beneficial change. Mr Armstrong relies on that point in the present case: there was no criminal trial, because William Cornick pleaded guilty, and so this inquest represents the only opportunity available to the bereaved family for a full investigation of the murder. He rightly points out that when the Senior Coroner decided to resume the

inquest, the reason for doing so was that there was a public interest in ensuring that there would be a public airing of relevant matters.

34. Mr Armstrong also relies on a passage in the judgment of Richards LJ in R (Litvinenko) v Secretary of State for the Home Department [2014] HRLR 131 at paragraph 62:

> "It is clear from the authorities to which I have referred that a coroner has to form a judgment on how wide the inquiry should go. In that sense he has a 'discretion' as to the scope of the inquest. But his duty is to investigate fully, fairly and fearlessly the matters falling within the scope of the inquest as he has judged it should be."

35. It should be noted that in that case, there was a challenge to the decision of the SSHD not to direct a public inquiry into the death of Mr Litvinenko. The coroner had identified one particular aspect of the circumstances of the death as being relevant to his inquiry, but had felt himself unable properly to investigate it, and had recommended such an inquiry. It was in that context that the observations quoted were made: it was held that the coroner had been wrong to draw a distinction between matters which he was obliged to investigate and matters which he had a discretion to investigate.

36. In judicial review proceedings, a decision by a coroner as to the scope of an inquest as to which witnesses are to be called may only be challenged on the grounds of *Wednesbury* unreasonableness, ie irrationality: see R (Mack) v HM Coroner for Birmingham [2011] EWCA Civ 712, in which Toulson LJ said (at paragraph 9) that the coroner has –

> "… a wide discretion – or perhaps more appropriately a wide range of judgment – whom it is expedient to call. The court will only intervene if satisfied that the decision made was one which was not properly open to him on Wednesbury principles."

37. In McDonnell v HM Assistant Coroner for West London [2016] EWHC 2078 (Admin) Beatson LJ, giving the principal judgment, referred to Mack, and also to Jamieson, and said it is clear that

> "… decisions by a coroner as to the scope of enquiry and as to which witnesses to call are a matter of judgement which may only be challenged on the ground that they are *Wednesbury* unreasonable, ie irrational."

38. There was some debate before me as to whether the test of irrationality includes circumstances in which a coroner is said to have taken into account irrelevant matters, or failed to take into account relevant matters. I accept that it does. The test may be summed up by saying that a party who seeks to challenge a decision by a coroner must show that the coroner acted in a way which was not reasonably open to him or her, and made a decision which could not reasonably be reached.

39. Evidence at an inquest may be given orally or, in the circumstances set out in regulation 23 of the Coroners (Inquests) Rules 2013, it may be given in writing. By regulation 23(1)(b), one of the circumstances in which a coroner may admit written evidence is where "there is good and sufficient reason why the maker of the written evidence should not attend the inquest hearing". Another such circumstance is where the written evidence "is unlikely to be disputed": see regulation 23(1)(d).

40. Where evidence is given orally, regulations 17 and 18 permit the coroner in certain circumstances to direct that it be given via a video link or from behind a screen. In addition, paragraph 8 of the Chief Coroner's Guidance Note 22, Pre-Inquest Review

Hearings clearly contemplates that a coroner may also permit other arrangements which would assist a witness to give his or her best evidence. In the circumstances of this case, Mr Armstrong suggests that one measure which the Assistant Coroner could and should have considered would be the submission in advance of a written note of the questions which counsel would wish to ask of the interviewed pupils.

The submissions of the parties:

41. Mr Armstrong's submissions on behalf of the claimants can be summarised as follows. He starts with the proposition, which is not contentious, that the inquest into this dreadful murder must serve an important function in finding facts and assisting the learning of lessons for the future. That is so whether or not Article 2 is engaged. In any event, as I have indicated, it is common ground that I should for present purposes assume that Article 2 is engaged.

