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IN HIS MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND

**ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
KING’S BENCH DIVISION (JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY MARGARET DRAKE
FOR JUDICIAL REVIEW**

**Mr Henry KC with Mr Fitzsimons (instructed by Holmes & Moffett Solicitors) for the
Appellant**

**Mr Scott (instructed by the Coroners Service) for the Respondent
Mr Daly (instructed by the Directorate of Legal Services) for the Belfast Health and Social
Care Trust as Notice Party**

Before: Keegan LCJ, Colton LJ and Humphreys J

KEEGAN LCJ (*delivering the judgment of the court*)

Introduction

[1] This appeal relates to an inquest which is not yet concluded into the death of Mr Stephen Moore (“the deceased”) who was found dead at the Royal Victoria Hospital on 27 September 2018. The appellant is the next of kin of the deceased. The presumed cause of death was recorded as suicide by hanging, traumatic rib fractures and delirium.

[2] After a full hearing McLaughlin J (“the judge”) dismissed the judicial review of a decision of Coroner Toal (“the coroner”) refusing to revoke a notice for production of an expert report obtained by the next of kin of the deceased in the inquest, pursuant to section 17A(4) of the Coroners Act (Northern Ireland) 1959 (“the 1959 Act”). The coroner delivered two detailed rulings on 2 May 2025 and 12 May 2025 requiring the next of kin to produce the report to her.

The role of the coroner

[3] After a case management review on 17 February 2026, we adopted a practice which is long established in Northern Ireland explained in *Re Jordan's Application* [2016] NI 107 at paras [14]-[22] and many subsequent cases that the coroner through counsel may assist the court in cases of this nature. This practice allows for the court to be fully equipped on coronial law and the relevant issues without having the coroner enter the arena in relation to the merits of the argument. In this case it was necessary to hear from coroner's counsel given that the notice party declined to make any representations in the appeal.

[4] Further validation for our approach is found in *R (On the application of Maguire) v HM Senior Coroner for Blackpool and Fylde* [2025] AC 63, where the Supreme Court discussed how coroners should engage in proceedings of this nature at paras [116] and [117] as follows:

“117. Although Mr Beer, for the Coroner, made a contribution by way of submissions about the general legal framework in which inquests take place, the court did not have assistance by way of full argument to understand the detailed factual circumstances of the case and how they might bear upon the issues in the appeal: such argument need not have been inappropriately adversarial. The agreed statement of facts and issues did not clarify matters as it should have done. In future, I would suggest that in a situation like this the onus on counsel for a coroner, whilst remaining neutral, is to act as an amicus curiae (advocate to the court) and assist to ensure that the court is given the full factual picture, including if necessary by drawing the court's attention to matters not emphasised or omitted by a claimant, as well as alerting it to relevant law and authorities. As it is, the court has had to inform itself about the factual circumstances of the case by going back to the underlying materials and evidence before the Coroner.”

The core issue

[5] Whilst this case has been complicated by a lengthy litigation history both at the coronial level and in the judicial review court, it centres on a simple question of whether a properly interested person (“PIP”) can lawfully withhold an expert report obtained for the purpose of an inquest post the decision in *Ketcher and Mitchell* [2020] NICA 31.

The background facts

[6] As the facts are amply set out in the decision of McLaughlin J we will not repeat them save to provide context to the legal arguments made before us.

[7] On 27 November 2019, a decision was taken to hold an inquest into Mr Moore's death. Coroner Toal assumed conduct of the inquest on 16 November 2020. Two PIPS were engaged, namely the appellant as next of kin of the deceased and the Belfast Health and Social Care Trust ("the Trust").

[8] On 17 November 2022, the Coroners Service instructed Professor Palazidou, Consultant Psychiatrist, to provide an expert report to the coroner. She was asked to address the following issues:

- “(a) whether it is likely that the deceased died by his own hand while the balance of his mind was disturbed;
- (b) whether his former mental health issues, chronic back pain and neck injuries may have contributed to his death; and
- (c) whether agitation and delusional behaviour in hospital may have contributed to his death.”

