

Inquest Touching the Death of Shukri Yahya Abdi

Ms Joanne Kearsley H.M. Senior Coroner for Greater Manchester North

Findings and Conclusion

Introduction

1. This has been the inquest into the death of Shukri Yahye Abdi ("Shukri"). The Interested Persons ("IPs") are (i) Mrs Zamzam Ture, Shukri's Mother, represented by Mr Ashley Underwood QC of counsel, (ii) "Child 1" represented by Ms Alison Hewitt and Ms Anna Naylor, (iii) "Children 2-4" represented by Mr Joseph Hart of counsel, (iv) Broad Oak school represented by Mr Cullen and v) Greater Manchester Police ("GMP") represented by Mr Mark Monaghan, of counsel.
2. The purpose of the inquest is laid out in section 5 (1) of the Coroners and Justice Act 2009 which provides that a coroner must ascertain who the Deceased person was, and when, where and how she came by her death. It is important to remind everyone in court that an Inquest is a fact-finding inquiry. An Inquest does not apportion blame in anyway.
3. In order to answer those questions I have received and admitted oral and written evidence from Shukri's family, from post mortem investigations, from various witnesses including Child 5 and from investigations of her death conducted by GMP and finally from Child 1-4 which included first accounts, their ABE interviews and from some children further supplemental written statements and their oral evidence. The Court has also had the benefit of viewing Body Work Video footage from the scene which included conversations with some of the children, CCTV footage and stills of their movements and downloaded social media stills and videos from the phones belonging to some of the children.
4. The court heard evidence from Shukri's mother Mrs Ture. During the course of the Inquest it was brought to the attention of the court that the interpretation being provided by the translator, may not have been accurate. For this reason

the Inquest was adjourned to allow the court the opportunity to obtain a transcript of Mrs Ture's evidence. This transcript was interpreted by a second interpreter and has been shared with Mrs Ture to ensure the accuracy of her evidence. Mrs Ture has responded setting out a few amendments.

5. Set out below are my findings and conclusion as to Shukri's death. Unless otherwise stated, all my findings have been reached on the balance of probabilities. In the course of this document I make reference to some of the evidence I have heard but it not intended to be, and it is not, a comprehensive review of all the evidence before me. Rather my intention is to explain, by reference to parts only of the evidence, why I have reached my findings of fact and conclusion. However in reaching my findings and conclusion I have taken account of all the evidence I received both oral and written. If a piece of evidence is not expressly mentioned, it does not mean that I have not considered and taken full account of it.

Shukri – Background Facts

6. I am satisfied that the person who died was Shukri Yahye Abde and that she was born on the 1st August 2006 in Kenya. She was the daughter of Yahye Abdi and ZamZam Arab Ture .
7. At the time of Shukri's birth her family were living in a refugee camp in Kenya. This is where Shukri was brought up with her siblings until the 24th January 2017 when the family were accepted into the United Kingdom. Shukri's Father remained in Kenya. At the age of 10, Shukri came to live in Bury with her Mother and siblings and attended a local primary school for 5 months before moving to Broad Oak High School.
8. At secondary school, Shukri was a happy, lively, chatty girl in school. She was described as a *"joy to have in class"* by Lisa Parker who had known Shukri since year 7. Like many young people her age she could *"push boundaries"* on small matters such as who she could sit next to in class but Shukri was clearly remembered as a smiling and happy girl and someone who *"did not have a nasty streak in her."*
9. The court heard how Broad Oak School was near to Shukri's home and she would walk to and from school. Mrs Ture described how if she was home

before Shukri she would walk to Broad Oak to look for her. Mrs Ture confirmed that Shukri would come home from school everyday, although she was aware that on occasions Shukri may have after school activities such as athletics. Mrs Ture also confirmed Shukri had on occasions been late home but she had always found her at the school. She described how the staff at the school reception knew her and would laugh and ask her, "*are you looking for Shukri.*"

10. Shukri would also attend mosque (madarasa) every day from 5-7pm with her younger siblings. Mrs Ture would take the children to mosque. In June 2019 Shukri was preparing for an exam although she was unclear as to exactly when the exam was being held.
11. Mrs Ture told the court that as far as she was aware there had been no issues between Shukri and Child 1, her recent statement clarifies that, in fact, Mrs Ture did not know Child 1. However Mrs Ture told the court that as far as she was aware Shukri did not want to be friends with Child 2.
12. Child 2 acknowledged in her evidence that there were occasions when herself and Shukri had disagreements but on several occasions during the Inquest the court heard how Child 2 found Shukri to be a "*funny and entertaining*" child who was fun to play with.
13. Mrs Ture described to the court the efforts she went to to look for Shukri when Shukri did not come home from school on the 27th June 2019, tragically contacting the police to report Shukri missing, only shortly the police became aware of a child who was in the river.
14. Mrs Ture told the court that prior to June 2019 Shukri had never been to a river or waterfall (weir) and that she did not like the water. She told the court Shukri had also never swam in a swimming pool.
15. It seems to me that in the short time Shukri had been in the United Kingdom she was adjusting well to a new way of life. She was settled in her secondary school and was popular and happy. Whilst her mother may have had a different view, the fact was that in school Shukri was friendly with many of the girls including Child 1 and Child 2 although there were times when, like many teenage friendships, they could have on-off days.

27th June 2019 – At School

16. On the 27th June 2019 Shukri had been in school all day. During the day Lisa Parker had been teaching year 8 (Shukri's class). She recalled how normally the pupils would be allocated seats based on their ability but on this day they were doing project work and she allowed them to push tables together and choose who they sat with. Shukri chose to sit with Child 2 and another child. Shukri was described as being "*chatty with everyone*" on this day and as the class was smaller in size Ms Parker recalled hearing a lot of laughing and giggling about the task in hand. She did not recall hearing any social chat.
17. Whilst Child 2 and Shukri were sitting together on the 27th June 2019, Ms Parker was aware that there were occasions when they could fall out but described this as, "*short-lived and then they were fine*". Indeed she told the court, "*they were rarely allowed to sit together as they were too chatty together.*" This was confirmed by Child 2 who acknowledged that on occasion they had had disagreements but that by the 27th June 2019 any disagreements, "*were forgotten.*"
18. The evidence of Child 2 suggested that it was in this class when they were working together that Child 1 suggested going somewhere later. Child 2s recollection was that this was to a, "*water park and slide.*" Child 2 thought this was a good idea as the weather was hot and sunny.
19. In her interview Child 1 describes how the location she had in mind when she suggested going swimming was, "*a different one...it was the one, Farifield hospital, ...it weren't that deep, it was just normal water where you could slide down and get in the water..*" She had been there before with her sister.
20. There is a discrepancy in the accounts of Child 1 and Child 2 as to who invited Shukri. Although both Child 1 and 2 agree that Shukri accepted the invitation and seemed happy with the idea and was willing to join in although, Child 1 stated in her interview, "*But she (Shukri) didn't know it was going to be a river. She thought it was going to be a swimming bath.*"
21. The Court heard there was no discussion at this time as to whether anyone could or could not swim although Child 2 told the court her plan was not to go fully in the water as she could not swim. An arrangement was made that the girls would meet at the school gates at the end of school.

