

Ruling on position statements and admissions

Introduction

1. In this ruling I consider, first, whether Interested Persons (“IPs”) should be invited or directed to lodge “position statements” or other documents dealing with the stance taken by them as to their or others’ responsibility for the Hillsborough disaster, second, whether admissions of negligence by South Yorkshire Police (“SYP”) in civil litigation arising from the disaster should be admitted into evidence and, third, whether admissions of any IP (in particular SYP) which may be said to be indicative of some kind of responsibility for the disaster should be admitted in evidence.

Legal background

2. Mr. Hough QC, as Counsel to the inquests, in a summary with which, as I understand it, there is no disagreement, has set out the legal background in the following way.
3. The purpose of the coronial investigation and inquests is to identify the 96 people who died; and to ascertain how, when and where each came by his or her death. In a case such as the present, where the Article 2 procedural obligation is engaged, the “*how*” question is interpreted as meaning “*by what means and in what circumstances*” each person died. This wider interpretation is necessary so that the inquiry can be “*effective*” in Article 2 terms and provide answers to the key issues in the case.¹ See section 5 of the Coroners and Justice Act 2009 (“CJA 2009”).
4. At the end of the inquests, the jury must make determinations in respect of each of those who died, answering the statutory questions set out above. The determinations must not be framed so as to appear to determine any question of civil liability, or any question of criminal liability of a named person. See section 10 of the CJA 2009.
5. The inquests are inquisitorial proceedings, in which the Coroner determines the scope of inquiry and calls each of the witnesses. Subject to his duty to conduct a full inquiry with a view to answering the statutory questions, the scope of inquiry and selection of witnesses are matters for the Coroner’s judgment.²

¹ See *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182, especially at 202B-203C. Note also that the Court in *Middleton* found (at 198B) that the Article 2 standard of effectiveness required that an inquest should ordinarily culminate in a “*conclusion on the disputed factual issues at the heart of the case.*”

² As to scope of inquiry, see: *R v Inner West London Coroner, Ex Parte Dallaglio* [1994] 4 All ER 139 at 155b; *R (Sreedharan) v HM Coroner for City of Manchester* [2013] EWCA Civ 181 at para. 18. As

6. The function of an inquest is fundamentally different from that served by civil or criminal litigation. It is an inquiry into the facts relevant to a death, not a forum for establishing liability.³ This important point is reflected in the statutory limits on inquest determinations which are outlined above. Similarly, the law recognises persons with an interest in an inquest, but not “*parties*” as such.

7. Nevertheless, an inquest may explore matters which are closely linked with questions of criminal or civil liability.⁴ In considering and delivering verdicts of unlawful killing and adjectival findings of neglect, inquest juries regularly have to do this. Moreover, where the Article 2 procedural obligation is engaged, it can be appropriate for a jury to express conclusions in terms of “*failures*” or even “*serious failures*” which resulted in death.⁵ It may be a mis-direction in such an inquest for a jury to be told to express their conclusions in non-judgmental terms.⁶

8. Inquest proceedings are governed by a statutory scheme comprised of the CJA 2009, the Coroners (Investigations) Regulations 2013 (“the Regulations”) and the Coroners (Inquests) Rules 2013 (“the Rules”). However, these do not provide a comprehensive procedural code akin to the Civil or Criminal Procedure Rules. It is therefore necessary for the Coroner to rule as to the procedure to be followed, provided that the statutory provisions must be respected, procedural fairness observed and the relevant Article 2 standards satisfied.

9. The rules of evidence which govern civil and criminal proceedings do not apply directly to inquests.⁷ However, the Rules and the principles of fair procedure do regulate evidence in some material ways. For instance, questions entirely irrelevant to the inquiry should be excluded under rule 19(2) of the Rules. Written evidence

to selection of witnesses, see *R (Mack) v HM Coroner for Birmingham* [2011] EWCA Civ 712 at para. 9.

³ See *R v South London Coroner, Ex Parte Thompson* (1982) 126 SJ 625.

⁴ See *R (Smith) v Oxfordshire Asst. Deputy Coroner* [2008] 3 WLR 1284 at paras. 40-45 (Collins J, in a passage not questioned on appeal). See also *R v Derby Coroner, Ex Parte Hart* (2000) 164 JP 429 at transcript, paras. 119-20. There, the Court accepted that a police force which had it in mind to pursue a criminal prosecution after an inquest could properly question witnesses and thereby elicit evidence supportive of such a prosecution.