[9] The report from Professor Palazidou was received on 12 February 2023. Following this an addendum was prepared on 19 April 2023. Both reports were shared promptly with the PIPs and as far as we can discern, no issues were raised at this stage. In February 2023, the coroner circulated a scope document which set out the issues for investigation in a sequence of five questions as follows:

- “(1) Was Mr Moore delirious at any point following his admission to the Royal Victoria Hospital on 17 September 2018;
- (2) If so,
 - (a) What was the cause(s) of the delirium?
 - (b) Were the staff aware that Mr Moore was delirious? If not, why not?
 - (c) What treatment (if any) could have been of benefit to Mr Moore to treat or manage the delirium?

- (d) Did Mr Moore receive that treatment? If not, why not?
- (3) Was Mr Moore delirious at or around the time of his death?
- (4) Did Mr Moore die by his own hand?
- (5) If the coroner finds that Mr Moore did die by his own hand, was the balance of his mind disturbed at that time?"

[10] It also appears that no substantive changes were made to the scope document referenced above. In late September 2023, dates for hearing of the inquest at Banbridge Courthouse in December 2023 were provided. However, on 6 November 2023, the Trust informed the Coroners Service that it intended to instruct its own expert consultant psychiatrist, Dr Armstrong. The report from Dr Armstrong was produced by the Trust to the coroner on 11 December 2023 and shared with the next of kin.

[11] On 13 December 2023, the appellant through her solicitors Holmes & Moffett, wrote to the Coroners Service with a request for an adjournment of the inquest so that they could obtain independent expert evidence given the last-minute addition to the expert evidence by the Trust. The coroner acceded to this request and adjourned the inquest.

[12] On 2 April 2025, the appellant's counsel confirmed that a report from a Dr Hussain had been received. Thereafter, by way of correspondence of 24 April 2025, the appellant's solicitors informed the coroner that she did not intend to rely upon or produce to the coroner the report based on paras [36] and [37] of the *Ketcher and Mitchell* decision.

[13] On 20 February 2025, the coroner fixed dates for the inquest to take place on 27-30 May 2025, in Banbridge Courthouse. She produced a schedule of witnesses required to give oral evidence, the dates when they would give evidence and those whose evidence was agreed under rule 15 of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 ("the Coroners Rules"). Witnesses were scheduled on Tuesday 27 May 2025 and Wednesday 28 May 2025 with Thursday 29 May 2025 set aside for the expert evidence. The inquest proceeded on two of the above dates as we understand it and is effectively part heard with only the expert evidence to be heard.

[14] On 2 May 2025, the coroner issued a notice to the appellant pursuant to section 17A of the 1959 Act, requiring the appellant "to produce to the coroner the report of Dr Hussain obtained by her and in her custody and control which is relevant to the inquest into the death of Stephen Moore." This request was supported by a written ruling of the coroner. The report was to be disclosed by 8 May 2025. In response, the

appellant issued a written application to the coroner pursuant to section 17A(2)(b) of the 1959 Act to revoke the notice of 2 May 2025. The coroner refused to revoke the notice, providing her reasoning in a further written ruling of 12 May 2025 which we expand on later in this judgment. Thereafter, judicial review proceedings were issued challenging the coroner's notice and ruling. Leave was granted by the Court of Appeal on 24 June 2025 and the application was remitted for a full hearing by the judge.

The issues raised on appeal

[15] The argument advanced by Mr Henry KC was two-fold, namely that the coroner had applied the wrong legal test in relation to production of the report of Dr Hussain and secondly that she had failed to follow the guidance provided by *Ketcher and Mitchell*. Para [5] of the skeleton argument filed on behalf of the appellant helpfully frames the challenge as follows:

- “(i) The coroner misunderstood the section 17A(4) process by misplacing emphasis on the fact that initial disclosure is to the coroner only;
- (ii) The coroner misapplied the persuasive obiter guidance provided in *Ketcher and Mitchell* [2020] NICA 31, in particular, the guidance on how the public interest exercise ought to be approached.
- (iii) The impugned decision was irrational. The coroner failed to recognise the significance of the fact she had access to two expert reports speaking to the delirium issue.”

The relevant statutory provisions

[16] The 1959 Act was amended by the Coroners and Justice Act 2009 to insert new provisions dealing with disclosure, namely section 17A, section 17B and section 17C. This amendment brought the coronial law in England & Wales and that of Northern Ireland into symmetry by allowing coroners greater power to obtain disclosure of relevant material.