22. *I find as a matter of fact that the suggestion to go to swimming was made by Child 1. That Child 2 extended the invitation to Shukri who at this stage seemed happy and willing to go with the children after school and that arrangements were made to meet at the school gates after school. As a matter of fact there was no discussion or indication given by Shukri at this stage that she could not swim. I also find that Child 1 who made the initial suggestion was not specific as to the location of where they would be going swimming and that at this stage Shukri would not have known this was to be a river.*

27th June 2019 – From leaving School to being at the River

Leaving School

23. At approximately 3.20 pm Shukri was in the changing rooms at school getting changed alongside some other girls with a view to attending an athletics session. Child 5 gave evidence to the Court in which she described what can only be described as an unpleasant encounter between Shukri, Child 1 and Child 2.
24. Child 1 and 2 came into the changing rooms clearly having been looking for Shukri who had not met them at the school gates, as arranged.
25. Child 5 was in the changing rooms as she was also going to the athletics club. She knew Child 1, 2 and Shukri, although she was not in their school year.
26. She described how Child 1 came into the changing rooms and, *“raised her voice a bit”* and was telling Shukri to get changed saying *“you knew we were going out.”* Child 5 also described how during this encounter Child 1 was *“getting hold of Shukri’s shoulder and barging past her.”* She went onto describe how Shukri was not saying anything but simply put her things back in her bag and left with Child 1 and 2.
27. Child 5 described how the atmosphere had changed in the changing rooms when Child 1 and 2 had entered and how the encounter was, *“a bit nasty.”*
28. In her evidence Child 2 indicated she did not remember much about what happened in the changing rooms. Whilst for the most part, I found the oral evidence from all the children to be helpful, the evidence of Child 2 in relation to this particular event was vague.

29. She did accept in her evidence that both herself and Child 1 were, *“pissed off and angry”* that Shukri had not met them as agreed. In her interview Child 1 acknowledged that Child 2 said, *“that bitch she went to that athletics. And I started laughing and I was like yeah, she probably did.”*
30. Child 1 described how they went to find Shukri who was in the changing rooms, Child 1 described how Shukri was getting changed and, *“we were like what the hell are you doing here, and she was like well I’m going, I’m going to do athletics. I was like no you’re supposed to come with us. She was like oh god I’m sorry, I forgot. And then she came down with us.”*
31. In her evidence Child 2 described Child 1 telling Shukri to *“hurry up”* as she put things in her bag.
32. In respect of this incident, I found the evidence of Child 5 to be entirely honest, reliable and helpful. Child 5 came forward following the death of Shukri to speak about what had happened in the changing rooms and in my opinion she gave a very truthful account.
33. *I find as a matter of fact that Shukri had been in the changing rooms with the intention of attending her athletics class and then going home as she would normally have done so. Whether she had forgotten or had changed her mind in respect of meeting Child 1 and 2 cannot be determined but I am in doubt that had Child 1 and 2 not gone looking for Shukri then she would have remained at school and not left with them.*
34. *Having not met them at the school gates, Child 2 in particular wanted to locate Shukri and was unhappy she had not met up as arranged. Child 1 and 2 went looking for Shukri with the intention of finding her so that she would go with them as planned.*
35. *Having located Shukri in the changing rooms, I am satisfied that she was subject to peer-pressure in the manner in which she was spoken to, in particular by Child 1 and ultimately was persuaded to leave athletics and go with Child 1 and 2.*

Primark

36. Following their leaving of the school grounds the court was assisted by the evidence which captured the girls on CCTV or mobile technology such as their phones (either by way of stills or video footage) during the course of the evening. This included whilst at Primark, at the bus station, at Ms Cusacks house and then later as they walked through Bury town centre towards the river.
37. After leaving school the girls go into Bury to Primark. I am satisfied from the evidence that they go with the intention of obtaining items of clothing to wear when they go swimming.
38. Mr Addison and Mr Hawker saw the girls in the Primark store in. Being attune to difficulties with teenagers in the store Mr Addison described how he watched them, noting that there was an attempt to shoplift items from the store. All the girls were taken to be spoken to and Child 1 acknowledged she had put items in her bag and she apologised for what she had done.
39. During this time Shukri and Child 2 were very quiet and it was Child 1 who was described as "*doing the talking.*" Having been spoken to they were allowed to leave.
40. Mr Addison described how when they had come into the store they were laughing and giggling together and at no time did he form the impression Shukri did not want to be in the company of Child 1 and Child 2.
41. *Having considered the evidence in relation to the time in Primark I am satisfied that Shukri was content to be with Child 1 and 2 at this time. There is no evidence that Shukri was the child who instigated the taking of any items, although she there and involved. I accept this behaviour would have been extremely out of character for Shukri.*
42. Whilst in Primark Child 2 told the Court that Shukri was worrying about what she would say to her Mother and indicated that she no longer wanted to go to the "*waterpark.*" Child 2 said that she wanted Shukri to go with them as she was more fun and that Shukri was saying, "*no*" so Child 2 said something along the lines of, "*let's think about an excuse to tell your mum.*"

Bus Station

43. CCTV footage from the bus station captured the girls waiting for a bus to return to Child 1s home. During this time Shukri can be seen to walk away from Child 1 and 2. Both Child 1 and Child 2 confirmed in their evidence that there was a time at the bus station when Shukri wanted to go home.
44. In her statement dated 25th July 2019 Child 1 describes how when they reached the bus stop, Shukri told them that she had a religious exam to go to and that she didn't know whether to go or whether to stay. Child 1 says she told Shukri to go as she didn't want her to get into trouble and she knew she had strict parents. When Shukri walked off she says Child 2 followed her and she followed Child 2. Child 2 and Shukri were then talking in "*their own language*" so Child 1 went to sit down and rang her foster carer. Shukri and Child 1 then walked off outside and the bus arrives and all three children get on the bus.
45. Child 2 told the Court that Shukri was worrying that she did not know what to tell her Mother as to why she was home late. Child 2 was again quite vague in her evidence as to what occurred at this stage. She told the court they had all been talking and "*found an excuse for Shukri*", although she could not recall what it was.
46. In her evidence as to what occurred at the bus station, Child 2 also confirmed that she wanted Shukri to stay with them as, "*Shukri was more fun*" and she acknowledged she was helping Shukri think of an excuse for her Mother.
47. When asked she stated Shukri decided to stay with Child 1 and 2 but that she could not recall;
- a. Whether she had laid her hands on Shukri
 - b. Whether anything unpleasant/rude or threatening was said to her
48. *I find as a matter of fact that at the bus station Shukri would more than likely have returned home at this stage, if she had not again been persuaded, predominantly by Child 2 to stay. There is no evidence to suggest that this persuasion was in anyway threatening towards Shukri or that she did not willing stay once persuaded to do so.*

49. All the girls then went to the home of Child 1. Mrs Cusack recalled how they were in Child 1's bedroom and she could hear them laughing and giggling "*like teenagers.*" They all had food sitting outside and for a short time Ms Cusack joined them. Child 1 had asked her if they could go out albeit Mrs Cusack told the Court she, "*assumed they were going to Openshaw Park.*" When the girls left her house she said they had indicated they were walking to Bury and she recalled how they had got changed. At no stage did Ms Cusack hear the girls talk about going swimming.
50. The Court has also had the benefit of viewing snap-chat video footage captured whilst the girls were at Ms Cusack's home and on the street shortly after they left. Shukri can be seen having got changed into different clothing. This footage clearly shows all the girls laughing, twerking, singing and dancing. There is absolutely no suggestion at this point in time that Shukri was unhappy or did not want to be with Child 1 and 2. Indeed her behaviour at this stage shows a young girl in the company of her friends fully engaged with them.
51. *Whatever doubts Shukri may have had previously, I find as a matter of fact that Shukri was entirely willing to be at Mrs Cusack's home and to leave with Child 1 & 2. Moreover she was happy and enjoying the company of Child 1 and 2 at this time and she willingly left with them with a view to going swimming albeit, as I will come onto, it is unlikely she knew of the exact location.*

Meeting Child 3 and 4

52. Child 3 and 4 both gave video interviews to GMP. All the children confirmed that the meeting with Child 3 and 4 was unplanned.
53. Child 3 and 4 had arranged to meet each other and had been to the cinema in Bury town centre. Having left the cinema early they had bumped into Child 1, 2 and Shukri. Child 4 had not met Shukri before but had briefly known Child 1 and 2. Child 4 said he was told they were going to the river.
54. Child 1 confirmed that she invited Child 3 & 4 to the river. Child 3 initially said he wasn't going to go to the river as he said, "*it's going to be boring*" but that Child 4 was happy to go. Child 1 also said that Child 2 and Shukri were "*not good*" about the boys joining them but that on the walk they were all laughing.