⁵ See paras.40-45 in the judgment of Collins J in *Smith (loc. cit.)*.

⁶ See: *R (Cash) v Northamptonshire Coroner* [2007] 4 All ER 904 at paras. 47-52; *R (Lewis) v HM Coroner for Mid and North Division of the County of Shropshire* [2009] EWHC 661 (Admin) at paras. 158-73 (Forbes J).

⁷ See: *R v Divine, Ex Parte Walton* [1930] 2 KB 29 at 36; *R v Greater Manchester Coroner, Ex Parte Tal* [1985] QB 67 at 84-85; *R v Attorney General of Northern Ireland, Ex Parte Devine and Breslin* [1992] 1 WLR 262 at 266.

may only be admitted without a witness being called to adduce it if one of the tests in rule 23 is met. As a matter of fairness, it may be appropriate for a coroner to balance the relevance and value of evidence against its prejudicial effect before deciding whether or not to call or admit it.⁸

10. IPs within inquest proceedings have a number of statutory rights, the most important of which is to examine witnesses.⁹ The Courts have often recognised that such persons play an important part in the conduct of the proceedings. In particular, they should generally be permitted to make representations on key procedural issues relevant to their interests; on determinations to be considered at the end of inquests; and on legal directions relating to such determinations.

11. IPs are prohibited from addressing the coroner or jury as to the facts: rule 27 of the Rules. Properly construed and applied, this rule is compatible with Article 2 standards.¹⁰ It does not, however, preclude interested persons from making reference to the facts of the case in the course of submissions on legal (or procedural) questions.¹¹ Indeed, it is difficult to see how meaningful submissions on determinations could be made in a complex case without fairly detailed reference to the facts.

Factual and procedural background to the issues

12. Again, I substantially rely on Mr. Hough's summary.

The general background

13. Since the Hillsborough disaster happened on 15 April 1989, it has been the subject of (i) a public inquiry in 1989; (ii) lengthy inquests in 1990/91; (iii) numerous civil claims (including contribution proceedings); (iv) a judicial scrutiny in 1998; (v) a private prosecution in 2000; and (vi) an archiving and reporting process undertaken by the 'Hillsborough Independent Panel' ("HIP") in 2010-12. It has also attracted considerable commentary in the press. In November 2012, the Divisional Court quashed the verdicts of the original inquests and ordered these fresh inquests.¹² A

⁸ See, for instance, *R (Stanley) v Inner North London Coroner* [2003] EWHC 1180 (Admin) at paras. 22ff, where Silber J concluded that evidence of previous convictions of the deceased was irrelevant, but found that it had the further vice of being prejudicial (which ought to have been taken into account).

⁹ See rule 21 of the Rules. As to the participation of interested persons more generally, see *Jervis on Coroners* (13th edn.) at paras. 8-21, 10-03 and 11-65 to 11-69.

¹⁰ *R (Hair) v HM Coroner for Staffordshire* [2010] EWHC 2580 (Admin).

¹¹ *R (Lin) v Secretary of State for Transport* [2006] EWHC 2575 (Admin) at para. 56.

¹² See: *Attorney General v HM Coroner of South Yorkshire (West)* [2012] EWHC 3783 (Admin).

series of pre-inquest hearings were held from April 2013 and the inquests themselves commenced at the end of March 2014. Meanwhile, the teams of Operation Resolve and the IPCC have been (and are) pursuing investigations into the disaster and its aftermath, which may in due course lead to criminal prosecutions and/or disciplinary proceedings.