42. Mr Armstrong then submits that the Assistant Coroner has rightly ruled that the scope of the inquest includes issues relating to the existence of any school policy about the reporting of matters such as a pupil armed with a knife, and/or a pupil making threats to kill a teacher, and about the manner which any such policy had been communicated to school students. Having made that ruling, Mr Armstrong argues, the Assistant Coroner is obliged to explore those issues fully, fairly and fearlessly, but cannot do so if he rules out what Mr Armstrong describes as "the only source of evidence on a key issue". Moreover, submits Mr Armstrong, the decision not to require any of the interviewed pupils to attend the inquest as witnesses was made on a blanket basis applicable to all those pupils, without any individual enquiry or individual balancing exercise, and without any consideration of the various measures which could be taken to avoid or reduce any distress which any of those prospective witnesses might experience in giving evidence. Mr Armstrong argues that one of the matters which could be considered by the inquest, with a view to lessons being learned for the future, is whether schools should have policies about weapons which are entirely clear and regularly reinforced, and which impose a simple rule of "see a knife, tell a teacher" without leaving it to an individual pupil to make an assessment of the seriousness or otherwise of any threat posed by a fellow-pupil armed with a knife. He points out that, understandably, the police who were interviewing pupils as part of the criminal investigation into the murder were not concerned to ask any questions about any such matter. Insofar as the interviewed pupils volunteered any observations relevant to the issue, they were not subjected to any further questioning or request for clarification.

43. Mr Armstrong adds that the Assistant Coroner made no attempt to enquire into whether all or any of the students concerned would be willing, or perhaps even keen, to give evidence at the inquest. Instead, he assumed that they would suffer trauma of a degree which outweighed the prospective value of their evidence. Mr Armstrong points out that it is apparent from contemporaneous press reports that at least some students were prepared to speak to the media about the murder. He argues that the Assistant Coroner should have enquired into whether any individual student was also prepared to give evidence to the inquest. He suggests it is at least possible that one or more of the interviewed pupils might positively welcome the opportunity to speak publicly about what happened, particularly if reassured (as Mr Armstrong would make clear) that no one criticises the witness for what he or she did or failed to do.

44. Mr Armstrong relies on case law from other jurisdictions to show that the distress of a young witness is not necessarily a reason why that witness cannot or should not give oral evidence. I agree; but it is common ground that the coroner was right to have regard to the likely distress as a relevant factor. Moreover, it is in my view relevant that in other jurisdictions it is usually the parties who decide which witnesses they wish to call, whereas here the decision is one for the coroner alone.

45. Mr Armstrong accepts that the Assistant Coroner was right to weigh the potential benefit of the evidence which the interviewed pupils might give against the risk that the experience of giving evidence would be at best very distressing, and at worst harmful, to them. He submits however that in weighing benefit and risk, the Assistant Coroner fell into error on both sides of the balance. He wrongly thought that the police interviews contained everything relevant which the former pupils could say, when in fact they were being interviewed by the police for a very different purpose and were not asked about matters relevant to the inquest. Nothing the Ofsted inspector, or indeed any "sample" students, could say would be any adequate substitute for the testimony of those pupils who actually heard or saw relevant matters and are therefore in the best position to answer questions about their understanding of the school's policies. As to the risk to any former student who is called to give evidence, he submits that the Assistant Coroner had no more than generic evidence as to the effect on a number of unidentified pupils in the school as a whole, and did not consider the position of any individual. Having ruled that evidence on these matters was relevant, the Assistant Coroner should have made a more detailed enquiry before concluding that the risks of adducing the evidence meant that it would nonetheless not be heard.

46. Mr Armstrong adds that whilst teachers can talk about the school's policies, or lack of a relevant policy, they cannot say what the pupils understood any policy to be. He points out that the author of the Learning Lessons Review did not meet any of the interviewed pupils. He refers to an inquiry in Scotland into the death of a boy named Bailey Gwynne, who was fatally stabbed at a school in Aberdeen in October 2015. That inquiry was able to make recommendations of a kind which, Mr Armstrong submits, the Assistant Coroner will find it more difficult to make in this case, because of his exclusion of relevant evidence. He argues that it is an important matter, because where anything revealed by the investigation (including the inquest) into Mrs Maguire's death "gives cause for concern" as to a risk of future deaths, the Assistant Coroner will be under a duty to present a report to an appropriate person with a view to preventing future deaths: see paragraph 7 of schedule 5 to the Coroners and Justice Act 2009 and regulations 28 and 29 of the Coroners (Investigations) Regulations 2013.