55. Having told Child 3 & 4 that they were going to the river it appears to have been Child 4 who has taken some lead in the directions to the river. In her interview Child 1 says that she had *“forgot the way down to the river so the boys were like we know the way, so Child 4 said he knows the way and he shown us the way.”*
56. The location they have arrived at was not the location envisaged by Child 1. She confirmed that this is now somewhere she had been previously.
57. *Having considered the evidence I find as a matter of fact that the meeting with Child 3 & 4 was unplanned and purely coincidental. Only having met, did the boys become aware that Child 1,2 and Shukri were heading to the river, nothing more specific, and that they then all walked together down to the River Irwell following a route Child 4 knew, arriving at a part of the river not familiar to Child 1.*
58. *As a matter of fact whilst both Child 2 and Shukri were initially nervous about being in the company of boys they were happy to remain with the group and made no attempts to leave and go home.*

Threat to Kill Shukri

59. During the evidence the Court heard from Mrs Cusack the foster carer for Child 1. She had known Child 1 for 6 weeks at the time of Shukri’s death. After Shukri’s death Mrs Cusack described how it took Child 1 a few days for her to digest what had happened. A few days after Shukri died Mrs Cusack described how she was at home and Child 1 told her that when the children had been walking to the river *“if you don’t get in the water I am going to kill you.”* It is important to recall that Mrs Cusack also said that Child 1 recollected this was said, *“when they were all walking and messing about and that she said it in a laughing and joking manner.”*
60. Mrs Cusack went on to tell the court that she asked child 1 why she said it and the response was, *“After coming all this way she wanted everyone to get into the water.”*
61. Child 1 was happy for Mrs Cusack to advise social services and the police of the information and that Child 1 wanted people to know that it wasn’t meant in a bad way given the events which had unfolded.

62. All the children were asked as to whether they had heard Child 1 make any comment along the lines of “get into the water or I will kill you,” to Shukri. Child 2 told the court she did not recall any such comment, and Child 4 said he did not hear any such comment.
63. The Court received evidence from Daniel Stockdale a teacher who had tutored Child 1 for some time after Shukri’s death. He provided a statement in which he explained that in his view Child 1 had a “*low level of language comprehension and in terms of her social language development she copied and mimicked phrases and idioms she had heard without properly understanding what she was saying.*” Mr Stockdale explained in his statement that on occasions Child 1 would use the phrase...“*or I’ll kill you*” in a way many children do and he provided the court with an example of such a situation involving himself.
64. Indeed in her interview this was a phrase used on several occasions by Child 1.
65. *On the balance of probabilities I am persuaded that the account given by Child 1 herself to Mrs Cusack is probably accurate, there would be no reason that I can see for Child 1 to make up this incident, some days after Shukri’s death.*
66. *However and I must stress this, there is absolutely no evidence that there was any animosity between child 1 and Shukri on the walk to the river, no-one heard her say it and that this is a phrase that Child 1 is likely to use frequently. For these reasons I do not find that this was said with any malice or intent but very much in the context of a child who was keen to go swimming in the water and did not want to be the only one. Any suggestion to the contrary would be wholly inaccurate and incorrect.*

Events at the River.

67. Having walked down the River, Shukri and the children 1-4 arrive at a spot on the River Irwell where there is a weir. This is located just off Dunster Road near to the Bury police station. The weather on the evening of the 27th June 2019 was warm and sunny. It had been a particularly hot day. The river was described in the statement of DI Naismith as being approximately 30 metres wide with large rocks that stretched across a shallow part of the water. The court was also provided with photographs of the scene.
68. PC Darbyshire told the Court that from the rocks to the weir was about 20-25 metres and that within a couple meters of the rocks the river drops away from

being approximately knee deep to being 15 foot deep. When searching for Shukri he also described how the water around the rocks looked calm and inviting especially on a summers evening but that within 2-3 metres from the rocks towards the weir you could start feeling the effects of the weir and on a small body this can have "*quite an effect*".

69. I turn then to the events at the River, the only witnesses to the events at the river were the children 1-4. All the children were video – interviewed by Greater Manchester Police shortly after the death of Shukri. Prior to this on the evening in question Child 2 and 3 provided first accounts and the Court has also viewed some body worn footage from officers who spoke to some of the children at the scene. The court also had the benefit of listening to the 999 call made by Child 1 and 2.
70. Child 2, 3 & 4 also gave evidence to the Inquest. Child 1 is not well enough to do so and no inferences should be drawn by her inability to give evidence in person. The court is entirely satisfied that she is not well enough to attend.
71. All of the children admitted that during the course of their recollection that there were times when they were not paying attention to the unfolding events, Child 3 said, "*he was eating crisps*" and Child 4 told the court he was "*talking to child 3.*" This is to be expected, at the time the children were not to know of the tragic events which were going to unfold.
72. The following facts however seem clear from all the evidence:
 - a. Child 1 was the first child to get into the water.
 - b. Child 1 can swim.
 - c. Child 1 was the only other child in the water when Shukri got into difficulties.
 - d. Child 2 was not in the water when Shukri got into difficulties.
 - e. Child 3 did not get into the water at all and he confirmed he cannot swim.
 - f. Child 4 only gets into the water once Shukri has got into difficulties and does so in an attempt to assist her.
73. Therefore in establishing the sequence of events leading up to Shukri's death the courts attention has been focused on the movements and discussions between Child 1 and Shukri.

Conversation about entering the Water

74. In the main, in relation to the sequence of events surrounding who entered the water and in what order they did so, the children were fairly consistent in their evidence.
75. The first Child to enter the water is Child 1. She confirmed this in her interview saying, *"I got in the water first and I was just floating on the water, nothing happened to me, I was on the water but I weren't in the deep end, because when I stepped a bit down that's the deep end."* This was also confirmed by the other children.
76. Following Child 1 the court heard evidence that it was Shukri who then entered the water next.
77. Child 3 described how Child 1 got in the water first so that it was covering her full body and then Shukri got in, described by Child 3 as *"up to her legs."* This was followed shortly after by Child 2.
78. Regardless of the fact that Shukri had entered the water at this stage it certainly appears that she was able to sit down in the water, as described by Child 1, 2 & 3.
79. Having got into the water briefly Child 2 then left to change her top.
80. Child 3 told the court how when Child 2 got out, Child 1 said to Shukri words to the effect, *"come on I will help you and help you swim"* and together they went into the water holding hands.
81. In his interview Child 3 describes the conversation between Child 1 and Shukri saying, *"Shukri was like 'I can't swim' and Child 1 was like 'Nah you need to get in' and then Child 1 was like 'I'll teach you how to swim.'"*
82. Child 3 described how he thought Child 1 could swim, *"cos she said she's proper good at swimming"* and said, *"so I believed her, so I was like 'Go in, just trust her she's your friend.'"* At which point Shukri re-entered the water.
83. In her interview Child 2 said she thought Child 1 said to Shukri, *" come with me"* so Shukri went there (into the water) and they were holding hands.