14. This history presents particular challenges for the current inquests. They must necessarily consider some of the evidence given and statements made over the years. They must exclude matters from the jury's consideration in order to comply with legal rules and observe procedural fairness. Furthermore, the proceedings as a whole must be kept within bounds. That is a by no means easy task given the inevitable ambit of the evidence which a jury inquiring into the deaths of 96 people will have to consider (see below) and the huge amount of material which exists. As things stand, it seems unlikely the jury will be retiring to consider its determinations before August or September 2015, some 18 months after the inquests began.
15. At the pre-inquest hearings and over the course of the inquests thus far, IPs have addressed legal and procedural issues with submissions which have properly referred to the underlying facts and evidence. These have, for example, included submissions as to scope of inquiry; engagement of Article 2, ECHR; expert evidence disciplines; lay witnesses to be called; video evidence to be adduced; and proper scope of questioning. In their questioning of witnesses, legal representatives of IPs have sought to identify failures or level criticisms; or conversely to elicit evidence answering such points.
16. The inquests have already received evidence on the topics of the safety of the stadium and the planning and preparation for the match. Evidence is currently being heard concerning events of the day of the disaster, including the emergency response. That section of the inquests hearing is scheduled to conclude very early in 2015. The inquests will then move into a phase in which the movements and the cause of death of each of the 96 people who died will be examined in sequence. In that part of the inquests the jury may well have to grapple with complex medical evidence concerning the 'survivability' of those, or some of those, who died, had the emergency response to the disaster been different. This broad structure of the inquests has been the subject of careful submissions and general agreement.

How the present issues arose

17. When Mr White, a former SYP inspector, was giving evidence, Mr. Hough adduced the fact that he had been one of the plaintiffs in civil proceedings against SYP which had failed for legal reasons (remoteness of damage). Some of the advocates representing the bereaved families applied for permission to make reference to admissions made by SYP in those proceedings.¹³ That led to the raising of two other but related topics; first, the admission into evidence of previous public admissions of responsibility made by SYP at different times over the years; second, (and I summarise very shortly), the suggested contrast between those admissions and the way in which the current chief constable of SYP by his counsel Ms. Barton QC was questioning witnesses in the inquests. An issue was also raised about the way in which the match commanders had questioned witnesses (about which more below). Mr. Mansfield QC on behalf of the 75 families submitted that the positions of the IPs should be clarified. They should now be asked to provide statements¹⁴ setting out their current positions.

The families' submissions on position statements

18. Mr. Simblet on behalf of the 75 families submitted that I had the power to and should order each IP to file a position statement. He submitted that it was now 'imperative' for IPs to set out their current stance to the evidence. Obliging an IP to set out its stance would help me ensure that questions are properly framed. It would help the jury. For, as he submitted, the way in which counsel for the match commanders is questioning witnesses does not help but obfuscates. As he submits, to police officers who are likely to agree, it is put (and I summarise) that supporters arrived late, were affected by drink and were seeking to force their way into the ground, necessitating the match commanders' instruction to open the exit gates. To fans, who say the Liverpool supporters behaved perfectly properly, no questions are asked. No account is challenged. Other relevant areas of evidence are not challenged either, submitted Mr. Simblet. In those circumstances everyone is entitled to know what the match commanders' position is.

19. Mr. Simblet's submission went further. He submitted that to permit the match commanders to raise issues of Liverpool fans' misbehaviour without rational exposition would be inconsistent with my duty under Rule 19(2) to disallow irrelevant questions. Unless they took a consistent approach in questioning witnesses, points put selectively to some witnesses only could not be said to raise relevant

¹³ See transcript for 17.9.14, p95-111.

¹⁴ See transcript for 18.9.14, p1-8.

issues. In argument, Mr. Simblet accepted that had the questions been asked of fans he would not be making the submission that he was.

20. Mr. Weatherby QC on behalf of 22 of the families made a number of points on the issue of position statements. I summarise. Because these are inquisitorial proceedings no IP is required to put a case. No IP is required to challenge witnesses. However, it is axiomatic that the jury must not deliberately or inadvertently be misled. The police interests, as Mr. Weatherby described them, were tactically exploiting the position. They did not challenge damaging evidence because it was too difficult to do so. They combed for evidence adverse to the (unrepresented) fans. That approach has the effect of obfuscating the real issues. I therefore need to use every power or discretion available to me to try and assist the jury to focus on the real issues. Position statements would enable me to know 'where an IP is coming from' when questions are asked. Their relevance can then properly be assessed.

