Claim No. AC-2025-CDF-000108

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR PERMISSION TO APPLY FOR JUDICIAL REVIEW

**BEFORE MR JUSTICE KIMBLIN**

B E T W E E N :

THE KING on the application of
(1) WELLS RUGBY FOOTBALL CLUB LIMITED
(2) TAUNTON RUGBY FOOTBALL CLUB LIMITED

Claimants

- and –

HIS MAJESTY'S SENIOR CORONER
FOR THE AREA OF SOMERSET

Defendant

MR DANIEL SELWOOD

Interested Party

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UNAPPROVED NOTE OF *EX TEMPORE* JUDGMENT

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1. This claim was issued in December 2024 and transferred to Cardiff in July 2025. Permission to apply for judicial review was refused in February 2026 by Jefford J. It is a claim in which the Claimants are the rugby clubs of Wells and Taunton who seek to challenge by way of judicial review the findings at an inquest held before HM Senior Coroner for the Somerset Area. Daniel Selwood is an Interested Person whose presence on the Claim Form is to represent the interests of the Deceased's family.

2. This matter comes before me by way of an oral renewal for permission to bring judicial review proceedings. Its focus is an incident that took place on 12 January 2020 described by the Senior Coroner as follows:

> *Jennifer Mary SELWOOD, aged 69, was a spectator of the youth rugby matches at Taunton Rugby Club on the morning of the 12th January 2020 when she was hit on the head by a rugby ball kicked as part of the warm-up taking place on the main pitch. She suffered a severe head trauma and was taken by ambulance to Musgrove Park Hospital where onward conveyance to the neurological*

*specialist centre at Southmead Hospital was deemed appropriate due to the severity of her injuries. Jennifer had aplastic anaemia which made her more prone to serious consequences following trauma as her blood lacked natural clotting ability due to low platelets. Despite medical intervention her condition worsened and it became apparent that her injuries were terminal. She died in hospital on the Twenty-Fifth of January 2020.*

3. That tragic set of circumstances was the subject of the Senior Coroner's inquest which was opened on 31 January 2020 and concluded at a hearing on 11 September 2024. The Senior Coroner heard from a number of witnesses called in accordance with the schedule of witnesses. The Coroner reached a conclusion as to death which conclusion is the target of this claim:

> *Accidental death contributed to by poor supervision and spectator safety management.*

4. One of the issues in this claim is the use of the expression "contributed to by poor supervision and spectator safety management" with particular emphasis on the word "poor". Other grounds relate to and overlap, albeit that they raise different issues, including procedural unfairness.

5. The Statement of Facts and Grounds rehearses the legal context. Mr Holborn for the Claimants draws attention to section 5 of the Coroners and Justice Act 2009 and in particular the purpose of an investigation into a person's death which is to establish (i) who the deceased was (ii) how, when and where they died, and (iii) the particulars required for registration. He further draws particular attention to section 5(3) which provides that the coroner conducting an investigation into a person's death may not express "any opinion on any matter other than" the matters just listed. Section 5 of the 2009 Act is to be understood in the context of section 10 of that Act and, in particular, section 10(2) which provides that the answers to the questions should not be "framed in such a way as to appear to determine any question of (a) criminal liability on the part of a named person, or (b) civil liability.

6. These features of the 2009 Act are the subject of guidance issued by the Chief Coroner in her Guidance No.17 which guides senior coroners as to how to go about navigating these provisions and advises:

> *In a non-Article 2 case, a narrative conclusion should be a brief, neutral, factual statement; it should not express any judgment or opinion. For example, in a clinical death, a narrative conclusion might state that the deceased died from recognised complications of a necessary surgical procedure.*

The Chief Coroner goes on to point out that:

> *The difference in some cases may be slight and not much more than a matter of words. For example, in a non-Article 2 case judgmental words such as 'missed opportunities' or 'inadequate failures' should probably be avoided. But rather*

*than, for example, saying that 'There was a missed opportunity when the registrar failed to seek advice from the consultant', the coroner could say just as effectively: 'The evidence leads me to find that the registrar did not seek advice from the consultant who was nearby and available at the time and the registrar knew that. The registrar acted on his own.*'

7. The Chief Coroner goes on to say that words that express civil liability are not permitted by virtue of section 10(2) and include words such as 'negligence', 'breach of duty', 'breach of Article 2' and 'careless'.