84. Child 4 recollected Child 1 saying something along the lines of, *"I will look after you in the water."* Child 4's recollection was that Child 1 said this just before Shukri went into the water.

85. In my opinion, having heard the evidence I found child 3 to be a crucial witness to these events. I also found that the manner in which he gave his evidence was entirely reliable. He was clearly physically close to both Child 1 and Shukri when this conversation occurred. Indeed he was involved in the conversation unlike Child 2 and 4 who simply overheard matters. It was the comments he made at this time which led to him being seemingly cross with Child 1 when she returned to the rocks having left Shukri.

Knowledge as to whether Shukri could swim

86. I have considered carefully the evidence given in relation to the knowledge held by the children, in particular Child 1, as to whether Shukri could swim.

87. Child 2 told the court Shukri told her, *"my mum takes me to swimming lessons with her brothers and sister"* but went onto say that Shukri commented, *"she was not really good at swimming and had only been to a few lessons."* Mrs Ture's evidence was that Shukri did not like water and that she had never got in a swimming pool. She had never tried to swim.

88. In her interview Child 1 gives several different comments relating to her knowledge as to whether Shukri could swim, she says:

- a. *"She didn't tell nobody she couldn't swim"* [page 19/70]
- b. *" She didn't tell me she can't swim, she was like I'm just going to go there and have some fun and then she didn't ask us if we can swim or anything, we just thought she could swim. We didn't need to ask her because we had swimming lessons so I thought she could swim."* (page 19/70)
- c. *"Basically we didn't know, we didn't hear if Shukri said I can't swim or I can swim, because at that point I was with (Child 2) walking down and she was laughing with the boys at the back. And me and (Child 2) was walking down so if she said to the boys I can't or I can swim, we don't know that."* (page 63/70)
- d. When asked in interview, "what did Shukri say to make you say It's all right, I'll look after you, Child 1 answers, *"I think she said she can't swim, I think that's what she said."* This was just before Shukri entered the water with Child 1.

89. This is also corroborated by the information Child 1 provided shortly after the 27th June 2019 to Ms Cusack when Child 1 told her that she (child 1) was trying

to teach Shukri to swim and said, *"I knew she could not swim but I told her I would save her if she could not swim."*

90. Child 4 stated he thought Shukri had said that she was *"alright at swimming,"* when she had been asked by Child 1 if she could swim.

91. On several occasions throughout his evidence Child 3 told the Court that Shukri has said she could not swim the *"second she got there and Child 1 said, I will teach you."* Child 3 recalled how he thought this had first been said by Shukri on the walk to the river as they were behind Tesco's, he said, *" Shukri was saying she could not swim at all..... she was saying she doesn't know how to swim....she was saying this normally. [Child 1] said that she is good at swimming as she goes to Bury baths..."*

92. Whilst reaching this finding it is important to also confirm that Child 3 recalled how:

- a. Shukri seemed happy about being at the river
- b. He did not hear anyone threaten Shukri

93. Both Child 3 and 4 categorically told the Court

- a. No-one pushed Shukri into the water
- b. No-one held her underwater

94. Child 4 recalled how:

- a. He did not hear Shukri say she did not want to get into the water
- b. When Shukri got into the water she did not do anything which made Child 4 think she was not happy to get into the water
- c. He did not hear Shukri say that she wanted to stay in the shallow part

95. There has been much speculation and rumour following Shukri's death suggesting she was pushed into the River. I will state now and make it as clear as I can, there is no evidence whatsoever to suggest that Shukri was pushed. Such suggestions are simply rumours and unhelpful speculation. There is no place for speculation in court and in this case such rumours are totally incorrect.

96. *Having considered the evidence I am satisfied on the balance of probabilities that Child 1 was aware that Shukri could not swim before she entered the water with her. That it was encouragement from Child 1 who told Shukri that*

she would teach her to swim. This led Shukri to enter the water with Child 1. I am equally satisfied that Shukri in entering the water did so willingly.

Child 1 and Shukri in the water

97. Turning to the sequence of events once Child 1 and Shurki enter the water, I have set out what I find are four key stages:
- a. Child 1 and Shukri entering the water holding hands
 - b. Their moving out to deeper water
 - c. What was described in court as 'crisis point' which I will refer to as the time when Shukri starts to go under the water
 - d. Child 1 swimming back to the rocks.
98. At the moment in time Child 1 and Shukri enter the water holding hands there is no evidence that anything untoward was happening. Shukri is not in difficulties, indeed the evidence of Child 3 & 4 suggests that whilst Child 1 and Shukri were in the water there was a short period of time where there are no issues or concerns and that they were swimming around with Shukri holding onto Child 1.
99. With Child 1 and Shukri having entered the water, the other children all described how Shukri and Child 1 then move towards deeper water. This was described by both Child 2 and 4 as to around shoulder level. Although shoulder level on each of the children would vary in depth given their differing heights what is clear is that this was deeper water than where Shukri had entered previously.
100. The court heard Child 1 did not know this area of the River Irwell. There is no evidence to suggest she had been at this location previously. She had been to another part of the river previously where she had been swimming with her sister, she said in interview;

" It weren't that deep, it was just normal water where you could slide down and get in the water, and me and my sister were fine when we did that before. Nothing happened to us in that river. But this one."

101. Whilst Child 1 had been in the water before Shukri entered with her, exactly how far out she had been and for how long is not clear from the evidence. There is no reliable evidence on this point, save that from the evidence of all the children I am of the opinion Child 1 could not have been in the water very long before she returns and engages in the conversation with Shukri and Child 3.
102. She did recognise in her interview the significance of the weir and the amount of water which came over it, describing it as *“all the water in Manchester comes over there”* leading to the area around the bottom of the weir to be very deep.
103. Child 1 also described how when she was in the water with Shukri she had some appreciation that the water was deeper at a certain point describing it as follows:
104. *“And then Shukri was there, and that’s where the deep part was being here. Because when I put my legs down here, I can feel it.”*
105. The evening of the 27th June 2019 was a hot and sunny evening. There is no doubt in my mind that the water around the rocks would have looked still and inviting. However several of the firefighters who joined the search for Shukri described the reality of the area.
106. Firefighter Dowling in his statement stated that whilst searching the river for Shukri the River was *“that deep more then 15 feet deep where the poles would not reach.”* [A160].
107. Firefighter Taylor stated, *“I continued walking up to the weir until I came to about 10 feet off the Weir. From this point I had to swim and was unable to touch the bottom of the floor. MY intention was to look down the Weir but I started to feel the pull of the weir this was when I was about 2 feet away from the edge. I felt if I continued I would be dragged into it, I knew this posed a significant risk to myself and colleagues.”*[A190].
108. Firefighter Bamford described the *“rough swell”* at the base of the weir. [A199]