[17] Section 17A is entitled “Power to require evidence to be given or produced.” It provides the coroner with statutory power to require information to be provided in two circumstances namely, to assist in deciding whether to hold an inquest and/or to assist the coroner during subsequent inquest proceedings. The issue in this case arises in the latter scenario after a decision had been made to have an inquest. Section 17A should be read in full:

“17A Power to require evidence to be given or produced

(1) A coroner who proceeds to hold an inquest may by notice require a person to attend at a time and place stated in the notice and –

- (a) to give evidence at the inquest,
- (b) to produce any documents in the custody or under the control of the person which relate to a matter that is relevant to the inquest, or
- (c) to produce for inspection, examination or testing any other thing in the custody or under the control of the person which relates to a matter that is relevant to the inquest.

(2) A coroner who is making any investigation to determine whether or not an inquest is necessary, or who proceeds to hold an inquest, may by notice require a person, within such period as the coroner thinks reasonable –

- (a) to provide evidence to the coroner, about any matters specified in the notice, in the form of a written statement,
- (b) to produce any documents in the custody or under the control of the person which relate to a matter that is relevant to the investigation or inquest, or
- (c) to produce for inspection, examination or testing any other thing in the custody or under the control of the person which relates to a matter that is relevant to the investigation or inquest.

(3) A notice under subsection (1) or (2) shall –

- (a) explain the possible consequences, under subsection (6), of not complying with the notice;
- (b) indicate what the recipient of the notice should do if he wishes to make a claim under subsection (4).

(4) A claim by a person that –

- (a) he is unable to comply with a notice under this section, or
- (b) it is not reasonable in all the circumstances to require him to comply with such a notice,

is to be determined by the coroner, who may revoke or vary the notice on that ground.

(5) In deciding whether to revoke or vary a notice on the ground mentioned in subsection (4)(b), the coroner shall consider the public interest in the information in question being obtained for the purposes of the inquest, having regard to the likely importance of the information.

(6) A coroner may impose a fine not exceeding £1000 on a person who fails without reasonable excuse to do anything required by a notice under subsection (1) or (2).

(7) For the purposes of this section a document or thing is under a person's control if it is in the person's possession or if he has a right to possession of it.

(8) Nothing in this section shall prevent a person who has not been given a notice under subsection (1) or (2) from giving or producing any evidence, document or other thing."

[18] Section 17B is also relevant. It is entitled, "Giving or producing evidence: further provision" and reads as follows:

"(1) The power of a coroner under section 17A(6) is additional to, and does not affect, any other power the coroner may have –

- (a) to compel a person to appear before him;
- (b) to compel a person to give evidence or produce any document or other thing;
- (c) to punish a person for contempt of court for failure to appear or to give evidence or to produce any document or other thing.

But a person may not be fined under that section and also be punished under any such other power.

- (2) A person may not be required to give or produce any evidence or document under section 17A if –
- (a) he could not be required to do so in civil proceedings in a court in Northern Ireland, or
 - (b) the requirement would be incompatible with a retained EU obligation.
- (3) The rules of law under which evidence or documents are permitted or required to be withheld on grounds of public interest immunity apply in relation to an inquest as they apply in relation to civil proceedings in a court in Northern Ireland.”

[19] An exercise in statutory interpretation ensues which we approach in the manner recently adopted by the Court of Appeal in *Re Secretary of State and Robert Clarke's Applications* [2026] NICA 10 at paras [80]-[84]. We will not quote again the relevant portions of the Supreme Court cases which are relevant ie *R (O) v Secretary of State for the Home Department* [2022] UKSC 32 paras [28]-[29], *R (PACCAR Inc and others) v Competition Appeal Tribunal and others* [2023] 1 WLR 2594 paras [40]-[42] and in *For Women Scotland v Scottish Ministers* [2025] UKSC 16, paras [10]-[12]. Summarising the above the correct judicial approach in relation to interpretation of a statute is to ascertain the meaning of the words used in the light of their context and the purpose of the statutory provision.