8. During the course of submissions Mr Holborn took me to *R v HM Coroner for North Humberside and Scunthorpe, ex parte Jameson* [1994] CA. It is a case with some big names in it; I note that the Coroner had junior counsel by the name of Ian Burnett and that the court was further assisted by Stephen Richards as *amicus*. After a long summary of the relevant statutory and case law the court was able to set out general conclusions. Paragraphs 3 and 4 are particularly relevant:

> *(3) It is not the function of a coroner or his jury to determine, or appear to determine, any question of criminal or civil liability, to apportion guilt or attribute blame. This principle is expressed in rule 42 of the Rules of 1984. The rule does, however, treat criminal and civil liability differently: whereas a verdict must not be framed so as to appear to determine any question of criminal liability on the part of a named person, thereby legitimating a verdict of unlawful killing provided no one is named, the prohibition on returning a verdict so as to appear to determine any question of civil liability is unqualified, applying whether anyone is named or not.*
>
> *(4) This prohibition in the Rules is fortified by considerations of fairness. Our law accords a defendant accused of crime or a party alleged to have committed a civil wrong certain safeguards rightly regarded as essential to the fairness of the proceedings, among them a clear statement in writing of the alleged wrongdoing, a right to call any relevant and admissible evidence and a right to address factual submissions to the tribunal of fact. These rights are not granted, and the last is expressly denied by the Rules, to a party whose conduct may be impugned by evidence given at an inquest.*

Paragraph 6 states that:

> *There can be no objection to a verdict which incorporates a brief, neutral, factual statement: "the deceased was drowned when his sailing dinghy capsized in heavy seas," ... But such verdict must be factual, expressing no judgment or opinion, and it is not the jury's function to prepare detailed factual statements.*

9. With that rather lengthy introduction I now turn to each of the Claimant's grounds. Ground 1 is that there was an unlawful appearance of a finding of civil liability. Mr Holborn's submission is that use of the word "poor" in the context of supervision is unlawful because

it appears to make a finding of civil liability. He argues that the value judgment "poor" must be measured against something; at the very least less than "acceptable" or "reasonable". He argues that it does not matter that the precise words used do not exactly mirror a finding of civil liability and he cites the statutory use of the word "appearance".

10. The Senior Coroner has taken an active part in proceedings. In particular she provided a response to the letter of claim dated 2 December 2024 which is a detailed response. Having set out the relevant background in some detail and excerpts from the evidence and having rehearsed the statutory provisions and some of the key cases, the Senior Coroner says this in respect of Ground 1:

> *The Coroner does not accept that describing something as 'poor' transgresses s.10(2) CJA 2009 or can properly be equated with appearing to determine civil liability. That is not the natural reading of the word 'poor'. Use of that word alone makes no reference to whether a duty of care arises. Saying something was 'poor' without more does not attract civil liability. The Senior Coroner does not accept that her finding that there was 'poor supervision and spectator safety management' gives any appearance of her having determined any question of civil liability.*
>
> *…*
>
> *The Senior Coroner's conclusion that this was an 'accidental death contributed to by poor supervision and spectator safety management' explains the cause of death it does not purport to determine civil liability. A coroner is obliged to record matters that she considers probably made a more than minimal contribution to a death. Identifying the core factual issues raised in the case and stating what has been found in respect of them is a key coronial duty.*

11. On Ground 1, Jefford J considered the matter on the papers and gave the following reasons for refusing permission to bring judicial review proceedings:

> *It is not reasonably arguable that a finding that conduct that was "poor" contributed to a death is tantamount to a finding of negligence and/or appears to make a finding of civil liability contrary to section 10(2) of the Coroners and Justice Act 2009. As a matter of normal English usage, something may be done poorly without being done without reasonable care and skill amounting to negligence.*

12. In support of that finding Mr Matthewson addressed me this morning to the same effect. He drew the analogy with clinical treatment in a civil case which might fairly be described as "poor" but which nevertheless falls short of being negligent. In frank and realistic submissions, he argued that use of the word "poor" by the Coroner was unusual but nevertheless he maintained that it was unarguable that use of the word was unlawful.

13. After some considerable thought I have come to the conclusion that Mr Matthewson is correct on this point, and was correct to concede that use of the term "poor" was unusual. The reason I have given this matter particular care is because the statute uses the word "appear". I do find that use of the word "poor" – at first impression – suggests some criticism, but does the phrase have the appearance of determining civil liability? In my judgment there is no reasonable prospect, upon this point being argued more fully, of a judge finding that the inclusion of the word "poor" gives rise to the appearance of determining civil liability.

