INQUESTS INTO THE DEATHS OF ANTHONY WALGATE, GABRIEL KOVARI, DANIEL WHITWORTH & JACK TAYLOR

PRE-INQUEST REVIEW - OLD BAILEY

5TH JULY 2019

RULING ON SUBMISSIONS RE: Ms PERSAUD/WALTHAM FOREST CORONIAL OFFICE

1. I have been appointed as an Assistant Coroner in the East London jurisdiction in order to conduct the Inquests into the deaths of the above-named 4 young men. Earlier inquests, conducted by Ms Nadia Persaud (the Senior Coroner for East London), into the deaths of Gabriel Kovari and Daniel Whitworth reached open conclusions. The inquest into the death of Anthony Walgate was opened and adjourned and then transferred to Hull. The inquest into the death of Jack Taylor was opened and adjourned and thereafter not resumed because, on 15th October 2015, Stephen Port had been arrested on suspicion of murdering all 4 young men. He was duly convicted.

2. Following his conviction the original Coroner, Ms Persaud, applied to the Divisional Court for an order quashing the inquisitions in the Inquests which she had conducted. That application was supported by the bereaved families represented then, as now by Mr Thomas QC who emphasised that there was no criticism of the Coroner. The application was granted on 28/11/17 and fresh inquests ordered. The inquest into Mr Walgate's death was transferred back to this jurisdiction.

3. On 5/7/19, I conducted the first PIR. There was consensus between all present in relation to all but one of the matters raised. An order will be drawn up in due course in relation to those agreed matters.

4. The only contentious issue related to the following question:

Is it permissible for me to include in the scope of these inquests the conduct of Ms Persaud/the Waltham Forest Coronial Office in relation to the Inquests into the deaths of Mr Kovari and Mr Whitworth?

If I rule that it is not permissible, then no further question arises. If I rule that it is permissible, then there is a second question as to whether either Ms Persaud or the Coronial Office should be an IP in these inquests.

5. The issue arises because it has been suggested that there may have been shortcomings in the way in which Ms Persaud investigated the deaths. The areas in which there is alleged to have been insufficiency of investigation include (but are not limited to):
   (i) Whether either body had been moved;
   (ii) The authenticity of the suicide note;
   (iii) Mr Whitworth's movements in the days leading up to his death.

   The criticism would be that Ms Persaud did not sufficiently explore those matters or, alternatively, adjourn the inquests for others (the police or her own Coroner's officers) to investigate them. Put another way it would be argued that Ms Persaud did not ensure that all relevant evidence was called/adduced before her.

6. It is agreed by all parties that the question whether I can investigate those matters and make findings (or direct the jury to make findings) in respect of them, is one of "hard-edged" law and there is no room for me to exercise any discretion in this context.

7. Mr O'Connor QC, Counsel to the Inquests and Mr Skelton QC on behalf of the MPS, both submit that the answer to the posed question is: No. Mr Clarke on behalf of the bereaved families and Dr Van Dellen on behalf of Mr Waumsley (who is the former partner of Mr Whitworth) submit that the answer to the question is Yes and that I should therefore include the conduct of Coroner in the first 2 (quashed) Inquests within the scope of these Inquests.

8. I have no hesitation in concluding that, as a Coroner, in law, I am not permitted to explore the conduct of another Coroner and, accordingly, the conduct of Ms Persaud and/or the Coronial Office cannot form part of the scope of these Inquests and neither should be IPs.