[20] In this case, the interpretation exercise centres on the following five statutory provisions:

- (i) Section 17A(1)(b) of the 1959 Act as amended which provides the coroner the power of production of an expert report which is a document, being a document in the custody or under the control of the person which relates to a matter that is relevant to the inquest.
- (ii) Section 17A(4)(b) which allows a person so ordered to object on the basis that it is not reasonable in all the circumstances to require him to comply with such a notice.
- (iii) Section 17A(5) which provides that in deciding whether to revoke or vary a notice on the ground mentioned in subsection (4)(b), the coroner shall consider the public interest in the information in question being obtained for the purposes of the inquest, having regard to the likely importance of the information.

- (iv) Section 17B(2)(a) which states that a person may not be required to give or produce any document under section 17A if he could not be required to do so in civil proceedings in a court in Northern Ireland.
- (v) Section 17B(3) which provides that public interest immunity applies as it would in civil proceedings in a court in Northern Ireland.

[21] The section 17A provisions are procedural as they allow a coroner to request documents by way of notice. A person so requested may object to production and request that a notice is varied or revoked.

[22] Section 17A(5) is also expressed in clear terms to the effect that the coroner must assess the public interest when deciding whether to revoke or vary a notice. This is a consideration which must be applied.

[23] Section 17B(2)(a) read with section 17B(3) permits a person to object to produce a document based on public interest immunity as would apply in civil proceedings in a court in Northern Ireland and may not be required to produce a document if he could not be required to do so in such civil proceedings.

[24] The above provisions when read objectively do not pose much difficulty as the ordinary and natural meaning of the words is clear. However, the practical application of these provisions has not been so straightforward given the tensions that arise between inquisitorial proceedings, litigation privilege and duties of candour.

[25] *Ketcher and Mitchell* engaged with this issue and the application of section 17A(4)(b), although it did not involve revocation of a notice. That case concerned an inquest into the death of two young soldiers who appeared to have committed suicide at Ballykinler army base following a tour of Afghanistan. The next of kin obtained a psychiatric report solely for the purposes of the inquest which they did not want to share with the coroner. The coroner had obtained his own report, but he issued a notice requiring production of the next of kin's report.

[26] Plainly, the Court of Appeal was uncomfortable with production of an expert report in an inquest against the wishes of the next of kin. However, the court was bound by *Re L* [1997] AC 16, where a majority held that an expert report obtained by a mother in care proceedings had to be produced to the police who sought disclosure in connection with a related criminal investigation. The court was also influenced by Lord Carswell's *obiter* comments in *Three Rivers District Council v Governor and Company of the Bank of England (No.6)* [2004] UKHL 48; [2005]4 All ER 948; [2005] 1 AC 610 setting out the conditions for litigation privilege namely:

- “(a) The litigation must be in progress and contemplated;

- (b) The communications must be made for the sole dominant purpose of conducting that litigation; and
- (c) The litigation must be adversarial, not investigative or inquisitorial.”

[27] Notwithstanding the force of these authorities the Court of Appeal in *Ketcher and Mitchell* at para [37] went on to provide the following *obiter* remarks which are relied on in this appeal:

“[37] First, this was a case in which the coroner already had the report of Professor Fazel. He was clearly satisfied with that report as a basis upon which to proceed with the inquest. He had no basis for considering that the report held by the appellants would add anything to what Professor Fazel was contributing. It is difficult to say how the likely importance of the outstanding report was other than modest. Secondly, there was no other example of this point being taken in coronial proceedings. That is not surprising. In almost all cases, any expert report would have been obtained by the solicitors representing the properly interested persons and in most cases would have been for the dominant purpose of the civil claim. In truth, the circumstances in which this requirement to produce the report arose was almost fortuitous. Thirdly, in the vast majority of cases there would have been no power to require the production of such an expert report. It is difficult to see, therefore, why the public interest of the coroner in obtaining the report in this case was particularly strong since the interest of the family in preparing their case would normally outweigh it. Fourthly, as part of the public interest calculation, the coroner had to take into account the public interest in encouraging properly interested persons in inquests to carry out appropriate investigations in the preparation of their cases. Compulsory disclosure of such reports as a matter of course would be likely to discourage such investigations. In those circumstances it appeared to us that the balance was highly likely to favour the view that a requirement to disclose the report was not reasonable.”

