IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2020] EWHC 3670 (Admin)

No. CO/3406/2020

Royal Courts of Justice

Wednesday, 16 December 2020

Before:

LORD JUSTICE COULSON
MR JUSTICE HOLGATE

IN THE MATTER OF:

THE INQUEST INTO THE DEATH OF MICHAEL RICHARD VAUGHAN

CAROLINE SAUNDERS – HM SENIOR CORONER FOR GWENT

Applicant

J U D G M E N T

LORD JUSTICE COULSON:

1 On 8 April 2014 Michael Richard Vaughan was found alive but unresponsive at his home. He had taken a large quantity of paracetamol. He was attended by Russell Williams, who was a mental health team leader employed by the Aneurin Bevan University Health Board in Newport ("the hospital board") which had been treating Mr Vaughan for various mental health issues for some time. He was taken to hospital but sadly he died on 10 April 2014.

2 Mr Williams had found a suicide note at the deceased's home. He gave the original note to the deceased's brother, Malcolm Vaughan, to whom it was addressed, but he properly retained a copy and he put it with the deceased's medical records kept by the hospital board.

3 The inquest into the death of the deceased took place on 9 July 2015. It appears that, not unreasonably, Malcolm Vaughan expected Mr Williams – or somebody else at the hospital board – to include a reference to the suicide note in their report to the Coroner. For reasons which were unexplained, but subsequently ascribed to a failure of process or procedure, that did not happen. Accordingly, the Deputy Coroner, Mrs Wendy James, did not know about the note at the time of the inquest. She returned a conclusion of misadventure.

4 It appears that immediately after the inquest, at a meeting later on 9 July 2015, Malcolm Vaughan challenged Mr Williams as to why no mention had been made of the suicide note. The correspondence which the court has seen suggests that Mr Williams replied to say that he had referred to the note in his original report, but the reference had been omitted from the report that was provided to the Coroner. It is therefore plain that, from 9 July onwards, everyone involved in this case at the hospital board was aware of the suicide note.

5 The existence of that note might be thought to cast considerable doubt on the verdict which had been reached. The hospital board's failure to refer to it at the inquest was particularly unfortunate because the Vaughan family had been critical of their management of the deceased in the months leading up to his death.

6 On 20 July 2015, Malcolm Vaughan wrote a measured letter to Mrs James, saying that he found it "a matter of deep concern that evidence of a suicide note left by my late brother was clearly removed from a report for whatever reason and would therefore ask that the inquest be reopened and those people with the relevant information are asked to attend in person in order that no further omissions will be made." By this time the Coroner's Office was already aware of the suicide note because the hospital board had written to inform them of it the day after the inquest, on 10 July 2015.

7 Regrettably, there was then a period of over two years before anybody acted on Malcolm Vaughan's request. On 11 August 2017 Mrs James wrote to the Attorney-General seeking a fiat to reopen the inquest. Her letter, which was not provided to the court until late yesterday afternoon, is unsatisfactory because it does not explain why she allowed two years to pass before she acted on Malcolm Vaughan's request. Procedurally, worse was to come. Although in January 2018 the Attorney-General granted the requested fiat, no claim form was filed at the Administrative Court in consequence, and so the authority of the fiat lapsed.

8 On 8 July 2019, Caroline Saunders took up her post as Senior Coroner for Gwent. With commendable speed, within three weeks (that is to say on 29 July 2019) she wrote to the Attorney-General's office requesting a further fiat, on the basis that the previous fiat had expired and that the grounds for requesting the original fiat remained valid and unchanged. Thereafter there were further exchanges with the Attorney-General's office, and it was not until 18 August 2020 that the Attorney-General granted the further fiat.

9 This time a claim form was issued, on 22 September 2020. The claim was supported by a document entitled "Facts and Grounds" which, on a careful study, did not set out all of the history in the way that it ought to have done. In addition, what is missing from the Facts and Grounds, and indeed from all of the documents until very, very recently, is any information about the attitude of the deceased's family to the prospect of a further inquest. This court has been involved for some days now in seeking to obtain that information. Originally it was suggested that Malcolm Vaughan was in favour of a further inquest but that suggestion was based on what was said by the applicant in a letter of 1 August 2019 to the Attorney-General, so it was not only hearsay but it was also sixteen months' old.