109. The next key consideration for the court, has to be, what happened next? In short, what gave rise to the crisis point, the point in time when Shukri started to go under the water.
110. The court was assisted by Child 2,3 & 4 who tried their best to explain to the court what had happened once Shukri was in the water with Child 1.
111. They all marked on aerial photos of the area in question where they believed the girls entered the water, where they went to and whereabouts it was Shukri got into difficulties. It should be acknowledged that to ask any witness to pinpoint exactly where events occurred on an aerial map is not an easy task. The court also acknowledges that these witnesses all of whom are children, witnessed what must have been a very distressing incident, the recollection of which cannot have been easy.
112. Child 4 described how Shukri and Child 1 went out to an area he marked as X on the plan. He said that Shukri had her arm on Child 1 when they moved away from the rocks. Child 4 told the Court Child 1 and Shukri moved out into the water to where the depth would be *"just below my (Child 4s) shoulder"* and that they were on their backs. He stated that Child 1 and Shukri were in this area for about 5 minutes during which time Shukri had her arm on Child 1.
113. Child 4 described how, *" it looked like Shukri could swim with Child 1s help."* He described how Shukri was relying on Child 1 *"quite a lot to swim."*
114. Child 4 went on to tell the Court that after 5 minutes Child 1 let go of Shukri and came back to the rocks at which point Shukri was going under the water and coming back up.
115. Child 4 accepted that he had been talking to Child 3 during this time and was not *"really looking"*. He had not seen Child 1 as she left Shukri and had not heard anything being said.
116. When questioned Child 4 confirmed he had not seen Shukri holding onto Child 1s feet
117. On the evening in question Child 4 had also told PC Howard one of the officer who arrived on the scene, that Child 1 had taken Shukri in the water and let go of her, although PC Howard did not explore what he had meant by this.

118. Finally Child 4 told the Court he believed that Shukri was relying on Child 1 to stay afloat and that Child was supporting Shukri.
119. Child 3 described how Shukri and Child 1 entered the water holding hands and went into the deeper part. It was his understanding they went into the deeper part as Child 1 was going to teach Shukri to swim. He told the court that when they got to the part where they started to swim Shukri put her arm around Child 1s neck, he described how Shukri started *“jumping all over Child1 and was holding with two hands Child 1s neck and head.”* He went onto say at this point Child 1 started swimming back and let go of Shukri.
120. He told the court that when they got into the deep part Shukri panicked.
121. Child 3 said he did not see Shukri holding onto Child 1s feet, he did not see them on their back and that Shukri could not swim a little bit on her own indeed she could not swim at all on her own.
122. Child 2 told the court she could see that Child 1 was doing back stroke but she could not see what Shukri was doing properly after she had changed her top. She did tell the court she could see that Child 1 and Shukri were linking hands and holding each other when she got back and that the water was now up to the shoulders on both the girls. She said she thought she could see Shukri flapping her feet but she did not see her holding onto Child 1s feet.
123. Child 2 described how she saw Shukri let go of Child 1s hand and go down. She did not see Shukri holding onto Child 1s head.
124. As stated Child 2-4 are some way from direct events being on or around the rocks. In addition as is understandable they are not entirely focused on what Shukri and Child 1 are doing.
125. In respect of the evidence from Child 1, there are in my opinion, a number of differing, unreliable accounts which have been provided to various people. In saying that, I acknowledge that there is no doubt this was a traumatising and distressing event to witness and I do not underestimate the impact this evening has had on Child 1.

126. In her interview with GMP on the 28th June 2019, Child 1 set out differing accounts of what happened whilst herself and Shurki were in the water, she says;

- e. *" She got inside the water and she was holding me by my hand and it was like, she was holding me by my hand like that. Like I was in the water and she jumped into the water but she was, I was here and then she was here like you know, like next to me. And I had my legs like goes to walk on the floor so I had my leg behind the walk so I don't fall. And I tried pulling her forward to me but she something, I don't know, something happened. But I think it was something under the water or sommat. She went, she was like going down the water and then she tried getting back up. She didn't make it and she kept on going down"*

Later she says:

- f. *"But Shukri was like more at the deep part. I wasn't, so it must be the leaf under the rocks or whatever, but something must have pulled her down because she tried..."*

Followed by;

- g. *"And then me and Shukri thought we were going to put hands like that and we were going to go under the waster like that"*

And;

d. *"...That's the time when we did that and then sommat happened when we went under water. But I was like near this part here and she was like near the deep end."*

Later Child 1 states:

- e. *"Oh Shukri was holding onto my legs at the back like that."*

When questioned more about what she means by this Child 1 says;

f. *"Because we were under the water and we were under the water like that, she were holding the back of my legs. And I couldn't swim but that's when I got out.."*

She goes on to say;

g. *"But it was an accident because after that I was like that, and then Shukri hold on to my legs like that, and that's when I put my legs out and started (inaudible) Because she hold on to my back of my legs and I couldn't move because she was holding on to my legs so I couldn't swim."*

Explaining further;

h."Swimming under water. Just swimming under water and having fun.....So I did it first...Before Shukri got in the water I did it. But I didn't know there was a deep part there, and I was just swimming under the water, I was swimming under the water and she was like oh well that's sick and then she tried doing it as well and..she was just holding onto my legs and she thought it was funny. But I couldn't swim because she was holding onto my legs...holding it really tight and I couldn't move because I can't swim with one hand ..with these hands so I had to like push her and I accidentally pushed her to the deep part and that's when she started drowning."

Child 1 reiterates this final account several more times during the course of her police interview.

127. Besides the interview of Child 1 there was evidence available to the court from others to whom Child 1 had provided information as to the events of the evening;

- On the 999 call made by Child 1 on the 27th June 2019 she states, "Oh she's been in the river for ages, drowning basically..I can get these on (unintelligible) could get arrested for (unintelligible) Laughs? ..we're gonna go court! ..I'm gonna fucking kill myself!" And in the same call, " I feel like its all my fault coz I didn't help her like help her float."
- To William Keenan at the scene [A32]: "Is your mate in there?" She said "Yes, she has been in there 15 minutes". I started to get undressed and she said "I had hold of her hand". She pointed down to the water below the ledge and I jumped in the water."
- To Steven Duckworth at the scene [A33] "Help, help our friend's fell in the river."
- Timothy Heap [A115] "She slipped out of my hand then I swam back to the other part of the river down to Naima because I know it was going to happen. I didn't actually know she was going to go down like you know going down and sinking. She was holding onto my hand she was into the deep part and she let go of my hand and she slipped to the side, But I tried jumping in, saving her but then I was like I can't it was too deep and the black stones everywhere."

- In his evidence Peter Gray from GMFRS, who attended the scene on the evening, stated, *" I asked if they knew anything about what had gone on. The older girl looking of the two told me in a very fast pace that she had gone in and pointed to the stones where FF Robinson was. She told me she went under and it was 20 minutes ago. She explained she being the missing girl had walked along the stones from position 4, towards the weir and suddenly disappeared."*
- In text messages to her sister on the night of the 27th June Child 1 says, *" She hassent made it I think she hassent if I would of not let go of her she would pull me with her and I wouldn't be alive."*
- Child 1 notes taken to ABE A365-366 *"Shukri saw me going to the deep end so she went and she grabbed my hand cos I think the sea green thing got around her legs and pulled her she was holding on to me and I let go because my hands were wet... she tried swimming but she couldn't so we started scryiming and panicin and we wanted to save her but it was to risky"*
- In Joan Brierley's statement [A84] *"The girl that drowned in the river Irwell was my friend, we were paddling and she slipped and fell into the deep water and I rang the police."*
- To her family support worker (page 64/3345 social services records) on the 2nd July 2019, it was noted, *" Child 1 disclosed that she was playing mermaids in the water and the girl was holding onto her legs"*
- In the psychological report dated the 8.10.19 of Ms Alexis Waitman it is reported Child 1 said, *"Shukri was holding my hand but she slipped on the wet stones. I kept holding her hand but it was too wet so I had to let go and she started to panic. I swam back and we all watched and thought she was messing about (as she so often did)."*
- Mr Daniel Stockdale gave an account from Child 1 in his statement dated the 3.3.20 *"Child 1 continued and said that she and shukri went into the water where Shukri has been holding onto her [child 1] they went further from the rocks towards a deeper part. Child 1 said she was reluctant to go any further and after trying to help"*

Shukri to swim she began to come back to the stones still holding onto Shukri. She felt it was too dangerous to go further to the deeper water. As they were going back Shukri let go of child 1 and was reluctant to make her way back. Child 1 told Shukri it was too deep and dangerous and it would be better for them to be in the shallower part ."