My ruling on position statements

Some general observations

21. These are inquisitorial proceedings. IPs have the right to examine witnesses. They do not have the obligation to do so. They are not therefore obliged to advance a case or challenge a witness. It does not seem to me that the failure to exercise the right to question a witness or group of witnesses can of itself render questions otherwise relevant, irrelevant. It cannot, in the context of the present proceedings, be the case that had Mr. Beggs QC on behalf of the match commanders questioned Sir Maurice Kay on the basis that the fans were drunk or misbehaved, it would render relevant and admissible similar questions to police officers and that his failure to do so would render such questions irrelevant. Either the questions are relevant or they are not.
22. While I well understand the families' unhappiness regarding questions about drink and fan misbehaviour, I have no doubt I could not properly exclude them, whether under rule 19(2) or in the exercise of my discretion, if the match commanders wish to pursue them. Numbers of police officers speak of drink and fan misbehaviour as having played a part in the disaster. Whatever view I may have about that issue and the way it is being pursued, I have little doubt that a decision by me to exclude that evidence or questions on the topic would be unsustainable.
23. I agree too with the observations of Mr. Hough that the failure by an IP to exercise the right to question a witness, or particular groups of witnesses, may have

consequences. I do not doubt that the jury will have noted those instances in which an IP has vigorously questioned (and put a case to) witnesses who may be thought to be favourable to its interests and has declined to do so in respect of those witnesses giving evidence adverse to its interests. To anyone sitting where I do and where the jury does, the distinction is plain and stark. I doubt very much that such an approach either obfuscates or misleads. The jury will have formed its own view as why the questions are only put in such a selective way. Moreover (and this may be a matter for further consideration on another day), an IP faces at least the risk that I shall in my summing up draw to the jury's attention the failure by an IP to exercise his right to question the witness.

My decision

24. For reasons which will shortly be apparent, I assume, without so deciding, that I have the power to order position statements. The question then is whether in the exercise of my discretion I should exercise it. I have concluded (as Mr. Hough submitted) that I should not.
25. I could not sensibly have requested IPs at the pre-inquest stage to file position statements. Disclosure and expert evidence was incomplete. Interviews with key witnesses were being conducted. IPs could reasonably have objected that they needed to see that material before submitting any kind of position statement. To request position statements now would not in my judgment provide substantial assistance in case management. Most key decisions have been taken. Many important witnesses (although by no means all, and, as Mr. Simblet pointed out, very few on the response to the disaster) have given evidence.
26. I agree too with the observations of Mr. Beer QC on behalf of Sheffield Wednesday Football Club ("SWFC") that the preparation of position statements would not be an easy task. It would take a great deal of time. I am not as optimistic as Mr. Weatherby as to think it could properly be done in very few pages. By the time such statements have been prepared the inquests would have moved on. To order their preparation now would be a distraction and of limited assistance. Furthermore, in the light of what is said by some IPs in their written submissions, I doubt position statements from them would be of much assistance.
27. On the other hand, as Mr. Hough submitted, I could gain considerable assistance from IPs filing submissions early in 2015, shortly after evidence on events of the day and

the emergency response has been heard. They would cover all aspects of the inquests up to that time. These submissions could usefully identify the key issues and highlight important evidence bearing on those issues. Since by that stage the jury will have heard all the evidence which relates to the events relevant to all those who died, it will be possible for IPs to make at least preliminary submissions on issues and directions for the jury. There would be a clear benefit in such submissions being made early in 2015, both because they would assist me in my ongoing work on the summing-up (a major endeavour) and because they would initiate the probably lengthy and difficult task of preparing the questions and directions for the jury on issues relevant to all those who died. As I understand it, no IP really contests the view that such submissions would be helpful. There would be no reason why some work on them could not begin immediately.

28. If it is right that submissions of the kind described above could usefully be requested in early 2015 in any event, then it would be undesirable to ask all IPs now to produce position papers. Such a double direction would not be sensible.

29. In short, for the reasons I have set out, I would not order the filing of position statements on the assumption I had the power to do so.

Admissions of negligence by SYP in civil proceedings

The background

Alcock v Chief Constable of South Yorkshire Police

30. As Mr. Hough put it, after the disaster, claims were brought by supporters and police officers in the stadium who had suffered physical and psychological injury, and by others elsewhere who had suffered psychological harm. The defendants included SYP, SWFC and Eastwood & Partners (“E&P”), who were SWFC’s civil engineers at all material times. Initially, SYP settled many of these claims without admission of liability. It disputed other claims, mainly by reference to legal arguments about scope of responsibility for psychological injury. An initial set of claims which tested those arguments went through the Courts to the House of Lords and are collectively reported as *Alcock v Chief Constable of South Yorkshire Police* [1992] 1 AC 310.

