

Wednesday, 3 September 2014

(9.50 am)

Approved Ruling

LORD JUSTICE GOLDRING:

Introduction

An issue has arisen about the order in which the Interested Persons should question witnesses.

As with so many issues involving inquests, this is very much a matter for the exercise of my discretion.

The legal provisions

By rule 19 of the Coroners (Inquests) Rules 2013, I must allow any Interested Person who so requests to examine any witness, disallowing irrelevant questions.

By rule 21:

"Unless the coroner otherwise determines, a witness at an inquest hearing must be examined in the following order:

"(a) first by the coroner;

"(b) then by any Interested Person who has asked to examine the witness; and

"(c) if the witness is represented at the inquest, lastly by the witness's representative."

Reflecting rule 21, it is agreed, first, that Counsel to the Inquests should begin and end the questioning in every case, and, second, if the witness is represented, counsel for that witness should be the last of the Interested Persons to question the witness.

The issue

The issue arises in this way. On 24 March 2014, Counsel to the Inquests submitted that:

"In general, the running order should be adopted so that those who may have criticisms to make of a witness or his or her organisation should ask questions early in the order, and those likely to defend those criticisms should ask questions relatively late. It is submitted that this approach is consistent with the intention underlying the default rule that the witness's own representative should ask questions last."

That is the procedure which so far has been followed by agreement, the consequence being that, in respect of witnesses so far called, counsel for the families have questioned the witnesses, such as police officers, who have been critical of the fans, first, and the police and other institutions, such as South Yorkshire Metropolitan Ambulance Service (SYMAS), last.

The next tranche of evidence concerns witnesses such as fans, whose evidence, generalising very broadly, will be criticised by the police and defended by the families. The families submit that, in accordance with what so far has happened, the institution should first ask questions and they last.

Mr Beggs, on behalf of the match commanders, supported by counsel for the other police Interested Persons and SYMAS, submits that the families should continue to ask questions first, the institutions last.

In short, clear and well-put submissions, Mr Beggs makes the following points:

- (1) I have a broad discretion as to the order of questioning.
- (2) Requirements of fairness should dictate the way in which I exercise that discretion. Fairness demands that those in his position should come after the families. Behind these inquests lies the spectre of police officers and possibly others being prosecuted. That is a real, not fanciful, prospect. The importance of them being able properly to deal with allegations regarding what they did or failed

to do requires them to be able to ask questions to deal with those criticisms in the full knowledge of what they are. They can only do that once the families have questioned those witnesses. The need for fairness in the circumstances trumps everything else.

Ms Richards, on behalf of SYMAS, makes the additional point that in the case of SYMAS she may not know what those criticisms actually are until after the questions have been asked.

A preliminary, general observation.

The events with which these inquests are dealing happened a long time ago. There are copious witness statements, sometimes previous transcripts of evidence, all of which have been disclosed. At the outset of the evidence, Counsel to the Inquests asks detailed questions first. In reality, little evidence comes by way of surprise to any Interested Person.

My view

As Mr Hough submitted, there are cogent arguments both ways as to how my broad discretion should be exercised. At the most, I can only set out a default position. There may be exceptions in particular cases.

It seems to me the rationale for rule 21 is that set out by Counsel to the Inquests in the submissions of 24 March to which I have referred. As Mr Hough submitted, following this broad approach would achieve balance over the course of the inquests. Just as the police and institutional parties are likely to have the last word, subject, I emphasise, to Counsel to the Inquests, with the institutional witnesses, so the family representatives should broadly have the last word with

most of the supporters. Of course, for fans who have lost loved ones in the disaster and are represented, as is accepted, there is no question but that they will go last of the Interested Persons. That is so, however critical of the police they may be.

To follow this course would be consistent with how, so far, matters have proceeded.

While I am, of course, very conscious of the points raised by Mr Beggs, this is an inquisitorial, fact-finding process in which, as the authorities make plain, the families are at its heart and in which questions of civil or criminal liability are not decided.

The difficulty referred to by Ms Richards was one which the families faced in the inquests so far. They were able to do that. Moreover, as I have said, questioning is firstly done by Counsel to the Inquests. By the time that has been completed, the main issues are reasonably clear to all Interested Persons. There has also, again, as I have said, been very full disclosure.

If, in any particular case, there is a difficulty, it can be dealt with either by Counsel to the Inquests in their re-examination, possibly following a note from the Interested Person, as has previously happened in the course of the inquests, or, very exceptionally, asking to open or re-open questioning.

In short, therefore, the default position is that the questioning will, in general, follow the course previously indicated. If in a particular case it is suggested the default position should not be followed, I shall rule on the topic. I shall keep the matter under review. If it seems to me to be leading to injustice, I shall obviously reconsider the position.

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