128. When Child 1 swam back to where the other children were it became evident to them that Shukri was not able to save herself. Upon noticing Shukri was in trouble Child 4 entered the water to try and assist her and both Child 3 and 4 then ran to raise help. I do not propose to reiterate the evidence heard from witnesses as to the attempts which were made to rescue and help Shukri. Save to say that the Court heard of the concerted efforts made in particular by Child 3, Child 4, individuals who had been in the area and the emergency services. Sadly these attempts were unsuccessful.

129. When Child 3 was asked if he had blamed Child 1 about had happened, he said he didn't blame her but that he had asked her why she had let go of Shukri's hand as if "*she had grabbed her hand and come back with her she would have been safe*".

130. PC Dolan who was one of the first officers on the scene recalled one of the girls saying that she had been holding hands with Shukri when she was in the water, he could not recall which girl had said this.

131. I have considered extremely carefully all of the evidence surrounding the events in the water. I acknowledge the care which must be taken when considering the evidence from the children taking into account their age, their levels of understanding, a child's perception of events, and their understanding of the actual significance of events as they unfolded.

132. I found the evidence of Child 3 and 4 in particular to be very honest, reliable and told in a very matter of fact way describing the events as best as they recalled them. I accept they had all witnessed an extremely distressing incident which without any doubt must have been very shocking for them.

133. *Having considered all of the evidence I am satisfied on the balance of probabilities that;*

- h. Shukri entered the water following some encouragement and assurance from Child 1 that she would teach her to swim;*
- i. That Child 1 said this having been made aware that Shukri could not swim.*
- j. Having encouraged Shukri to enter the water Child 1 and Shukri were in the water together holding hands.*
- k. They have then moved into an area where the depth of the river has become greater.*

134. Ms Hewitt made representations to the court that there was no evidence of Child 1 deliberately moving leading Shukri into the deeper water. I do not accept this. Both Child 3 and 4 described how Child 1 and Shukri moved into the deeper part of the water. Child 3 was clear in his evidence that he was of the view they did this in order to allow Child 1 to teach Shukri to swim.

135. **On the balance of probabilities I also find it more likely than not;**

- l. that Child 1 moved both herself and Shukri into deeper water in an attempt to teach Shukri to swim.*
- m. Shukri would have been reliant on Child 1 when they were moving to a different part of the river.*

136. What happens once they are in or near to the deeper part of the water had required very careful deliberation. On the balance of probabilities I find the account given by Child 1 in her interview the next day and reiterated to her family support worker days later is probably the most reliable account *and that there came a point whereupon Child 1 attempted to swim underwater, as she had done when she was in the water on her own.*

137. *Only this time with Shukri holding her (whether this be by her legs or otherwise) she found it difficult to swim. I am satisfied that there was no suggestion Shukri was not happy to partake but I am equally satisfied she would have had any real understanding of the dangers of this area of water.*

138. *At this stage on the balance of probabilities, either through Shukri panicking as described by Child 3 or due to the fact that she herself was being pulled down Child 1 in all likelihood let go completely of Shukri, probably pushing her away and swam back to the rocks.*

139. I have no hesitation in saying this, I find no issue with the fact that Child 1 swam back to the rocks, in my view by that stage it is likely she herself had been being pulled under the water and this Inquest could very easily have been dealing with the deaths of two children had she attempted to under the water to look further for Shukri.

Recovery of Shukri

140. Shukri was recovered from the water by PC Darbyshire from the North West underwater search team. He provided the Court with detail about the area in which Shukri and the other children had been. PC Darbyshire confirmed where Shukri was located gave no assistance in determining whereabouts she had entered the water.

141. Professor Lumb, Forensic Pathologist conducted a post mortem examination, in his opinion Shukri's medical cause of death was:

a. 1a) Drowning

142. I agree with Professor Lumb's view and I shall record the medical cause of death accordingly.

Conclusion as to the Death

143. Having reached my findings of fact I now turn to my conclusion.
144. At the end of the evidence I received legal submissions from all counsel for the Interested persons which I have considered carefully. In addition the court heard oral submissions.
145. In addition I have reminded myself of the Chief Coroners Law Sheet Number 1 on Unlawful Killing, Law Sheet Number 2 Galbraith Plus and the Chief Coroners Guidance number 17 on Conclusions.

Galbraith Plus Test

146. In considering any conclusion I have to be satisfied that there is enough evidence; in the familiar Galbraith sense that properly directed I could reach a particular conclusion and in addition that I must be satisfied that it is safe to

leave such a conclusion. *R v (Secretary of State for Justice) v HM Deputy Coroner for the Eastern District of West Yorkshire* [2012] EWHC 1634 (Admin) paras. 17-25.

147. Whilst I acknowledge the suggestions by Counsel that, in light of the ruling in *Maughan*, it is perhaps open to consideration as to whether the Galbraith Plus test is of more or less significance, the fact is at this stage it is entirely appropriate for me to consider the evidence and apply the test as it stands.

Unlawful Killing

148. Mr Underwood QC on behalf of Shurki's family submits that the court should consider a conclusion of unlawful killing. In order to do so I would first have to be satisfied that the evidence before the court meant that properly directed such a conclusion could be found and that it was safe to do so (Galbraith Plus Test). If I was so satisfied then I would have to then consider the elements required for unlawful killing.

149. In short, I would have to be satisfied on the balance of probabilities that Shukri died as a result of an act of murder or manslaughter. The standard of proof having been amended in the recent case of *R (on the application of Maughan) v HMSC for Oxfordshire* [2020] EWCA Civ 809.

150. Mr Underwood QC invited the Court to consider the conclusion of unlawful killing on the grounds of murder as well as gross negligence manslaughter. When asked to assist the court as to the whereabouts in the evidence of any suggestion of intent Mr Underwood did not direct to anything specific.

151. The fact is there is absolutely no evidence before the court that Child 1 had any intention to kill Shukri. At its very highest the comment made by Child 1 which has been described as a "threat to kill" is nothing more than a phrase used by an exuberant child in the company of her peers who wants to have her friends join her in the water. To even suggest this case reaches anywhere near the standard required for a court to consider the most serious of offences is nothing short of preposterous and was most unhelpful. It was particularly regrettable in this case given the known vulnerabilities of child 1 and the persistent scrutiny and pressures child 1 has been under.

152. I turn then to the submission for unlawful killing based on gross negligence manslaughter.

Gross Negligence Manslaughter

153. The case of *R v Adomako* [1995] 1 AC 171 sets out the required elements which need to be proven in order to establish gross negligence manslaughter. These are helpfully summarised in the Crown Court Compendium part 1 dated July 2020.