[28] Therein lies the rub - if litigation privilege does not apply because an expert report was obtained for inquisitorial proceedings only, how can the next of kin resist production to the coroner and subsequent disclosure to the other PIPs? In analysing this problem, we turn to the coroner’s decisions and the judge’s consideration of them.

The coroner's decisions

[29] The first decision of 2 May 2025, properly engages with section 17A(2)(b). This is the statutory power in relation to production of documents; there is no dispute that an expert report is a document. The only question in relation to the application of section 17A(2)(b) is whether it was relevant to the investigation or inquest. This test is framed in broad terms. The coroner's decision was that:

“As an expert report into the psychiatric state of Mr Moore around the time of his death it undoubtedly relates to a relevant matter.”

[30] The coroner also states at para [15] of her first decision that she could use the power in section 17A(2)(b) to require disclosure of the report from the next of kin should she wish to do so. There is nothing wrong with that analysis. However, the coroner having decided she could use the power then discusses whether she should use the power. This is a matter of discretion. In that regard she cites the well-known authority of *R v HM Coroner for North Humberside and Scunthorpe ex parte Jamieson* [1995] QB 1 at 14, which requires a coroner “to ensure that the relevant facts are fully, fairly and fearlessly investigated.” Again, there is no issue taken with this principle. The coronial process must be effective; it is fundamentally inquisitorial in nature although it is also prohibited from making any findings of civil or criminal liability.

[31] In any event, the coroner goes on to consider the case of *Worcestershire County Council v HM Coroner for Worcestershire* [2013] EWHC 1711(QB) and refers to the fact that disclosure in an inquest is in the first instance to the coroner, the coroner then determines what material should be disclosed. Para [19] of the coroner's first decision states:

“It is not automatic that all relevant disclosure that a coroner receives must be provided to the PIPs. A coroner is entitled to decline to disclose relevant material if, for example, they believe that the public interest in not disclosing that material outweighs the public interest in its disclosure.”

[32] Continuing, the coroner describes the exercise as inherently fact specific. She then discusses the *Ketcher and Mitchell* decision and distinguishes the guidance given in it from this case because she says that she does not have a sufficiently clear picture in relation to some of the matters upon which she needs to decide. At para [30] she said:

“The position in *Ketcher and Mitchell* is fundamentally different compared to the present inquest. I consider that Dr Husain's report may well add to my understanding of the issues given the current state of the evidence. This was

not the view taken in *Ketcher and Mitchell*. The benefit that Dr Husain's report may bring to the inquest is weightier than it was in *Ketcher and Mitchell*. The balancing exercise is therefore fundamentally different."

[33] The coroner then goes on to consider the other points raised by *Ketcher and Mitchell* before deciding that she should issue a notice for production of the expert report obtained by the next of kin.

[34] The second decision of the coroner which follows in writing was prompted by the appellant's communication that she wished to apply to revoke the coroner's notice. The coroner reiterates her first decision and thereafter decides that there is further balancing exercise she will conduct as to whether to disclose the information after reviewing it. This analysis is found at para [14] where she says:

"Once I have assessed it (the report) I will conduct a further balancing exercise where I will consider the competing public interests about whether to disclose the report to the PIPs."

The judge's decision

[35] In his comprehensive judgment McLaughlin J analyses both of the coroner's decisions first through the prism of *Ketcher and Mitchell* and then through the prism of a long series of decisions which relate to public interest immunity. These decisions are not on point because the public interest immunity arising in the cases referred to concern national security, journalistic material, confidentiality or commercial sensitivity and are not realistically in play in this case.

[36] The judge found that the coroner had reached rational views at both stages. At para [74] of his ruling, he said that was influenced by the fact that the coroner has given a commitment to further procedural safeguards in the form of reconsidering the balance when considering disclosure to other PIPs. The judge went on to highlight a consequence in reaching a contrary conclusion whereby reports commissioned by next of kin would be treated differently from expert reports commissioned by other PIPs. He goes on to say in an inquest where individuals and/or state authorities might be implicated in a death, such a broad principle could facilitate non-production of material which is either inculpatory or exculpatory of a suspected party. The judge found that all of these prospects run wholly contrary to the fundamental purpose of an inquest and could have the potential to undermine the use of inquests as a mechanism for the state to discharge article 2 European Convention on Human Rights ("ECHR") investigative obligations.

