

Her Majesty's Coroner for South Yorkshire (East) and West Yorkshire (West)



**INQUESTS INTO THE DEATHS RESULTING FROM THE HILLSBOROUGH
STADIUM DISASTER**

**RULING BY LORD JUSTICE GOLDRING AS TO ASSISTANCE WITH THE
CORONIAL INVESTIGATION FOLLOWING THE PRELIMINARY HEARING ON 5
JUNE 2013**

Introduction

1. As set out in paragraph 2 of my ruling on timing, current investigations into the Hillsborough disaster comprise a police investigation led by Assistant Commissioner Stoddart into the causes of the tragedy and the deaths and an IPCC investigation into the actions of the police and the alleged cover-up. To the extent that the police investigation concerns the conduct of police officers, it is being treated as a managed investigation under the aegis of the IPCC.
2. The issue is how, if at all, I may or should make use of Mr. Stoddart's, and to a lesser degree, the IPCC's, investigation teams.

The argument

3. Both Mr. Stoddart and the IPCC have offered to provide me with assistance. In the skeleton argument submitted on behalf of Mr. Stoddart, it is said that he "has offered that his team work under the direction of the Coroner and the Inquest team." Ms Leek QC on behalf of Mr. Stoddart confirmed that, as she put it, Mr. Stoddart is "happy to prioritise strands of investigation and undertake such work as is requested or directed by your team." Mr. Lewis QC, on behalf of the IPCC, having emphasised that Mr.

Stoddart's will be the lead team, indicated a similar approach by the IPCC. As he put it, "...the IPCC...will assist the inquest if asked...to the best of our ability, and we will ensure that there is no delay as far as the IPCC is concerned...our role is...to ensure that the best evidence is put before the inquiry and that is what we intend to do."

4. All the families, for reasons I understand, have real concerns about my using Mr. Stoddart's team and the IPCC. They do not have confidence in either. Recent events have exacerbated those concerns. I can summarise their submissions as follows.
5. Mr. Stoddart's proposed investigation timetable does not suggest the sort of urgency reasonably to be expected. Little appears to have been done since Mr. Stoddart was appointed. Even now the team is not up to strength. Such work as it has done does not inspire confidence. What Mr. Mansfield QC, on behalf of the families of 73 of those who died, described as unheralded and un-notified approaches by police family liaison officers were made to the families. Neither solicitors nor individual family members were warned in advance. There was a lack of sensitivity when dealing with the families. In one case, a family was visited after visits were to cease.
6. As to the IPCC, it was said that experience shows an inability to complete work on time. The recent independent review concerning the IPCC's investigation into the death in custody of Sean Rigg was critical of the robustness of the IPCC's investigation and its analysis of the evidence.
7. The families' concerns formed the backdrop to their legal submissions. Mr. Mansfield, in submissions adopted by all those representing the families, put it in the following way. Those acting on behalf of the coroner must be substantively independent. An appearance of independence would not be enough. Mr. Stoddart and the IPCC should be accountable to me in what I ask them to do. In part of his investigation Mr. Stoddart would be accountable to the IPCC. The families have no faith that the IPCC will carry out an adequate or prompt investigation. The Director of Public Prosecution's "Challenge Panel" compromises my independence. (As I understand it, that panel amounts of a group of people brought together by the Director to try to improve public

confidence by providing independent challenge in respect of the investigations as they take place. Nothing it does will seek to challenge anything I ask to be done).

8. In his written submissions Mr. Mansfield suggested that the appropriate solution would be for me to arrange my own team of coroners' officers, either independent police officers or lay members. They would carry out those enquiries which I considered necessary. There would be memoranda of understanding between Mr. Stoddart, the IPCC and me.
9. In his oral argument Mr. Mansfield put it a little differently. He suggested a discrete coroner's investigative team which, in conjunction with my legal team, would decide what needed to be done. They would not themselves carry out the work. That, as appropriate, would be done by Mr. Stoddart or the IPCC under the close supervision of the proposed team.
10. In interesting submissions, while adopting as her primary argument Mr. Mansfield's, Ms Williams QC, on behalf of the family of Mr. McBrien, suggested as an alternative the appointment of an independent person of distinction with investigatory expertise who would lie between me and the investigation; someone such as a previous ombudsman or who had worked for an independent inspectorate was suggested. Ms Williams also stressed that the independence is an important feature of the investigative processes which are to comply with Article 2 of the ECHR.
11. On behalf of Mr. Stoddart it is said that the investigation team is well placed to investigate matters relevant to the inquests in a timely manner. The appointment of a separate investigation team would inevitably involve massive duplication of resources, additional expenditure and potential for confusion.
12. Finally, although not in any way resiling from his submissions, and no doubt conscious that counsel to the inquests were submitting that I should use Mr. Stoddart and the IPCC, but with clear memoranda of understanding, Mr. Mansfield very helpfully provided some draft clauses which might appear in such memoranda.