47. In short, he argues that the challenged decision has removed the only evidence which could be given on an issue which the Assistant Coroner has identified as being in scope, and which there is no powerful reason to exclude.

48. The claimants therefore contend that the decision of the Assistant Coroner was irrational, unfair and failed to take into account relevant matters. They seek a declaration that his decision was unlawful, and consequential relief.

49. Mr Armstrong also relied on Mack, in particular at paragraphs 21-22, as showing the need for a close examination of the evidence given at an inquest. However, I do not think the illustration is helpful to him: in Mack there were issues as to the standard of clinical care of the deceased whilst he was in hospital. The coroner was found to have erred in calling a consultant – who was experienced in the relevant field, but had been involved in only the initial stages of the care of the deceased – but not calling any doctor who was involved in the care of the deceased during the critical later period. It seems to me there is an obvious distinction between that situation, and the questions which the Claimants wish to ask in this case as to the school's policies and the pupils' understanding of those policies. Having reflected on the supplementary submissions of the parties, I have concluded that it is neither necessary nor appropriate for me to say anything about the boundaries of the issues which properly arise for consideration at this inquest: that is a matter for the Assistant Coroner.

50. On behalf of the defendant Assistant Coroner, Miss McGahey QC emphasises that a party who seeks to challenge a decision by a coroner as to the scope of an inquest,

and/or as to which witnesses should be called, must surmount a high threshold. She points out that the claimants alone sought the attendance of the students who were interviewed by the police: other parties – including Mrs Maguire's sisters - opposed that course. The Assistant Coroner, who was well placed to make decisions, was entitled to reach the view that the extent to which the students would be able to provide helpful evidence was very limited. Accordingly, notwithstanding that various measures could be taken to facilitate their giving evidence, the Assistant Coroner was entitled to conclude that the limited benefit which could be achieved by calling the students did not justify the distress likely to be caused to them. Miss McGahey points out that the evidence before the Assistant Coroner (and now) does not include either a relevant written school policy, or any evidence that there was an unwritten policy which was expressly communicated to students. Rather, there is simply the proposition advanced by members of staff that as a matter of common sense students would know that they should report a student who had brought a knife into school. She adds that in any event the small number of pupils who were interviewed by the police cannot necessarily be thought to be representative of the school's students as a body: thus questions of them would not necessarily provide any clear indication of how pupils generally understood what they should do if they saw a fellow pupil with a knife. Moreover, in view of the course of questioning which the claimants wish to be undertaken, Miss McGahey argues that even the most sensitive questioner would inevitably cause the former pupils concerned to feel that they were being criticised or blamed for their teacher's death.

51. Miss McGahey further submits that if questions about pupils' understanding of school policy were to have any substantial value, they would have to be asked of the whole school, not just of the small number of pupils who chanced to witness relevant events. Thus, she submits, calling some former pupils to give evidence never would supply what Mr Armstrong referred to as "the other side of the teacher-pupil dynamic".

52. As I have indicated, Mrs Maguire's sisters (who are Interested Parties) opposed the claimants' application. One of the sisters, Sheila Connor, has herself been a teacher for many years. She has expressed her support for the decision not to call former pupils as witnesses, saying that as an educator she is greatly worried about the possibility of students being held to question as to their actions, or lack of action, before the killing, and the possible implied transference of responsibility and blame onto them.

53. On behalf of Leeds City Council, Mr Campbell QC also resists this claim for judicial review. He too points to the high threshold which the claimants must surmount. He points out that, in giving the directions he did at the hearing on 21 December 2016, the Assistant Coroner did not accept, as coming within the proper scope of the inquest, issue (e) which had been proposed by the claimants in the skeleton argument referred to at paragraph 22 above: namely, "what did students understand about not evaluating themselves the risk represented by an individual, and whether those risks were genuine?". Mr Campbell observes that that is an issue which could only be investigated if the former pupils gave evidence; but there is no challenge by the claimants to that decision by the Assistant Coroner, and accordingly no questions about that issue will be permitted. He too argues that questioning the relevant students would risk significant emotional harm, whatever special measures may be taken and however carefully they may be questioned. He submits that the Assistant Coroner cannot fairly be criticised for giving weight to that risk, bearing in mind that there was evidence before him which identified it at least in general terms.