31. At an early stage of those proceedings SYP issued contribution proceedings against SWFC and E&P. Those proceedings were settled in October 1990 by means of a

Tomlin Order¹⁵ which provided for each of SWFC and E&P to pay a set sum and for SYP to indemnify them against all claims arising from the disaster. While something of the background to that settlement is known, our knowledge may well be incomplete as the underlying correspondence may be protected by privilege.

32. At first instance, Hidden J stated that (p316B):

“For the purposes of these actions the defendant has admitted negligence- that is to say a breach of duty of care- in certain specific circumstances. It was formally admitted on behalf of the defendant that he was in breach of his duty of care to those who died, or were injured by crushing.”

33. In the context of submissions regarding liability for nervous shock, counsel for SYP argued that (p349H):

“In the present case, actual or apprehended harm to the victim arose by reason of what, for the purpose of these proceedings, was admitted to be a breach of duty in failing to prevent third parties hastening into the crush in crowded pens where the victims were. [Taken from the summary of argument in the Official Law Reports.]”

34. In the Court of Appeal Parker LJ set out the position in the following terms (p351E):

“It was and is admitted by the defendant that the deaths and injuries suffered by those in pens 3 and 4...occurred as a result of the negligence of the police culminating in the opening of...[exit]...gate C...when pens 3 and 4 were already full. This action permitted the masses then outside the ground to gain access to those pens through a tunnel under the West Stand and create thereby a developing crush situation which led to the tragic result of some 95 people being killed...”

35. The judgments in the Court of Appeal were handed down on 3 May 1991. On 8 May 1991 the deputy chief constable wrote a memo to Mr. Wells, the chief constable, which stated:

“Whilst we have never formally admitted liability for what occurred at Hillsborough, we have not disputed the claims made by others that by opening the emergency gates (sic) and failing to protect the tunnel under the

¹⁵ See: INQ000237240001.

West Stand thereby allowing spectator access to pens three and four when they were already full, we allowed a dangerous situation to develop. By implication and general assumption, even by the High Court, we are assumed to have conceded this point.”

36. The case proceeded to the House of Lords. Lord Keith of Kinkel put the admission of SYP in the following way (p392F):

“The [SYP]..., which was responsible for crowd control at the match, allowed an excessively large number of intending spectators to enter the ground at the Leppings Lane end...They crammed into pens 3 and 4...and in the resulting crush 95 people were killed...The Chief Constable...has admitted liability in negligence in respect of the deaths...”

37. Lord Ackner said that (p399C):

“The defendant, for the purposes of these actions, has admitted that he owed a duty of care only to those who died or were injured and that he was in breach of that duty.”

White v Chief Constable of South Yorkshire Police

38. There were further claims. They included claims by current and former SYP officers. Forty officers (including Mr. White) issued proceedings in July 1991 against SYP, SWFC and E&P. In a defence dated 25 September 1991, counsel (instructed by Hammond Suddards, SYP’s solicitors) pleaded “for the purposes of these proceedings only” an admission that “the deaths and physical injuries suffered by those in Pens 3 and 4 occurred as a result of the negligence of the Defendants.”¹⁶ Liability was denied on the basis that the plaintiffs did not fall within the categories of person entitled to recover damages for psychological injuries in the circumstances. It is not clear whether Hammond Suddards had express or implied authority to make the admission which was made on behalf of SWFC or E&P.¹⁷ I shall assume for present purposes they did.

39. In the course of his decision at first instance (under the name of *Frost and others v Chief Constable of South Yorkshire Police and others*), Waller J (internal p32) referred to:

¹⁶ See: INQ000095380047-49.

¹⁷ See the submissions of SWFC at paras. 19-23.

“the breach of duty of the officer who ordered the opening of the gates and/or failed to block off the tunnel.”

40. In his judgment in the Court of Appeal, Rose LJ said that (p117G):

“Liability for the deaths...of [the] spectators has been admitted by the three defendants, the first of whom is the plaintiffs’ chief constable. The defendants admit negligence in the present proceedings...”

41. The chief Constable sought leave to appeal the Court of Appeal’s decision. In his petition to their Lordships’ House, the chief constable recounted (under “facts”) that:

“The immediate cause of the disaster was a senior officer’s decision to open at 2.52pm...outer gate...C without cutting off access to pens 3 and 4 which caused crushing as spectators entered the ground. The [Chief Constable] has admitted his liability for negligence causing the deaths...”