9. I shall set out the competing arguments and, thereafter, give my reasons for so concluding.

10. It is agreed by all parties that it would not be lawful for me, as Coroner, to investigate in the course of these Inquests the ***judicial*** acts of a Coroner conducting an earlier inquest: see Laws LJ @paragraph 27 of *Forrest v The Lord Chancellor and anr* [2011] EWHC 142 (Admin) *"Certain things are beyond contention. The coroner is a judge…and [no-one] save*

a properly constituted court of appeal or review, has the least business interfering with his judgments or how he arrives at them. His independence as a judge is a matter of constitutional guarantee. Nothing could be more elementary"

11. In *R v H.M. Coroner for North Humberside and Scunthorpe, ex parte Jamieson* [1995] QB 1 Sir Thomas Bingham (@26D) stated that the decisions of a coroner *"like those of any other judicial officer, must be respected unless and until they are varied or overruled."*

12. It is, therefore, settled law that a Coroner's judicial acts cannot be questioned or challenged other than in proceedings before a superior court with authority to entertain a challenge. In the context of an Inquest the authority comes either from S13 of the 1988 Coroners Act or by way of Judicial Review.

13. Mr Clarke, in a rather ingenious argument, seeks to persuade me that the principles set out above do not apply to the conduct of Ms Persaud or her office since her Inquests have been quashed and there is, therefore, no extant judicial act. He relies, inter alia, on the passage quoted from *Jamieson* in support of his submission arguing that since Ms Persaud's conclusions have now been "varied or overruled", her decisions are no longer to be respected.

14. With respect that argument is flawed and unsustainable. The passage quoted cannot be used to support such a submission. The fact that Ms Persaud's original conclusions have been quashed (upon her own application) cannot mean that an inferior court can now review her earlier decision-making process. By quashing the inquisitions the Divisional Court were not opening and could not open up the conduct of the Coroner to scrutiny by any other tribunal let alone a fellow Coroner.

15. The flaw in the argument is laid bare when one contemplates that if it were correct I, as Coroner, could, in theory, make findings which were inconsistent with those of the Divisional Court (say where an inquisition had been quashed on the basis of insufficiency of inquiry). If it were correct that in law, the conduct of any judicial officer whose decision had been successfully appealed or reviewed might be open to further review or challenge by another judicial officer of the same rank or even

of lower rank, it would render the sacrosanct immunity for judges worthless and, in effect, result in no real protection for them at all.

16. It is worth remembering what has happened here. Ms Persaud reached open conclusions in relation to the deaths of Messrs Kovari and Whitworth. Following Port's convictions for their murders, she applied for her conclusions to be quashed and they were quashed by the Divisional Court. Fresh inquests were ordered.

17. The families of the 4 murdered men and Mr Waumsley will now have the opportunity to explore all and any failings of the police and, possibly others, yet to be precisely identified, in order that I (with or without a jury) may hear evidence on all relevant topics so that the circumstances which gave rise to the deaths can be determined and, if appropriate, a report to prevent future deaths may be prepared.

18. It follows that I am in no doubt that I have no legal right or power to enquire into the judicial conduct of another Coroner. It cannot sensibly make any difference to that settled and established principle that the original conclusions have been quashed as they have here.

19. Accordingly, I rule against Mr Clarke on his first submission.

20. Next Mr Clarke submits that the matters which the families wish to be included within the scope of these inquests are not judicial and, therefore, they are outwith the principle precluding challenge. He argues that I should distinguish between *judicial* acts (which he accepts I have no power to investigate) and *investigative* acts (which he argues are open to review by me).

21. Mr O'Connor QC points out that a Coroner is a creature of statute. S1 of the Coroners and Justice Act 2009 sets out the duty of the Coroner to investigate certain deaths. That is the role. There is no distinction in the Act or Regulations between judicial and investigative roles. The two are in my view indivisible. I am supported in that view by the fact that Regulation 7 of the 2013 Coroners (Investigations) Regulations allows for delegation of *administrative,* but not *judicial* functions. The title itself of those Regulations is instructive and illustrative of the judicial role of the

Coroner which is an inquisitorial and investigative one – those are the Coronial judicial roles.