54. Thus both the defendant and Leeds City Council argue that the Assistant Coroner was entitled to reach the decision he did, and that in any event it cannot be said to have been one which no reasonable coroner could properly have reached.

Discussion:

55. It is, as I have indicated, common ground between the parties – and in any event, I have no doubt - that the Assistant Coroner was right to take the view that he must weigh in the balance the potential value of the evidence which might be given by the interviewed students, and the potential harm to them of requiring them to revisit such a dreadful event and potentially causing them to feel that they are blamed for failing to act in a way which would have saved Mrs Maguire's life. The issue for me is whether his conclusion, as to where the balance lies, is a conclusion which was not reasonably open to him.

56. I think it important to emphasise that the Assistant Coroner did not regard the potential evidence of the interviewed pupils as having no value. Nor did he take the view that the interviewed pupils could give no evidence which would be worth giving. Rather, he considered what evidence they could or might give and concluded (see paragraph 11.2 of the Minutes of 21st November 2016, quoted at paragraph 24 above) that the benefit of calling their evidence would be "small". In reaching that conclusion he took into account that it would be possible to extract relevant information from the transcripts of the ABE interviews. He also took into account that the passage of time since the shocking event of the murder was significant, because if the interviewed pupils were to be questioned in 2017 about their understanding in April 2014 of school policy, it was likely that their recollection of their reasoning at that time would now be different "in the wake of the tragedy and their subsequent developing maturity". In my judgment, he was correct to take both those matters into account. As to the first matter, Mr Armstrong suggested that it would be difficult for the inquest jury to follow and assimilate lengthy transcripts of ABE interviews. However, there would be no need for the jury to be asked to consider the full transcripts. The reality, in my view, is that it would be a straightforward exercise to isolate those passages in the interviews which are relevant to the matters ruled in scope, and to present them to the jury either in the form of verbatim quotes or in the form of a summary in reported speech. If dealt with in that way, as the Assistant Coroner clearly contemplated that they would be, the relevant sections of the ABE interviews would be very much shorter than the full transcripts, and would be easy for the jury to follow. The interviewed pupils for the most part did volunteer their reasons for acting or failing to act as they did. None of those stated reasons comes as any surprise in the circumstances of this case, and none involved any suggestion that a pupil either did not know he could speak to a teacher or thought a teacher would not treat a report seriously. It is true that the interviewing officers did not seek any further or more detailed information about these matters, but enough was said to make the pupils' explanations reasonably clear. As to the second matter, it seems to me that there is much force in the Assistant Coroner's observation, particularly when it is remembered that the interviewed witnesses would be facing questions as to why they failed to take action which would have prevented the murder. In assessing the likely benefit of hearing their evidence, the Assistant Coroner was right to take into account the difficulty they would face in distinguishing between their reasoning at the time, and their reasoning now against the background of all that has happened.

57. That consideration leads me to the Assistant Coroner's view (again summarised at paragraph 11.2 of the Minutes) that there was a "legitimate concern" that to question the interviewed pupils in a way which may connote blame on their part "ran the risk of exacerbating the trauma" which everyone recognises they suffered. Again, he was in my judgment correct to take that risk into account, and to give it particular weight. I have already indicated that I readily accept that the claimants do not wish there to be any implication of fault on the part of the interviewed witnesses, and I also readily accept that Mr Armstrong would do his best to phrase his questions in such a way as to avoid any such implication. But the Assistant Coroner was entitled to take the view that there was nonetheless a risk and a legitimate concern. However carefully the questions may be phrased, however much they may be preceded and followed by assurances that no criticism is intended, and whatever special measures may be adopted, there is in the end

no escape from the simple fact that each interviewed pupil would be confronted with the question of why he or she did not tell a teacher; and that question would be raised in circumstances where the witness could not but think that if he or she had told a teacher, tragedy would have been averted. The sad reflection of one of the interviewed pupils, which I have quoted at paragraph 12 above, clearly illustrates the risk.