42. The claims ended in failure in the House of Lords: *White v Chief Constable of South Yorkshire Police* [1999] 2 AC 455. In his speech (p491), Lord Steyn observed that it was *“admitted by the Chief Constable that the events [of the disaster] were caused by the negligence of the police in allowing the overcrowding of two spectator pens.”*

43. As I have indicated, when Mr White gave evidence at these inquests, Mr. Hough asked him to confirm that he had brought the civil claim. (This was relevant background to some of the accounts he had given). He confirmed that his claim had failed for legal reasons associated with responsibility for psychological injury. Following examination in chief, leading counsel for 75 families raised the issue of whether the admission recounted in Lord Steyn’s speech could be put to the witness.¹⁸

Admissions and apologies in general

44. Over the years since the disaster, various institutions have issued apologies to the victims and their families. The following have been brought to my attention.

45. Following publication of the Taylor interim report, the chief constable of SYP (Mr Wright) in a statement of 4 August 1989 accepted the conclusions of the report insofar as they related to SYP and extended heartfelt regrets to the bereaved. He stated:

¹⁸ See transcript for 17.9.14, p95-111.

“The report of the Inquiry...has been received by me and I have noted the criticisms that have been directed against members of the South Yorkshire Police both individually and collectively.

To make it clear to all concerned I would say at the outset that I accept the findings and the conclusions of the Inquiry insofar as they relate to the South Yorkshire Police.

The fact that we are held to have contributed to the terrible tragedy of Hillsborough is a matter of profound sadness to all members of the Force, and both personally and on their behalf I once again extend my heartfelt regret to those who have lost loved ones or suffered injury.”

46. In March 1991, the then chief constable, Mr Wells, made further apologies in interviews.

47. On 17 January 1992, Mr Wells, in response to a leading article said to bemoan the lack of an individual policeman to blame and ignore the known facts of the case, wrote a letter to the Yorkshire Post in which he repeated the acceptance by SYP of the findings of the Taylor inquiry, while adding that not only SYP were to blame. He stated:

“The truth is that Lord Justice Taylor described the failure of the police to order closure of the tunnel leading to the terracing as a “blunder of the first magnitude.” The South Yorkshire Police have consistently and unequivocally accepted the truth of this finding. I repeat it now...

Not only the police were to blame. You will recall that Lord Justice Taylor concluded that there were many factors that contributed to the disaster- the layout of the crush barriers, the dangerous congestion arising at the turnstiles, inadequate signing- were some.”

48. Mr. Wells made a similar statement in December 1996: HOM000031270013.

49. Lord Justice Stuart-Smith, in his ‘Scrutiny Report’, recorded that Mr Wells on behalf of the force had acknowledged four particular errors, but had stressed that SYP did not bear sole responsibility. As the Lord Justice put it:

“At my meeting with him Mr. Wells made it plain that since Lord Taylor’s Interim Report he had acknowledged on behalf of the force that there had been four main errors:

(i) failing to delay the kick-off in the light of the large crowds at Leppings Lane;

(ii) not noticing or taking full account of the fact that the central pens were full by 2.50 p.m.;

(iii) not foreseeing where supporters would go once Gate C was opened and not blocking off the tunnel- this was the critical mistake; and

(iv) not distinguishing distress from disorder and consequently not reacting sufficiently quickly or effectively to the situation....

...But Mr. Wells also pointed out that others had been criticised by Lord Taylor...and that the police did not bear sole responsibility for the disaster although he accepted that they took the largest share. This is in accordance with Lord Taylor's findings and is reflected in the apportionment of liability reached in the settlement of the civil proceedings."

50. In the aftermath of the HIP report, the current chief constable, Mr Crompton gave a televised interview in which he made a fulsome apology, both in respect of the disaster and in respect of the amendment of statements.¹⁹

51. On 12 September 2012, following publication of the HIP report, SWFC issued a statement welcoming the report and offering a full apology and condolences. In a statement on the SYP website (which is still there), Mr. Crompton acknowledged SYP's responsibility for the disaster, stated that "*disgraceful lies*" were told in order to blame Liverpool fans and that:

"In the immediate aftermath senior officers sought to change the record of events."