154. The six elements of the offence being ;

- n. The defendant owed an existing duty of care to the victim.
- o. The defendant negligently breached that duty of care
- p. That the breach of duty gave rise to an obvious and serious risk of death
- q. It was also reasonably foreseeable that the breach of that duty gave risk to a serious and obvious risk of death.
- r. The breach of that duty caused the death of the victim.
- s. The circumstances of the breach were truly exceptionally bad and so reprehensible as to justify the conclusion that it amounted to gross negligence and required criminal sanction.

155. Cases involving the courts grappling with gross negligence manslaughter and children are thankfully it appears, rare. Only one case was brought to the Courts attention, the case of *R v S* [2015] EWCA Crim 558. The circumstances of this case were that the 15 year old applicant killed his girlfriend, also 15, by shooting her. He was convicted of gross negligence manslaughter, the prosecution case being it amounted to gross negligence to point a gun at someone and pull the trigger without having ensured that it was safe to do so.

156. In the criminal courts the majority of cases involve adults either in a professional capacity such as doctors *R v Sellu* [2016] EWCA Crim 1716, *R v Bawa-Garba* [2016] EWCA Crim 1841 or other situations involving adults and the use of drugs, *R v Khan & Khan* [1998] Crim LR 830 where the court did not rule out the possibility of a duty of care being owed by drug dealers. The Court of Appeal also recently considered the conviction for gross negligence manslaughter in the case of *R v Broughton* [2020] EWCA Crim 1093 following

an appeal directed at the causative link between the appellants actions and the death.

Duty of Care and Breach of Duty

157. Dealing first of all with the question as to whether Child 1 owed a duty of care to Shukri and whether there was a breach of any such duty. Ms Hewitt correctly identifies that the existence of a duty of care is a question of law based on the facts.

158. It is well established that cases involving the supervision of children by those in a professional capacity are likely to give rise to a claim in negligence for breach of duty. In the case of *Woodland v Maxwell* [2015] EWHC 273 (QB) the court found that the actions of the defendants, a swimming teacher and life guard fell below the standard of care reasonably to be expected, when it was considered they failed to adequately supervise the applicant during the course of a swimming lesson in which she had been found unconscious in the water and had suffered serious brain injuries.

159. However when the activities involve only children, the situation is not as straightforward. The relationship between children of the same age engaging in a game, leisure activity or horseplay does not automatically give rise to a duty of care as a school teacher-child relationship might well do.

160. The Court of Appeal found no difficulty in accepting there was a duty of care between children of the same age engaged in what was described as horseplay, *Blake v Galloway* [2004] 1 WLR 2844 albeit there had been no breach of the duty.

161. Similarly in the case of *Orchard v Lee* [2009] EWCA Civ 295, where a 13 year old running around playing was found to owe a duty of care to a lunchtime assistant supervisor at the school when he accidentally ran backwards into her causing serious injury. Albeit again a breach of the duty was not established.

162. In cases which do not involve established categories of negligence Lord *Reed in Robinson v Chief Constable of West Yorkshire Police* [2018] UKSC 4 (8 February 2018) said,

“ In cases where the question whether a duty of care arises has not previously been decided, the courts will consider the closest analogies in the existing law, with a view to maintaining the coherence of the law and the avoidance of inappropriate distinctions. They will also weigh up the reasons for and against imposing liability, in order to decide whether the existence of a duty of care would be just and reasonable.

163. In considering whether there is a duty of care in this particular case, the correct approach is to apply the three-stage negligence test as set out in the case of *Caparo Industries PLC v Dickman* [1990] 2. A.C. 60 and for the court to consider;

Foreseeability of harm

Proximity

A determination that it is, in the circumstances of the instant case, fair, just and reasonable to impose a duty of care.

164. I will deal first of all with proximity, Ms Hewitt accepted that there was no issue with the test for proximity, I would agree with this. Shukri and Child 1 were together in the water, holding hands and Shukri was reliant on Child 1 to stay afloat. They were clearly in a sufficiently proximate relationship to potentially give rise to a duty of care.

165. In my view the question here centres on the issues of foreseeability of harm and whether it is just and reasonable in all the circumstances to impose a duty of care.

166. When considering foreseeability, the test to be applied is an objective one, ie whether an ordinary, prudent and reasonable 13 year old schoolgirl in her situation would have foreseen that there was a risk of injury; a possibility of injury is not enough. *Mullins v Richards* [1998] 1 WLR. 1304

167. LJ Hutchinson in the case of *Mullins v Richards* endorsed the following passage by Kitto J in *McHale v Watson* 115 CLR 199 as being the correct approach;

“The standard of care being objective; it is no answer for him, [that is a child] any more than it is for an adult to say that the harm he caused was due to his being abnormally slow-witted, quick tempered, absent-minded or inexperienced. But it does not follow that he cannot rely in his defence upon a limitation upon the capacity for

foresight or prudence, not being as personal to himself, but as being characteristic of humanity at his stage of development and in that sense normal"

168. This approach was reaffirmed by LJ Waller in para 9 of *Orchard v Lee* [2009] EWCA Civ 295. Furthermore LJ Waller went on to say;

"In Mullin v Richard [1998] 1 WLR 1304 Hutchison LJ who gave the lead judgment approached the issue as to whether a 16 year old girl should be held liable by addressing primarily the question of foreseeability of injury. It is for that reason the judge in this case directed himself in the way he did. That question is very much interlinked with the question whether the conduct should be held culpable, as his reasoning at 1310 D to H would show. But I respectfully suggest that the primary questions should be whether the conduct of the child is culpable ie whether it has fallen below the standard that should objectively be expected of a child of that age. That will be assisted by what injury the child could foresee as likely to be caused by that conduct, but is still a separate question."

169. The question for the court is, would an ordinary, prudent and reasonable 13 year old have foreseen that there was a reasonable risk of harm in this situation.

170. Paragraph 28 of Ms Hewitts submission argue that even if Child 1 did owe a duty of care to Shukri her actions cannot properly be characterised as a negligent breach of any such duty of care.

171. Ms Hewitt also submits at paragraph 26 of her submissions that, *"encouragement by Child 1 to enter the water would be nowhere near enough to create a duty of care."* However the encouragement in this case was more than simply words. Child 1 not only encouraged Shukri to enter the water, she provided physical support as Shukri entered the water by the physical holding of hands. This is not a case where Shukri entered the water separately to Child 1.

172. In my opinion having heard the evidence, Shukri entered the water because Child 1 not only encouraged her, indicated she would teach her to swim and held onto her. The court has to consider therefore at what, if any stage, Child 1 should have foreseen a risk of injury.