14. I can well understand why the Claimants would prefer the word "poor" not to be included but, as is pointed out in the authorities, the focus is on whether there is an appearance of determining civil liability and use of the word "poor" cannot go that far. I agree with Jefford J that use of the word does not go so far as to establish civil liability.

15. Further and in addition, the statute must be interpreted as a whole and requires coroners to make findings of fact. I accept that a coroner may find as a fact that arrangements such as those in issue in this case are "poor".

16. The Coroner also referred to three cases, *R (Smith) v Assistant Deputy Coroner for Oxfordshire* [2008] EWHC 694 (Admin), *My Care (UK) Ltd v HM Coroner for Coventry* [2009] EWHC 3630 and *R (Bodycote Ltd) v HMC Herefordshire* [2008] EWHC 164 (Admin) but in the light of my conclusion it is unnecessary to go further and consider those additional authorities.

17. For these reasons I decline to grant permission to apply for judicial review on Ground 1.

18. Ground 2 is that the conclusions were unlawful by reason of the expression of an opinion. In his skeleton argument Mr Holborn submits that use of the word "poor" offends the sixth principle in the case of *Jameson* in that it constitutes expression of an opinion. He makes the submission that there was no evidence called as to the standard of spectator management. I have already given reasons in relation to Ground 1 as to why I do regard the contested words to be a finding of fact and that substantially undermines Ground 2. However, there is another aspect which is the *way* the Coroner has responded to this claim. In the response to the letter of claim she says:

> *The Senior Coroner does not agree that her conclusion was an unjustified opinion. It was based on, among other matters, the oral evidence of your client's witnesses as to their own expectations for spectator management. It was a factual finding that the Senior Coroner was entitled to record given the totality of the evidence available to her…*

19. The Coroner then sets out the matters that she took into account. Mr Holborn's argument is that the first sentence acknowledges that the finding was a matter of opinion. I do not agree. Read fairly and as a whole, it means that Ground 2 was not accepted and provides

the evidential basis for the factual finding. I am quite sure that the Senior Coroner's intention was to make factual findings and that is what she is required to do.

20. I pause here to say something about that requirement. As the Chief Coroner's Guidance No. 17 demonstrates, the precise dividing line between factual findings and opinion is not always easy to identify. It is, in other words, a difficult line for coroners to tread. In my judgment the Senior Coroner unarguably trod on the right side of the line. For these reasons I decline permission on Ground 2.

21. Ground 3 takes a different tack and alleges a failure to conduct an adequate enquiry. To some extent it repeats the argument that there must be some objective standard and the foundation was that there was no evidence at all of an objective standard for spectator management. I should also pick up Ground 4 which is related to Ground 3 and concerns procedural unfairness. The argument is that the Coroner considered whether spectator management contributed to death but then refused to allow questions about objective standards of such management. It is also argued that there is a discrepancy between the reasons the Coroner gave at the inquest for disallowing questions and the response to the claim, and that the Coroner's explanations are contradictory. Ground 5 is a 'catch all' as to whether the Coroner's findings could reasonably be reached.

22. Jefford J dealt with Grounds 3, 4 and 5 together and made the observation that they were not arguable:

> *Ground 3: It is not arguable that the Coroner failed to carry out an adequate investigation such that her decision was unlawful and/or irrational. The claimants' argument under this ground approaches the matter as if the Coroner ought to have carried out, but did not carry out, a further investigation as to the risk of serious injury or death. There was clear evidence that Mrs Selwood's particular medical characteristics caused her death and the Coroner's decision did not turn on the likelihood of the same outcome for others. The relevant risk was no more than that of being hit by a rugby ball. As set out in letter dated 2 December 2024, there was ample evidence in respect of that risk and there was evidence from the claimants' witnesses that recognised what had not been done and/or could have been done better. The Coroner took that evidence into account in her finding that supervision and spectator management was poor - she could and did do so without needing evidence of lack of reasonable skill and care assessed by a departure from an established procedure.*
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> *Grounds 4 and 5 are not arguable for the same reasons as ground 3.*

23. I have again given careful thought to these grounds which allege unfairness. Fairness is important for the reasons explained in *Jameson* but a significant barrier to the Claimants' success lies in the fact that the observations made by the Coroner were findings of fact which did not require a deeper investigation into standards and procedures. I therefore decline to grant permission on Grounds 3 to 5.

24. That set of conclusions will be of some disappointment to the Claimants but they will be comforted by the conclusion of Jefford J and by my judgment that the Coroner's words do not even arguably give rise to the appearance of determining civil liability.

25. Finally I would like to extend my deepest sympathies to the family of Mrs Selwood.

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