52. Also on 12 September 2012, Yorkshire Ambulance Service issued a statement in which it accepted the findings of the HIP report and apologised for the "*shortcomings*" identified in the report.²⁰

53. Also on 12 September 2012, Sheffield City Council issued a statement apologising for inadequate and poorly conducted inspections of the Hillsborough Ground prior to the disaster.²¹

¹⁹ See: <http://www.bbc.co.uk/news/uk-19569708>

²⁰ See: <http://www.itv.com/news/calendar/update/2012-09-12/ambulance-service-issues-apology-over-hillsborough-shortcomings/>

²¹ See: <http://www.itv.com/news/granada/2012-09-12/sheffield-city-council-apologises-for-role-in-hillsborough-disaster/>

54. On around 13 September 2012, the Football Association offered a full and unreserved apology for the disaster, occurring as it did at a ground selected by them.²²
55. It is not presently submitted by any advocate on behalf of the families that what was said by the Yorkshire Ambulance Service, the Sheffield City Council or the Football Association should be admitted into evidence, although Mr. Weatherby reserved his position on that subject for the future.

The families' submissions

56. Both Mr. Menon QC on behalf of the 75 families and Mr. Weatherby QC on behalf of the 22 families submitted that there was a danger of overcomplicating the issue of admissions, whether in proceedings or otherwise. In essence it was perfectly straightforward. As Mr. Weatherby put it, the starting point is that where a person has made a statement against interest which is relevant, it should go in. An important justification for admitting a statement against interest is to correct a misleading impression. Both Mr. Menon and Mr. Weatherby submitted that in his conduct of the inquests the present chief constable has created such an impression. In contrast to clear admissions of responsibility he has through Ms Barton indicated that a range of others were at fault. As Mr. Menon put it, questions were asked which denigrated the fans. Mr. Weatherby reminded me of the occasion when Ms. Barton suggested that considerable force must have been used (by the fans) to force the perimeter gates. Blame was also cast on SWFC and SCC. If the SYP is permitted to take those positive lines, the jury should know of the forthright admissions previously made. Otherwise it may be misled. That should not be permitted.
57. Mr. Menon submitted it would be grossly unfair for the jury not to know of the admissions made. They should know what the history of the case is. Knowing of the admissions would enable them better to assess any acts or omissions by SYP.
58. Mr. Weatherby relied in particular upon three admissions, which, as I understood him, would suffice as far as he is concerned. First, what he categorises as the specific and clear admission in *White* which is summarised by Lord Steyn. If it is said that this was not a sufficiently clear admission, then he would be content for evidence to be adduced regarding its making. It is not necessary to consider the pleadings. The

²² See: <http://www1.skysports.com/football/news/11669/8075467/FA-offers-Hillsborough-apology>

fact that they were not signed (a point raised by Mr. Hough) is therefore irrelevant. Second, Mr. Weatherby submitted the comments of Mr. Wells to Lord Justice Stuart-Smith were clear and specific. They could hardly, he submitted, be more specific. They were moreover volunteered admissions, not made by reference to specific reports. Third, Mr. Weatherby relied on the website report which contains Mr. Crompton's most recent admissions. He submitted this was a voluntary statement which did not need to be made. If necessary, the chief constable can come and explain why he made it.

59. Mr. Menon and Mr. Weatherby sought to draw an analogy between a statement against interest said to have been made by Mr. Hicks, someone who was present at the disaster and lost two children, and admissions made by the chief constable. It is unnecessary in this ruling further to go into the topic of Mr. Hicks' evidence.

60. Both counsel submitted that it would not be right for SYP to hide behind the suggestion that the basis of any legal admissions is not presently clear. I should require them to produce the documentation lying behind the legal proceeding in order to clarify what exactly was being agreed.

61. Both counsel also submitted that simply because the admission of the admissions would be prejudicial to one or more of the IPs, that would not be a good enough reason to exclude them. As a matter of course in criminal proceedings, such possible prejudice is dealt with by proper direction from the judge.

62. Mr. Menon accepted that any direction regarding admissions in the legal proceedings might need carefully to circumscribe the use that could make of them. He suggested a direction in the following terms:

“It is...relevant...for you to be aware of the content of certain admissions that the chief constable made in [the civil claims brought by Mr. White and others]. The admission was expressed in the following and similar words: ‘The chief constable accepts that the immediate cause of the disaster was a senior police officer’s decision to open, at 2.52pm, an outer gate, Gate C, without cutting off access to pens 3 and 4 which caused crushing as spectators entered the ground. The chief constable therefore admits his liability for negligence for causing the deaths and injuries to the spectators.’ The chief constable did not admit each of the particulars of negligence relied upon by Mr. White and his co-claimants. The chief constable’s view is just

that: he was not present on the day and his admissions do not amount to direct evidence concerning those events nor do they amount to conclusive evidence. Whether those factors contributed to the deaths of the 96 deceased, or any of them, will be a matter for you.”