173. It therefore must be asked should an ordinary and prudent 13 year old who is aware that a child holding onto her cannot swim and is moving towards deeper water, reasonably foresee a risk of injury?
174. Taking a simplistic view if this were a swimming pool and a child led another child into the deep end and simply let go of them, knowing they could not swim it is perhaps conceivable that the answer to this question would be yes. Likewise if a child pushed another child into deep water, knowing they could not swim.
175. But neither of those situations is the case here and the location and environment play an integral part in considering this issue. Whilst Child 1 was not familiar with the location nor perhaps the specific dangers relating to the weir such as the pull it would create, she was aware that there was deeper water. She was also aware that Shukri was shorter than herself and she was aware that Shukri was reliant on her to stay afloat.
- 176. On balance I am satisfied that a reasonable, ordinary and prudent 13 year old would foresee a risk of injury in the circumstances of this case ie in swimming out into deeper water with someone who you are aware cannot swim and is reliant on you to stay afloat and then in attempting to swim underwater. In all the circumstances of the case I am satisfied that Child 1 by her actions assumed a duty of care towards Shukri.**
177. The question is then did Child 1 breach that duty of care? Again this is not an easy question to answer and as noted by LJ Butler-Sloss in *Mullin v Richards*, “*there has been little authority on the proper approach to the standard of care to be applied to a child.*”
178. In considering whether there had been a breach of the duty of care in the case of *Blake v Galloway*, LJ Dyson stated at p. 13, “*In the present case, the horseplay in which the five youths were engaged was not a regulated sport or game played according to explicit rules, nor was it organised in a formal sense. Rather it was in the nature of informal play.....*”.
179. Whilst recognising a duty of care (p.15) he went on to state at p. 17, “*If the defendant in the present case had departed from the tacit understandings or conventions of the play, and for example, had thrown a stone at the claimant, or deliberately aimed the piece of bark at the claimant’s head, then there might have been*

breach of the duty of care. But what happened here was, at its highest, "an error of judgement or lapse of skill." And that is not sufficient to amount to a failure to take reasonable care in the circumstances of horseplay such as that in which these youths were engaged." In my view the defendant's conduct came nowhere near recklessness or a very high degree of carelessness"

180. In *McHale v Watson* Kitto J made the following observation ;
"In regard to things which pertain to foresight and prudence experience understanding of causes and effects, balance of judgement, thoughtfulness it is absurd, indeed it is a misuse of language, to speak of normality in relation to persons of all ages taken together. In those things normality is, for children, something different from what normality is for adults; the very concept of normality is a concept of rising levels until 'years of discretion are attained."
181. Those observations were endorsed by LJ Butler Sloss in the case of *Mullins* together with the following, that *"girls of 15 playing together may play as somewhat irresponsible girls of 15."*
182. The area of the river where the children went is not somewhere where there are warnings against swimming. It was not, as I have said somewhere Child 1 was familiar with. Shukri was a willing participant in entering the water with Child 1. She did so knowing she could not swim.
183. However taking all of those factors into account, I consider Child 1 did breach her duty of care towards Shukri when she moved out to deeper water and aware that Shukri required her assistance to stay afloat proceeded to go underwater. It is this very action which I consider prompted Shukri to panic and the crisis to unfold. This action was in my view akin to the circumstances as described by LJ Dyson (above) of *"throwing a stone at the claimant."*

A serious and obvious risk of death

184. In all the circumstances of this case I am also satisfied that the risk of harm as described earlier which was foreseeable in this case was a serious and obvious risk of death. In my opinion the foreseeable risk of injury in this case as considered earlier is in fact that – a risk of drowning. Indeed it is difficult to envisage another type of harm which an ordinary, reasonable and prudent 13 year old would consider when you are thinking about someone who cannot swim being in deep water.

185. Ms Hewitt submits at para 31 of her submissions that, for this element of the Adamako test to be satisfied the obvious risk of death must also have been a reasonably foreseeable consequence of the negligent breach to Child 1 at the time of the breach.

187. Whilst I accept the chain of events in this case is swift, at the point Child 1 went underwater to swim I am of the view that a reasonable, ordinary and prudent 13 year old even given the characteristics and educational levels of Child 1 should have recognised the risk of death to a child who was reliant on her to stay afloat. Doing this action in water which she is aware is deeper and in which she herself states she was in effect struggling with in that she told the court she was at one stage linking her leg around a rock to keep herself steady.

188. It follows from this and the medical cause of death provided to the Court that causation is found.

Grossly Negligent so as to be criminal

189. I turn then to perhaps the most difficult element of the Adamako test. I should say at this stage for the benefit of those reporting and tweeting on this case – be careful as to how this case is reported. Nothing I have said so far amount to a conclusion of unlawful killing.

190. There is a final limb to the Adamako test and this given the lowering of the standard of proof could, now arguably, be the most significant. That is whether the specific causative breach of duty was so gross as to be classed as criminal.

191. I would concur with Ms Hewitt's submission that whilst the standard of proof has been lowered the bar as to what is criminal behaviour has not and there is an extremely high threshold for this test.

192. As stated by the Court of Appeal in the case of *R v Misra* [2004] EWCA Crim 2375, "*Mistakes, even very serious mistakes, and errors of judgment, even very serious errors of judgment, are nowhere near enough for a crime as serious as manslaughter.*"

193. Whilst very few Coroners cases have had to consider the question of gross negligence manslaughter one strikingly similar case was that of *R v (Brown) v HM Coroner for the County of Neath & Port Talbot* [2006] EWHC 2019 (Admin). It is worth repeating here the facts. In that case the deceased was a

16 year old school boy who could not swim. He was attending an outward bound course . The defendant in the case was a part-time youth worker who was assisting the team leader. At the end of the day it was agreed that the boys could swim in the river. The deceased was told not to go into the water. The area of the river where the boys were going was described as a splash pool which was small and a few feet away from the edge. At one end was a small waterfall and the water was too deep to stand. The court found that the youth worker had shouted over to the deceased words to the effect, "Come on in and I will catch you" to which the deceased jumped into the splash pool. The youth worker did not catch him and the deceased panicked and despite the efforts of a number of people he drowned.

194. In this case the High Court reviewed the conclusion of unlawful killing and reviewed the authorities. Reference was made to Lord Hewart's comments in *Rex v Bateman* 19 Cr App R.8; "*...in order to establish criminal liability the facts must be such that, in the opinion of the jury, the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others to amount to a crime against the state and conduct deserving of punishment.*"

195. In *R v Jessy*, the fact of which were referred to in the case of *Brown*, Mr Justice Steel summed up as follows; "*You have to be satisfied that the shortfall from the reasonable standard was so flagrant, so atrocious, that it can properly be characterised a serious criminal offence, namely manslaughter.*"

196. In the case of *Brown* Mr Justice Bennett at p.48 said, "I cannot see how on the facts of this case – which include the jury's implicit finding that the first claimant called out to Herve "*jump in, I'll catch you*" – taken at its highest, come anywhere near meriting the extremely serious verdict of unlawful killing."

197. Which leads me to consider whether the actions of Child 1 in this case were so atrocious, the breach so flagrant that her actions could properly be characterised as amounting to the most serious of criminal offences namely gross negligence manslaughter. And I find they are not nor could they be. Child 1 was not in a supervisory capacity, when all is said and done she is a child who was playing with other children of her age. She did not force Shukri into the water she did not undertake any actions with the explicit intention of causing her harm. She was in unfamiliar water the dangers of which I am satisfied were not fully appreciated.

198. Yes, it could be said she is a child who made a mistake who made a serious error of judgment. It could also be said that Shukri made a serious error of judgment in getting into the water knowing she cannot swim. I am sure the ramification of the 27th June 2019 will be felt by many for a long time.

199. But as heart-breaking and as tragic as this case is, I am entirely satisfied having considered all the facts of this case that this is not a case which, even on the balance of probabilities warrants a conclusion of unlawful killing.

200. The appropriate conclusion for me to return is that Shukri Yahye Abdi has died as a result of an Accidental death and this is what will be recorded in box 4 on the Record of Inquest.

201. Box 3 will record the following facts;

“On the 27th June 2019, at a location on the River Irwell near to Dunster Road in Bury, the deceased entered the water with a friend. She did so following some encouragement. Her friend was aware that Shukri could not swim and was reliant on her to stay afloat. They swam out to an area where the water was deeper, at which point her friend went underwater. On the balance of probabilities this caused Shukri to panic. Her friend was also struggling to swim at this point and either let go or pushed Shukri off at which point Shukri went under the water and drowned.