Our consideration

[37] Disclosure in inquests is obviously important to allow for an effective inquest whether article 2 is engaged or not. In most cases in this jurisdiction relevant information is produced voluntarily to the coroner and then disclosed to all interested parties. There are two stages (production and disclosure) because there has to be a screening process to decide if public interest immunity considerations mean that material whilst potentially relevant cannot be disclosed. The most common reason for this is to protect national security. A party may refuse to produce documents on the grounds of legal professional privilege which means that a litigant has a right not to disclose oral or written communications with his lawyer or third parties which come into existence once adversarial litigation is reasonably contemplated for the dominant purpose of obtaining advice or information in connection with those proceedings (applying *Three Rivers (No 6)*).

[38] An expert report can be protected by litigation privilege. However, the law as it has developed means that litigation privilege does not attach in circumstances where the dominant purpose falls outside of adversarial proceedings. A death in hospital may require an inquest but may also raise potential clinical negligence and civil proceedings. Hence, a potential problem arises because in a clinical negligence action the next of kin could refuse to disclose a report but not in an inquest, despite relating to the same subject matter.

[39] Of course an inquest is different in nature from a civil action. To that end, we note that the Coroner's Bench Book in England & Wales, issued in January 2025 in chapter 14 which deals with experts specifically recites *Ketcher and Mitchell*. This reflects the reality that even though coronial inquests have a vital function in exposing culpable and discreditable conduct they are fundamentally inquisitorial in nature. Therefore, there has not been a case so far as we are aware where an inquest has been described as adversarial in this jurisdiction.

[40] We have not heard legal argument on this point despite jurisprudence in this area discussed for example in chapter 3 of *Passmore on Privilege, 5th edition*. This is undoubtedly a fact specific and context specific issue. However, arguably when in this case the Trust obtained its own report the case took on an adversarial nature as the next of kin obtained their own report, doubtless to comment or respond to the Trust's report. Ironically, if the next of kin had said the expert report was also for the purpose of civil proceedings we would likely not be here as litigation privilege would apply. Against that the emphasis on candour is strong in inquests if not yet on a statutory footing. What this means is that a "cards on the table" approach is clearly expected from public authorities.

[41] Chapter 12 of the Coroner's Bench Book for England & Wales refers to the *Worcestershire County Council* case [2013] EWHC 1711, which deals with issues of disclosure and upon which the coroner relied. The factual background to that case is different from the instant case in that it involved a request for serious incident review

material to be provided. The disclosure of material for the purpose of an inquest which may attract public interest immunity is, however, discussed in this case. Two points emerge:

- (i) The public interest in the pursuit of a full and appropriately detailed inquest may outweigh a public interest claim for non-disclosure; and
- (ii) Greater disclosure may be required by and given to a coroner than is subsequently passed on to the interested persons (PIPs).

[42] In *Worcestershire*, a serious case review had been conducted into the death of a child and the coroner demanded access to information reports and management reviews prepared by those involved. It was argued that the coroner had no right to disclosure of these documents as if such a release became common place those preparing reports or reviews would have cause to be less candid. It was claimed that the overview of the Safeguarding Board's report that had been provided was sufficient. The coroner pointed out that he sought disclosure only to himself so that he might have a full understanding of the complex case in order to identify relevant witnesses, as the overview report was a much-abbreviated version of the full papers.

[43] The case went to judicial review before Mr Justice Jeremy Baker who decided that the public interest in a full and detailed inquest clearly outweighed the claim for public interest immunity. However, it was emphasised that this was disclosure only to the coroner for the stated purposes. Onward disclosure by the coroner to PIPs and therefore to the public would be a matter for the coroner and subject to judicial review if their decisions were challenged. Interestingly, the Coroner's Bench Book in England & Wales at para [14] of chapter 12 opines as follows:

"14. The *Worcestershire* case thus describes a two-stage process for disclosure, where the first stage is disclosure to the coroner alone for the purpose of assessing the scope and content of the inquiry. In the second stage the disclosure of that material to the IPs (and hence potentially the public at an inquest), will be made in the usual way, giving those who may wish to argue against disclosure sufficient opportunity to do so. This case is discussed in greater detail in Chief Coroner's Law Sheet No 3 (PDF)."