22. Dr Van Dellen shifted his position from his written submissions and sought to argue that the matters which can and should come within the scope of these Inquests are administrative functions and not judicial or investigative ones. Thus, he argues that they are open to review. In effect, he argues that the conduct of the coroner's officers in making or not making enquiries is open to review as part of the evidence and scope of these inquests. In my view, that submission, too is flawed because:
    (1) There is no evidence before me that Ms Persaud did delegate any administrative function in relation to the matters in question; and
    (2) Even if she had then that delegation was a part of her judicial function and cannot be challenged by me;
    (3) If it is suggested that she ought to have delegated such matters to her Coroner's officers but declined or failed to do so (e.g. leaving it up to the police to carry out their investigation as they saw fit) then that declination and/or failure was a judicial one and, again not open to challenge before me.

23. It is further submitted by Mr Clarke and Dr Van Dellen that Article 2 of the ECHR imposes upon me a duty to investigate the conduct (i.e. failures) of the Coronial Office in relation to preservation of life. That cannot be correct. There cannot be such a route to my investigating that which I otherwise have no power to investigate.

24. Mr Skelton QC puts the matter succinctly and clearly. He does so, in my view correctly. The investigation by Ms Persaud was a judicial one. Her judicial function as Coroner was inquisitorial. The fact that a Coroner may delegate the administrative exercise of her investigative powers does not undermine her exercise of her judicial function for which she alone is responsible in law. Ms Persaud's decisions on scope and lines of enquiry were judicial acts and the answer to the question posed is therefore "unequivocally no". The mechanisms for challenging coronial investigations are limited by statute (S13 of the 1988 Act) and common law (Judicial review). There are no other mechanisms because Coroners are creatures of statute and they are judicial officers who as a matter of constitutional principle are protected from investigation by other judicial

officers except by way of supervisory review by a superior court. That remains so even after the Coroner has stopped acting and their decision quashed. Otherwise the important protection of judicial immunity would be meaningless.

25. I agree with those submissions.

26. Accordingly, I have no difficulty in concluding that the areas of Ms Persaud's (and/or her office's) investigative acts and omissions were judicial acts/omissions and not open to review by me.

27. It follows that I conclude that:
    1. The fact that the original inquisitions have been quashed does not open up the possibility of review of the acts and omissions of the Coroner by another Coroner.
    2. That there is no distinction between the judicial and investigative functions of a Coroner. The roles are indivisible and not reviewable save by a superior court on appeal or judicial review.
    3. Whilst there is a statutory distinction between judicial and administrative functions, there is:
        (a) No evidence that Ms Persaud delegated any administrative functions;
        (b) Even if she did, that delegation was a judicial function and not open to review.
        (c) If the criticism is that she failed to investigate that is a failure in her judicial function as is any failure to delegate investigation. Neither are open to review by me.
    4. Article 2 of ECHR cannot permit me to do that which I am otherwise precluded in law from doing namely, investigating the conduct of another Coroner

28. I want to emphasise that the issue raised is one of pure law and it is irrelevant to this ruling whether there were in fact acts or omissions by Ms Persaud/her office or her officers. There either is a legal power to review or there is not and I have ruled that there is not.

29. However, the scope of these Inquests will have at its heart any failings or missed opportunities by police (and possibly others) to investigate matters which might have prevented one or more of the later deaths.

30. The scope will include reference to those matters identified in this application together with other questions around the suicide note, the sheet, movement of the body/ies, DNA and fingerprint evidence. Those matters will be explored with appropriate care and in detail and those with the duty to investigate them challenged as to their failures to do so. However, it can be no part of the scope of these inquests to challenge Ms Persaud's decisions (e.g. to leave the extent of any investigation up to the police or not to adjourn for further investigations to take place). Those prime examples of the acts/omissions which are open to criticism when articulated are quite obviously judicial acts or omissions which all agree and I have concluded cannot be challenged.

31. Finally I should add that should the disclosure process reveal relevant evidence upon the topics highlighted then that evidence will form part of the evidence at these Inquests.

HHJ Sarah Munro
Assistant Coroner
15th July 2019