10 The importance of this information cannot be over-stated. On any application for a further inquest the court will always give considerable weight to the views of the family involved, particularly where, as in this case, there has been a lengthy delay. Up to date evidence as to the family's views should always be before the court considering an application of this kind. Accordingly, it has been a matter of ongoing concern that this court has not had that critical information.

11 However, as a result of our communications with the applicant's solicitors, this court has received this morning a copy of an email from Malcolm Vaughan to the Coroner's Office. It is dated today's date. Mr Vaughan says:

> "I confirm that I have received and read all the documents sent to me regarding the application to open a new inquest into my brother Michael's death. I am in full agreement with a new inquest being held. I am certain my brother took his own life having read his suicide note."

12 It is against that factual background that this application falls to be considered.

13 Section 13 of the Coroners Act (as amended) provides as follows:

> "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—
> (a) that he refuses or neglects to hold an inquest or an investigation which ought to be held; or
> (b) where an inquest or an investigation 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."

Subsection (2) deals with the way in which the High Court may order that further inquest or investigation.

14 The approach to a s.13 application has been dealt with in many cases. At paragraph 10 of the judgment of the Lord Chief Justice in *Attorney-General v Her Majesty's Coroner for South Yorkshire* [2012] EWHC 3783 (Admin), otherwise known as "the *Hillsborough* case", the LCJ said:

> "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."

15 Ms Power, in her helpful submissions, has cited a number of other authorities in this vein but I do not find it necessary to set those out in this judgment. They largely paraphrase the above passage in the *Hillsborough* case.

16 The statutory test in respect of the interests of justice is in the alternative. If it can be shown that a fresh inquest is *either* necessary *or* desirable, then it will be ordered.

17 On the particular facts of this case, I am not persuaded that a fresh inquest is necessary. After all, the Coroner Service in Gwent has allowed a long time to pass without any, or any proper, explanation for the delay, with the record showing that the deceased's death was attributable to misadventure. During that period they have only sporadically suggested that the inquest should be reopened. None of that, on its face, suggests necessity. So if, for whatever reason, the deceased's family had been opposed to a fresh inquest, then I rather doubt whether I would have overruled their wishes and ordered such a fresh inquest on the grounds that it was necessary.

18 However, I am easily persuaded that a fresh inquest in this case is desirable. That is principally because that is what Malcolm Vaughan wants. Indeed, it is what Malcolm Vaughan has wanted since the afternoon of the original inquest. It is emphatically not his fault that those charged with resolving these matters on behalf of the public have provided a poor service to him and his family.

19 There is also the possibility of a different conclusion. As I have said, the applicant does not need to show that a different conclusion is likely, but the decision in the *Hillsborough* case makes it clear that, if a different verdict is likely, a fresh inquest ought to be ordered in any event. Here, having belatedly been provided with the suicide note and read it for myself, I am bound to say that a different conclusion is indeed likely. That is a second reason for concluding that a further inquest is desirable.

20 I accept Ms Power's submission that it may also be desirable to order a fresh inquest because that would mean that, if there is a different verdict, the relevant public records can be suitably amended. However, as discussed with her in argument, I am not persuaded, given the lapse of time in this case, that that is a strong point.

21 Finally, there is the question of the delay itself. It seems to me that delays may be relevant when considering the desirability of ordering a fresh inquest, although the delay in the *Hillsborough* case was in excess of twenty years. Ms Power submits that it might be regarded by the court as relevant that the delay was the responsibility of the applicant's

office (although not, I should stress, the applicant herself) rather than anyone else, and that the delay is of little materiality in a case where the family are content, indeed enthusiastic, for a further inquest to be ordered. I agree that, if the family are happy to accept the lapse of time for this purpose, then this is certainly a case where the court should too.

22 For all those reasons, I conclude that it is in the interests of justice for there to be a fresh inquest because that is the desirable outcome in this case. If my Lord agrees, I would order a fresh inquest. I would add, as we discussed in the course of argument that, in the particular circumstances which have arisen here, the inquest should be carried out as soon as possible and by the Senior Coroner herself. I would express the view that that is perhaps the least that the deceased's family deserve.

MR JUSTICE HOLGATE:

23 I agree.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.