[44] Law Sheet No.3 referred to above is a more comprehensive discussion of the *Worcestershire* case which is useful as it ends with four propositions as follows:

"17. In summary the lessons to be learned from the *Worcestershire* case (and the Channel Four case) are as follows:

- (1) An application by a coroner for disclosure need no longer be made by summons to the High Court or County Court. It may be made under the notice provisions in Schedule 5 of the 2009 Act. In particular a coroner who is conducting an investigation may require a person to produce any documents in the custody or under the control of the person which relate to a matter that is relevant to the investigation: paragraph 1(2)(b), Schedule 5.
- (2) The process of disclosure is a two-stage process. In the first stage disclosure is to the coroner alone, for the purpose of deciding the scope of the inquest and the witnesses to be called. In the second stage the coroner decides whether there can and should be onward disclosure to interested persons.
- (3) In the context of disclosure it should be remembered that a coroner's court is different from a civil court. Courts should be wary of 'trying slavishly to fit a coroner's inquest into the template of civil litigation.'

18. The benefit of the decision in the *Worcestershire* case for coroners is the extent to which they may justifiably ask for material which they reasonably believe may assist them in their investigation. The decision reflects the trend in the courts towards greater disclosure, at least, as in this case, for the eyes of the coroner."

[45] The *Worcestershire* case involved disclosure from a public authority and is framed in terms of disclosure being necessary to determine the scope of the inquest. This case is different as the issue in play is more nuanced because it involves a private interest, namely that of the next of kin. In addition, it is important not to lose sight of the facts which we return to as follows.

[46] Plainly, the coroner did not need the next of kin expert report to establish the inquest, to decide on witnesses or to determine scope. She also could have sought a second opinion herself following Dr Armstrong's report which came after her own report, but she did not. We venture that is because the experts agreed on the primary issue of delirium and only departed on the expected professional reaction to this. Hence, whilst relevant in the sense that it covered the same territory it is hard to see how the next of kin's report was essential for the coroner's investigation. Of some materiality is the fact that the coroner did not decide to adjourn the inquest for more information once Dr Armstrong's report came in. Rather, we expect that the coroner

thought she could proceed to hear the evidence and assess the two expert witnesses before her.

[47] However, the coroner had to deal with the next of kin's objection to produce their expert report. Whenever a party does not wish to produce a report or document, the test is whether that is reasonable applying competing interests applying section 17A(4)(B) and section 17A(5).

[48] In this case, when undertaking the necessary exercise, the coroner has taken into account an immaterial consideration as she specifically said she would conduct another balancing exercise in relation to disclosure postproduction of the report to decide if public interest immunity applied. We consider this was unnecessary and misleading. Public interest immunity was not relied upon by the next of kin. Hence, in this case where the production issue materialised after scope was determined and after all relevant disclosure had been provided by the public authority the adjudicative exercise was much simpler and different from the two stages in *Worcestershire*.

[49] Section 17A(4)(b) and section 17A (5) are the operative statutory provisions which we explained earlier in this judgment. The simple test is whether an objection is reasonable. This is a broad and flexible requirement. Any objection must be measured against the particular factual circumstances that arise. The guidance given to a coroner under these provisions is also open textured in that when deciding whether an objection to production is reasonable the coroner needs to balance the competing interests in play. Essentially, these are the need for the fullest possible information so that the inquest can answer the statutory questions and the next of kin's entitlement to be involved in the procedure to the extent necessary to safeguard their legitimate interests, including their entitlement to obtain expert reports.

[50] Hence, whilst we recognise the care and attention applied by the coroner to this issue, she was wrong to rule that she would engage in another balancing exercise after production. When the objection was filed by the next of kin seeking revocation of the notice the coroner should have undertaken a full balancing exercise on a predictive basis as to whether or not the public interest in having the inquest dealt with in as full a way as possible required overriding the next of kin's interests having obtained an expert report to satisfy themselves as to the other evidence that was put before the inquest.