58. As to the potential for harm of asking such questions of witnesses who would inevitably be vulnerable by reason of the trauma they had suffered and their young age, the Assistant Coroner was entitled to have regard to the views of Mrs Maguire's sister. He was also entitled to have regard to the 2016 statement by Mr Kelly. Mr Armstrong submits that neither Mrs Sheila Connor nor Mr Kelly is in this regard giving evidence as an expert witness. That is correct as far as it goes, but each speaks with relevant experience, and their views were relevant to the Assistant Coroner's decision as to where the balance lay between competing factors.

59. I have given careful thought to Mr Armstrong's submissions as to the absence of any inquiry of the individual interviewed pupils, and the adoption instead of a blanket view that they would all be at risk of harm if called as witnesses at the inquest. His submission that at the very least the Assistant Coroner should have made an inquiry as to whether any of the interviewed pupils would be willing to give evidence is superficially attractive. I am however persuaded that Miss McGahey is correct in her submission that no individual or detailed inquiry was necessary when the likely benefit to be achieved by calling this evidence was small. I agree with her that, if a prospective witness had crucial evidence to give, a more detailed inquiry and more careful consideration of possible special measures might well be necessary; but in the circumstances of this case, the Assistant Coroner's decision cannot in my judgment be impugned on the ground that it was based on only a generalised risk of harm. It was not necessary for him to embark on an individual investigation, on a pupil by pupil basis, before accepting the existence of such a risk.

60. It must also be borne in mind that in reaching the decision he did, the Assistant Coroner was accepting the submissions of parties other than the claimants. He was not making a decision which no party supported.

61. I would add that it is not easy to see what individual inquiries could have been made of the interviewed pupils. Merely asking each of them "are you willing to give evidence?" would not suffice, because it would not help the Assistant Coroner to gauge the risk of harm to an individual witness, and because it might cause a prospective witness to think (wrongly) that he or she could decide what topics would or would not be covered in evidence; but telling them that they would be questioned about why they didn't report William Cornick to a teacher, even if accompanied by an assurance that no criticism would be made, would give rise to the problem identified in paragraph 57 above.

62. I have also given careful thought to Mr Armstrong's submission to the effect that the Assistant Coroner has identified the evidence of former pupils as relevant to the matters in scope, but has then (rightly) abandoned the proposal to call "sample" pupils. Mr Armstrong has very effectively made the point that the end result of that process is that the Assistant Coroner has identified evidence as relevant, but has then excluded the only route by which that evidence could have been given. I have therefore considered whether there is an irrational difference between the initial acceptance that the issuing of relevant school policies was in scope, and that some student evidence should be adduced in that regard, and the eventual decision that no such evidence would be called.

63. There are however two reasons why I am unable to accept the submission. First, it does not follow, from the fact that the Assistant Coroner initially regarded it as

relevant to hear evidence which he at that stage thought could be given by "sample" pupils, that he was therefore obliged to call the interviewed pupils when the proposal of "sample" pupils was abandoned. Ruling an issue in scope does not carry with it a duty for a coroner to ask, or to permit an interested person to ask, every conceivable question relating to that issue. Secondly, the flaw in the proposal to call "sample" pupils – which Mr Armstrong rightly identified as being that they could never be anything more than a tiny, and not necessarily representative, sample of the whole student body– applies with equal force to the interviewed pupils if it is sought to rely on their evidence as representative of the understanding of pupils generally. The Assistant Coroner was as I have said entitled to conclude that the extracts from the ABE interviews would largely cover the evidence which the interviewed pupils might give as to their reasons for acting, or failing to act, as they did. The interviewed pupils could not add much, if anything, of any value to any wider issue in the inquest.

64. In short, in pursuing their understandable and commendable wish to assist in the learning of lessons for the future, the claimants would never be able to point to the evidence of a handful of former pupils as being necessarily representative of the understanding and likely response of school pupils as a body. Inevitably, therefore, questioning of any former pupil who was called as a witness would come down to an investigation of how he or she individually perceived the risk posed by William Cornick and why he or she did not report William Cornick to a member of staff. Thus, inevitably, there would be a substantial risk that any individual student questioned about such matters would feel that he or she was being criticised and perhaps even blamed for the death.

