

Judicial Communications Office

25 November 2020

COURT DELIVERS JUDGMENT ON ACCESS TO CORONER'S FILES

Summary of Judgment

Lord Justice Treacy, sitting today in the High Court, ruled that a scheme introduced to regulate access to Coroners' inquest files held in the Public Records Office was unlawful where the person seeking access was a "properly interested person" under the coronial legislation.

Background

William Holden ("the applicant") was convicted of the murder of Private Frank Bell on 15 April 1973 and sentenced to death. The death penalty was commuted to a life sentence. He was released after serving 17 years following a successful referral of his case to the Court of Appeal by the Criminal Cases Review Commission. His conviction was quashed on the basis that the non-disclosure of documents which had been provided to the Court of Appeal in a confidential annex could have supported an application to exclude evidence contained in a confession he made at the time. The applicant has subsequently pursued a claim for compensation as a consequence of the miscarriage of justice and has issued civil proceedings against the Ministry of Defence and the Chief Constable of the PSNI.

The applicant's solicitors wrote to the Public Records Office of Northern Ireland ("PRONI") seeking access to the inquest file in respect of Private Bell to further his compensation claim and civil proceedings. Given the allegations which had been made against the applicant he would have been entitled to status as a "properly interested person" before any inquest in accordance with the Coroners (Practice and Procedure) Rules (NI) 1963 ("the 1963 Rules"). PRONI replied proposing to deal with the matter by way of an undertaking binding the signatory to keep the disclosed documentation in the strictest confidence and prohibiting sharing the documentation with any third party without the express permission of PRONI.

The applicant's solicitors replied challenging this decision and seeking disclosure of the full inquest file. Pursuant to this request, the documentation was disclosed under the Freedom of Information Act 2000 ("FOI Act") and Data Protection Act 1998 regimes which meant that it was heavily redacted. The applicant contended that he, as a properly interested person within the meaning of the 1963 Rules, would automatically have had an entitlement to view the inquest file without charge and, for a small fee, obtain copies of the papers. At the first hearing date, it was contended by PRONI that the Northern Ireland Courts and Tribunals Service ("NICTS") had disapplied Rule 38 of the 1963 Rules to inquest files transferred to PRONI.

Relief Sought

The applicant contended that the impugned undertaking was unlawful and should be so declared and quashed as it was irrational. He claimed it explicitly acted to frustrate and undermine the pursuit of legitimate legal remedies by introducing a prohibition on the use of disclosed documentation in court cases without the permission of PRONI. The applicant also submitted that

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PRONI had failed to take all relevant considerations into account in particular that Rule 38 of the 1963 Rules automatically provides him, as a properly interested person, with entitlement to view and obtain copies of the papers. He claimed that the depositions which make up an inquest file are prepared in the knowledge that the information contained in them is likely to be the subject of oral evidence in a public court and the operative presumption is that the statements will go into the public domain. The applicant further contended that the decision of NICTS to disapply Rule 38 of the 1963 Rules to inquest files transferred to PRONI is ultra vires, that NICTS has no power, or is acting outwith its powers in determining this. Finally, the transfer of the inquest file to PRONI for the preservation of the papers should not operate to obstruct a statutory entitlement to access the papers and that the approach of NICTS operates to frustrate the intention of the entitlement.

Arguments

The Court noted that while an inquest file is prepared from the file submitted by the police to the Coroner, the inquest file and the depositions contained therein are the property of the Coroner. The depositions are prepared in the knowledge that the information contained in them is likely to be the subject of oral evidence in the Coroner's Court and the expectation of those who make statements to the Coroner, or the police in the course of a criminal investigation, is that in due course they may be called to give evidence in a trial or an inquest. The operative presumption is that the statements will go into the public domain, through one or other procedure.

PRONI confirmed in correspondence dated 13 February 2015 that the undertaking is about "giving effect to the Minister's [Minister for the Department of Arts, Culture and Leisure - DCAL] wish that inquest and other relevant records should be voluntarily made available to those properly interested persons who have a valid reason for wishing to view or obtain such records." This was referred to as "the pilot scheme". It was conceded by PRONI that the level of disclosure provided under the undertaking procedure may be greater than that provided under the FOI Act as there may be a large number of potential exceptions to disclosure when applying the FOI Act.

In correspondence dated 21 December 2016, the Solicitor to the Attorney General confirmed that the process launched by the DCAL Minister in January 2015 had been replaced by the Crown Court Files Privileged Access Rules (NI) 2016 which came into operation on 30 March 2016. The correspondence also noted that PRONI was still processing requests under the Minister's pilot scheme but all new applications were being dealt with under the 2016 Rules.

PRONI argued that the pilot scheme which contained the undertaking was not an abuse of public power with regard to the granting of access to public records, but an attempt to enhance the extent and speed of access to such records. It submitted that the key considerations which informed the creation and content of the pilot scheme were a wish to afford earlier and greater access than might be the case under other legislation and that PRONI had carried out a consultation on the proposed scheme. PRONI said the decision to formulate the pilot scheme and the undertaking was a lawful and proper exercise of its powers and "a pro-active attempt to provide a solution to a matter of genuine public concern".

PRONI also contended that it had acted properly and proportionately on the basis of information available to it at the time when the redactions were made. The Court noted that there is no statutory right under the Public Records Act (NI) 1923 for a member of the public to call for PRONI to make records available; rather it empowers PRONI to make them available.

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NICTS argued that documents transferred to PRONI are in the custody of DCAL. As such, following deposit with PRONI the Coroner no longer holds any documents or records that can be furnished by him under Rule 38 of the 1963 Rules. NICTS claimed therefore that it was not that Rule 38 was being misapplied but simply that the Coroner no longer holds any documents to release.

Conclusion

The Court said that the real mischief in this case is the inability of the applicant to access, pursuant to Rule 38 of the 1963 Rules, as a properly interested person, the inquest file of Private Bell. It said the reason he was not able to do so was that legal advice was received in 2013 that erroneously narrowed the scope of Rule 38:

“The advice received in 2013, which is relied upon in the argument of NICTS, narrows the scope of Rule 38 so that that rule only applies to inquest papers within the possession and control of the Coroner. There is, quite simply, no basis for such a narrow reading of Rule 38. Nothing in the 1923 Act governing PRONI, or anywhere else, calls for such a reading. Rule 38 has never been repealed. The archiving of Rule 38 documents does not mean the relinquishment of legal control. The power, and its exercise, under Rule 38 remains vested in “a coroner”.”

The Court concluded that Rule 38 should be applied to the applicant’s request. It added that the pilot scheme and the undertaking fettered the presumptive right of a properly interested person to full access to the inquest file (subject to the Coroner’s full consideration of matters relevant to disclosure) and it was therefore unlawful to apply that scheme to the applicant in this case. It said the lawfulness and the impugned undertaking as it might have applied to other parties (ie parties who are not properly interested persons) is beyond the scope of these proceedings.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk>).

ENDS

If you have any further enquiries about this or other court related matters please contact:

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