[51] Accordingly, we conclude that the coroner has misdirected herself in relation to the relevant test to be applied under section 17A(5) which provides that in deciding whether to revoke or vary a notice on the ground mentioned in subsection 17A(4)(b), the coroner shall consider the public interest in the information in question being obtained for the purposes of the inquest, having regard to the likely importance of the information.

[52] It follows that we also disagree with the judge's overall assessment of the coroner's decision making as he did not detect the error we have identified above. In

addition, we think that he was led into error by relying on the public interest immunity authorities that were put before him. These cases arise in an entirely different context and have clouded and overcomplicated the issue at the heart of this case. This is not a case in which the party seeking to set aside a notice relied on public interest immunity which would require a two-stage approach. Thus, the first ground of appeal succeeds. This is sufficient to deal with the appeal.

[53] It is not necessary for us to deal with the second ground of appeal in any detail given what we have said above. Suffice to say that the coroner was clearly aware of *Ketcher and Mitchell*. Also, para [37] simply provides some general guidance as to the interests in play when this type of issue arises, but it is not to be read as a binding code or indicative of only one outcome. In *Ketcher and Mitchell*, the Court of Appeal was influenced by the fact that the next of kin's report did not appear necessary to conclude an effective inquest. Obviously, this is a question which a coroner must answer bearing in mind the facts of a particular case and the need for effective participation by the next of kin.

[54] The reality of this case is that there has now been a delay of one year since this inquest started. We are concerned that there is to be another delay. In fact, during the hearing we were told that there may be a difficulty with the coroner's expert attending at all at the inquest due to medical issues that she herself has. This may necessitate another report being obtained now by the coroner which would, we venture, overtake the litigation that has occupied this case for the last year.

Conclusion

[55] Accordingly, we allow the appeal, quash the decision of the coroner refusing to revoke the notice and remit the matter to the coroner for reconsideration of the application in the light of what we have said. For assistance, we set out the applicable legal principles below.

Summary of the legal principles

- (i) While the coroner is in the process of deciding whether or not to hold an inquest, section 17A(2) applies. The coroner may serve a notice requiring production of documents "which relate to a matter that is relevant to the investigation or inquest."
- (ii) When the coroner has determined to hold an inquest, then section 17A(1) applies. The coroner may serve a notice requiring production of documents "which relate to a matter that is relevant to the inquest."
- (iii) Matters which are relevant to the investigation or inquest may include the issue of scope, the identification of witnesses, the pursuit of relevant lines of inquiry and the application of article 2 of the Convention. These are all matters for a

coroner to consider either whilst deciding to hold an inquest or in determining the inquest's proper scope.

- (iv) This is subject to the limitation, under section 17B(2) that a person may not be required to produce any document where he could not be required to do so in civil proceedings in a court in Northern Ireland or where the requirement would be incompatible with an assimilated EU obligation. This covers, for instance, the situation where a document is subject to legal professional privilege.
- (v) The recipient of such a notice may apply under section 17A(4) for the notice to be varied or revoked on the grounds that it is not reasonable to require compliance. In determining this question of reasonableness, the coroner must consider the public interest in the information in question being obtained for the purposes of the inquest, having regard to the likely importance of the information. This requires a balancing exercise to be carried out between potentially competing public interests. The coroner must consider the reasonableness of requiring production to her. [our emphasis]
- (vi) The recipient of a notice may alternatively agree to produce the documents to the coroner but, at the same time, object to onward disclosure to PIPs. In doing so, that party may assert PII or some other issue around privacy or commercial sensitivity.
- (vii) Once the coroner has defined the scope or provisional scope of the inquest, there is a second, non-statutory stage when she is then able to assess the potential relevance of the documents which have been produced to her and then to disclose such material to the PIPs. Such disclosure is not subject to any public interest balancing test, save where PII has been asserted.
- (viii) Where the scope of an inquest has been defined, production of a document thereafter can only be relevant to issues which the inquest has to determine. It will be highly likely that such a document will be potentially relevant and therefore subject to disclosure to PIPs. There is no second stage in this scenario where the coroner applies a public interest test unless PII has been asserted.