65. It appears, from the submissions of Miss McGahey and Mr Campbell, that neither the defendant nor the interested parties will seek to show that there was a written policy directly applicable to the situation of a pupil bringing a knife into school and/or making threats to kill a teacher. Nor does it appear to be suggested that there was a clear, albeit unwritten rule about those matters which had been communicated to the pupils. It may well be, therefore, that the evidence will point to a conclusion that Corpus Christi's approach was simply to rely on the common sense of pupils. In any event, whatever conclusion may be reached at the inquest as to the existence of any policy, the fact would remain that only one of the pupils who had seen or heard relevant behaviour by William Cornick made any report to a member of staff, and that that report came too late to save Mrs Maguire. Whether or not any former pupil gives evidence, submissions can therefore be made as to the success or failure of communication of any relevant policy. It follows that I cannot accept Mr Armstrong's submission that the effect of the Assistant Coroner's decision is that the inquest will only hear about one side of the communication of policy as between teachers and pupils: the fact that (with one exception) no report was made may in itself be regarded as important.

66. For those reasons it is my judgment that, in striking the balance which he did, the Assistant Coroner was entitled to conclude that there was a clear risk of harm to former pupils in calling them to give evidence, but that there was little prospect of their oral evidence assisting materially in ascertaining the circumstances of Mrs Maguire's death or in learning lessons for the future. There were arguments both for and against calling the interviewed pupils as witnesses, and there was room for different views as to how the balance should be struck; but the Assistant Coroner took the relevant matters into account, and it is in my judgment impossible to say that his conclusion was not one which was properly open to him.

67. As I have indicated, I have much sympathy for the claimants, and I fully understand their reasons for wishing to pursue this line of inquiry. For the reasons I have given, however, I am unable to accept the submission that the Assistant Coroner reached

a decision which was so seriously flawed as to be *Wednesbury* unreasonable. This claim for judicial review accordingly fails and is dismissed.

Addendum:

68. I am grateful to all counsel for the helpful written submissions, as to costs and other ancillary matters, which they provided after seeing this judgment in draft. The parties invite me to resolve the remaining issues on the papers, and it is clearly right that I should do so.

69. The claimants apply for permission to appeal against this decision. By CPR 52.6(1), permission may only be given if the court considers that the appeal would have a real prospect of success, or if there is some other compelling reason for the appeal to be heard. In my judgment, neither criterion is met. Mr Armstrong's submissions realistically recognise that his grounds for seeking permission are essentially the same as those which he argued before me. For the reasons given in this judgment, I have rejected those arguments. For the same reasons, and for the reasons set out in Miss McGahey's written submissions dated 11th August, 2017 – which I accept - I see no basis for either the submission that an appeal has a real prospect of success or the submission that there is some other compelling reason why an appeal should be heard. I do not think it necessary to reiterate those reasons; but I wish to emphasise that I reject the suggestion that my decision in any way restricts the duties of coroners in other cases.

70. As to costs, the defendant submits that the usual rule should apply and that costs should follow the event. A schedule of costs in the total sum of £10,719 has been provided. This differs from the schedule provided at the hearing in two respects: it omits that part of counsel's fees which related to the permission application; and it includes the costs of the hearing and subsequently (which the earlier schedule made clear it did not include).

71. The claimants submit that because this was an application made in the public interest, there should be no order as to costs; or alternatively, the costs should be restricted.

72. I have considered the passages in Davey v Aylesbury Vale DC [2008] 1 Costs LR 60 on which Mr Armstrong (paragraph 21) and Miss McGahey (paragraph 29) respectively rely. I have indicated in this judgment that I understand and accept the claimants' reasons for wishing the evidence of former school pupils to be heard. I have however rejected their submission that the Assistant Coroner made a seriously flawed decision. In considering costs, I accept Miss McGahey's submissions that the claimants "are in no different position from any others who bring unsuccessful claims arising out of tragic circumstances", and that they have shown no good reason why the defendant's costs should be borne by the council tax payers of Wakefield. The claimants have chosen, no doubt on advice as to the legal hurdle which they would have to surmount in order to succeed, to advance a case which has failed. In those circumstances I decline, in the exercise of my discretion, to make either no order for costs or a restricted order as to costs. I am satisfied that the usual rule should be followed, and that the claimants must pay the defendant's costs. The amount claimed in the schedule is in my view entirely reasonable. I therefore summarily assess the costs which must be paid at £10,719.