



**In the High Court of Justice
Queen's Bench Division
Administrative Court**

CO/4066/2021

In the matter of an application for judicial review

THE QUEEN

on the application of

JANE GRANGE LEE

Claimant

-and-

HM ASSISTANT CORONER FOR COUNTY DURHAM

Defendant

-and-

CHIEF CONSTABLE OF DURHAM CONSTABULARY

Interested Party

Notification of the Judge's decision on the application for permission to apply for judicial review (CPR 54.11, 54.12)

Following consideration of the documents lodged by the Claimant and the Acknowledgements of Service filed by the Defendant and the Interested Party

ORDER by HH Judge Klein sitting as a High Court Judge

1. The application for permission to apply for judicial review is refused.
2. No order for costs.

Reasons

1. This case relates to the scope of the inquest into the tragic death of Dylan Lee ("Dylan"). It is a distressing case and I extend my heartfelt condolences to Ms Lee, to Dylan's brothers and sisters and to all of Dylan's family.
2. The principal issue in this case is whether the Defendant ("the coroner") was in error in not investigating the circumstances in which Dylan died (see s.5(2) of the Coroners and Justice Act 2009). It would only be appropriate to give permission to apply for judicial review, in this case, if it is sufficiently arguable that Durham Constabulary arguably breached an operational duty to take preventative measures to protect Dylan's life, so that it would be sufficiently arguable that the coroner had an investigative duty (see per Lord Dyson in *Rabone v. Pennine Care Trust (INQUEST intervening)* [2012] 2 AC 72 at [112]). Durham Constabulary will only have had an operational duty if it knew, or ought to have known, of a real (that is, a not remote or fanciful) and immediate (that is, present and continuing) risk to Dylan's life from the conduct of the neighbours (see generally e.g. *R (Skelton) v. Senior Coroner for West Sussex* [2021] QB 525 at [45]-[63]).

3. It is not sufficiently arguable, on the material before the coroner at the time he made the decision being challenged, that Durham Constabulary had an operational duty to Dylan, so that it is not sufficiently arguable that the coroner fell into error.
4. PS Cockerill's report recorded that the Single Point of Contact (PC Fairbairn) had only two interactions with Dylan in the year before he died, including on 2 April 2021 when Dylan was recorded as having reported, in answer to a question about how the incident with the neighbour being investigated made him feel, that he was worried about the safety of his chickens but, otherwise, "everything [was] ok". Further, based on the report, there was nothing in the earlier interaction which ought to have put Durham Constabulary on notice that Dylan's life might be at risk.
5. Ms Lee's witness statement set out conduct by the neighbours which, if proved, is deeply concerning and was understandably distressing. She reported that Dylan was incredulous and furious and really upset (see para.40 of the statement) on one occasion, that he felt he was being treated differently because of his Romani Gypsy heritage on another occasion (see para.46 of the statement), that he was upset about the April 2021 incident (see para.50 of the statement) and that he was extremely upset and frustrated about another incident (see para.71 of the statement). It does not follow from this that there might have been a risk to Dylan's life. Nor, when it is borne in mind that Durham Constabulary had only two interactions with Dylan and when those interactions are taken into account, is there support for the conclusion that Durham Constabulary ought to have known that there was a risk to Dylan's life. Indeed, Ms Lee fairly says, in para.96 of the statement, that "Dylan's death came as a complete shock to [her]", that she "had no idea that he was thinking of taking his own life" and that "there were no warning signs".
6. Ground 1: It is Ms Lee's case, and the coroner agrees, that the coroner did not agree to investigate the circumstances in which Dylan died, or, to put it as it is put in the Statement of Facts and Grounds, that he did not agree her application on scope. It is not sufficiently arguable therefore that, by calling for a police report and/or calling police witnesses, the coroner had, in fact, agreed to investigate the circumstances in which Dylan died.
7. Ground 2: So far as this ground relates to the conduct of Durham Constabulary, it is dealt with above. So far as this ground relates the conduct itself of the neighbours, it is unarguable. The coroner would only have had an investigative duty if there was an arguable breach by a public authority of its Art.2 duty. The neighbours themselves did not have an Art.2 duty.
8. Ground 3: Even if the state has an investigative duty under Art.8, it does not follow that that investigative duty falls on a coroner (for which proposition no authority is cited). Indeed, it is to be noted that the function of an inquest is not to investigate a breach of a person's right to respect for private and family life. Rather, its function is to investigate who has died, and how, when and where (and, where appropriate, in what circumstances) a person came to die. Ground 3 appears to be a

complaint that, in making decisions, Durham Constabulary breached Art.8. There is no basis for contending that an inquest is the appropriate forum for the investigation of such a complaint. There is an established procedure, otherwise than in the coronial system, for dealing with complaints against the police.

9. Ground 4: This ground is dealt with above. In any event, it does not follow from the fact that the coroner may have misconstrued what the Chief Coroner said to the House of Commons Justice Committee that the coroner fell into error in deciding not to investigate the circumstances in which Dylan died.
10. It follows therefore that the claim is not sufficiently arguable and permission to apply for judicial review cannot be given.

Signed 

The date of service of this order is calculated from the date in the section below

Dated 24th February 2022

For completion by the Administrative Court Office

Sent / ~~Handed~~ to the Claimant, and the Defendant and the Interested Party's solicitors

Date: 28.02.2022

Solicitors: Bindmans LLP / Legal & Democratic Services / Force Solicitor
Ref No. SG/03167

Notes for the Claimant

If you request the decision to be reconsidered at a hearing in open court under CPR 54.12, you must complete and serve the enclosed Form 86B within 7 days of the service of this order.

A fee is payable on submission of Form 86B. **For details of the current fee please refer to the Administrative Court fees table at <https://www.gov.uk/court-fees-what-they-are>.**

Failure to pay the fee or submit a certified application for fee remission may result in the claim being struck out.

The form to make an application for remission of a court fee can be obtained from the gov.uk website at <https://www.gov.uk/get-help-with-court-fees>