My conclusion

The practical considerations

13. It has become clear that a great deal of investigative work needs to be done for the inquests. A very large amount of material has to be gathered. The archive of material will be held by the IPCC in premises occupied by its and Mr. Stoddart's teams. Witnesses will need to be interviewed or re-interviewed. The time within which to do it is not long. I have made it plain that the inquests must start by Monday 31 March 2014. The work which needs to be done for the inquests is essentially work which needs to be done as part of the police/IPCC investigation too. If I were to have my own investigative team it would have to be large. Much of the work it would do would have to be done by Mr. Stoddart or the IPCC anyway, for it seems improbable Mr. Stoddart or the IPCC could rely upon investigations carried out by the coroner's team. To have a separate coroner's team would seem to me to lead to duplication and have the potential for muddle and confusion. Although a secondary factor, it would too add greatly to expense.
14. To appoint such a team would take some time. It would not be easy to find suitable members. It is inconceivable a team could be in place and its investigations completed by 31 March 2014.
15. Furthermore, although, as I have said, I understand the concerns expressed, the fact of the matter is that Mr. Stoddart, a former Chief Constable, is assembling a team of investigators led by senior officers of considerable experience. Whatever criticisms can be made of the IPCC, it has made it plain that it will assist in any way it can. I cannot believe that either Mr. Stoddart or the IPCC would allow themselves to be put in the position where their actions caused the inquests to be delayed.
16. A smaller coroner's team or the appointment of an individual would mean that Mr. Stoddart and the IPCC would still be carrying out the investigations. While the problems would not be as intractable as those involving the appointment of a large investigation team, I can see little practical advantage in interposing a small team or an

individual between my team (and myself) and those investigating. I doubt that interposing even a person of great distinction, would lead to greater efficiency or to an investigation to a better standard. Seeking to manage (let alone micro-manage) a substantial investigation led by a former Chief Constable could well be counter-productive. Moreover, as the investigation teams would know, I have to decide what needs to be done for the inquests. I have to set the priorities for that work. I have to know how that work is progressing. The investigation teams have to be responsible to me for that work. Interposing a small group of people or an individual between myself (and my team) and the investigation teams risks dissipating that direct sense of responsibility to me. There would too, as it seems to me, be the potential for unnecessary bureaucracy and complication.

17. Finally, there would also be delay in appointing a small team or even a distinguished individual (following presumably a public competition).
18. In short, simply in terms of practicality, there is good reason for the investigation teams to work directly to my legal team and to me.

Independence

19. In my view it cannot seriously be suggested that Mr. Stoddart and his investigation team are not independent. He is a former Chief Constable. We are assured that everyone on the team is completely independent of any individual or organisation whose conduct is to be investigated. No-one is to have any connection with the events at Hillsborough or any previous investigations or inquiries. The team is said to comprise those with the best investigative abilities.
20. The independence of the IPCC is set in statute.
21. As it is put in the submissions of counsel to the inquests, there is no precedent for a coroner to assemble a substantial team of investigating officers separate from those of other state bodies. Equally, I am unaware of any case in which an individual has been inserted between the coroner and the primary investigators. Irrespective of precedent, I

cannot see that making use of Mr. Stoddart's and the IPCC's investigation teams or the product of their investigations prejudices my independence or that of the inquests. I am re-enforced in that view by the observations of Fox LJ in *Peach v Commissioner of Police of the Metropolis* [1986] QB 1064 and Laws LJ in *R (IPCC) v HM Coroner for Inner North London* [2009] EWHC 2681. As Fox LJ put it [1080A]:

“As a matter of sensible public administration it seems essential that the coroner should have the material obtained by the police so that he can decide what witnesses to call and to investigate the matter generally. He could, of course, conduct his own inquiry de novo. But in general he has not the resources to do so. It would in any event be wasteful of public resources...”

22. Laws LJ [paragraph 30] said that:

“[I]t seems to me inescapable that the function of the IPCC forms part of the Article 2 process at least where it is conducting an independent investigation into a death where the police may be implicated. Its investigative function is a statutory one and provides a particular means of enquiry where a death has occurred in police hands. It is manifestly a public function conferred in the public interest. In those circumstances, where the IPCC is conducting a managed or independent enquiry into a death where there may be some police responsibility and the coroner has also taken jurisdiction to deal with the case, the coroner and the IPCC are effectively partners in the investigative process. While the IPCC's primary focus will be on the police, they may generally assist the coroner...by providing information at the post-mortem and evidence at the inquest.”

23. Furthermore, as I have already said (in paragraph 3 above), both Mr. Stoddart and the IPCC have offered to work in response to my requests. Mr. Stoddart has made it clear he will work to the general and detailed priorities that I set. It would not stop there.

Under the proposed arrangements there would be memoranda of understanding between Mr. Stoddart and me and the IPCC and me which I anticipate would sufficiently meet any concerns about accountability.

24. I see nothing in the Challenge Panel which would prejudice my independence.

How the process would work

25. Having come to the clear conclusion that I should make use of Mr. Stoddart's investigation team and the IPCC, it may be helpful if I set out how I anticipate the process will work.
26. There will be memoranda of understanding. They will be shared in draft with the Interested Persons. I should make it clear that given the need urgently to proceed, I shall pursue matters with the investigation teams immediately.
27. Through my legal team I shall provide general guidance to Mr. Stoddart (and as appropriate the IPCC) on the topics which I consider it necessary to investigate. I shall set the priorities. The amount of detail in my guidance will vary according to the topic, no doubt normally following discussion with the investigating teams. There will be no question of micro-managing the investigation. Contact between my team and the investigation teams will be regular and structured. I shall seek a regular report (say every two weeks) on the progress being made.

Some final observations

28. First, as I hope I have made clear throughout, I regard my independence and that of the process as of the highest importance. These inquests must be, and be seen to be, fair to all.
29. Second, the date for the inquests has now been set. The investigations must therefore be conducted in such a way as to comply with it. That will include ensuring that the

necessary product of the enquiries is provided in time to be considered and used in the inquests.

30. Third, I have already set out the unfortunate circumstances in which the family liaison officers went to the families. No doubt lessons have been learned. It seems to me clear that sensible and acceptable arrangements need quickly to be put in place to enable officers to meet members of the families for purposes relevant to the inquests. It may be, for example, that the families have information about the movements of their loved one or loved ones which it is important for the police to know as soon as possible.

Lord Justice Goldring

10 June 2013