63. Mr. Weatherby submitted that I could direct the jury to the effect that the chief constable instructs Ms Barton and that on a particular date he made the following admissions, which they may find helpful in understanding the way that the SYP position has been played out in the proceedings, and also what happened on the day. In terms of what happened on the day, they must bear in mind he was not there, but as the institutional chief executive it should be assumed he has carefully considered the institutional position.

Ms Barton’s response

64. In fairness to Ms Barton I should set out her response shortly. She does not accept any inconsistency in the chief constable’s approach. She has challenged no-one. To suggest that others might bear some responsibility is not inconsistent with any admission previously made. Some of the admissions on their face made it clear that SYP, while accepting responsibility was not accepting sole responsibility.

My view

65. At first blush the submissions of Mr. Menon and Mr. Weatherby have a straightforward attraction. It is only on more detailed analysis that what seem to me insuperable difficulties become apparent.

66. I start with a general observation. These are fresh inquests. This is a fresh inquiry. As I made it plain to the jury from the outset, they are to reach their decisions on the evidence adduced before them. Previous analyses of the disaster and opinions based upon them form no part of their consideration. Not only are they hearing the evidence afresh, they are hearing some evidence which has never previously been heard. In short, opinions by others (expert witnesses apart) who were not present at the Hillsborough disaster on the basis of evidence they heard or read are not part of the jury’s consideration.

67. While different considerations might apply to admissions made in legal proceedings, and those made elsewhere, there are some significant common elements. An admission by, or behalf of, someone who was not there is the product of his (or his

lawyers') assessment of the evidence. It is in reality a statement of that person's opinion on the basis of the evidence considered by him (or his lawyers). The fundamental problem in admitting such evidence is that the jury would be asked to infer from that statement of opinion how the disaster happened and who had responsibility for it. That is a wholly different situation from an admission (or opinion) of someone who was present and a witness to the events. There is a further problem. The assessment or opinion must necessarily be based on the evidence as it appeared at the time of the admission. It could have been evidence which the jury has not heard. It could have been evidence which has been discredited before the jury by fresh evidence or in some other way. That can only be known by examining the evidential basis of the assessment made. Now to embark upon an analysis of the factual basis of the admissions would be far from straightforward, time-consuming and collateral to the issues the jury would have to resolve. It would be wholly disproportionate when set against any possible gain in the jury's understanding of the disaster.

68. There is yet a further problem. An admission might well have been more nuanced than at first sight it might appear. In the *Alcock* litigation contribution proceedings involving other IPs were compromised on an uncertain basis. In his different admissions and apologies, Mr. Wells made it clear that SYP was not solely responsible for the disaster. He referred in terms to the findings of responsibility regarding others made by Lord Justice Taylor. Now to embark on a possibly lengthy investigation of the compromise in order better to understand the proper basis of SYP's admission in the proceedings would again in my view be wholly disproportionate. Issues of legal professional privilege could arise. The evidential basis for the compromise might no longer be sustainable. Other IPs cannot be expected to sit quietly by when these matters are investigated. I cannot accept Mr. Menon's and Mr. Weatherby's submissions that this would necessarily be a quick or straightforward matter. It would similarly be wholly disproportionate now to embark on a consideration of what precisely Mr. Wells' acceptance of responsibility amounted to.

69. There is a further common element between admissions in the legal proceedings and elsewhere: the hugely prejudicial effect on those who were present at the disaster, are IPs in the Inquests, and were not party to the admissions. I take Mr. Duckenfield as an example. Mr. Duckenfield's account would be called into question in the eyes of the jury, not (as frequently happens in criminal proceedings) by a conflicting account

from a co-defendant said to have been involved in the offending, but by an assessment of what Mr. Duckenfield did, possibly on an uncertain (or even misconceived) basis, of someone who was not there and was not directly involved. I doubt very much whether that could be justified in principle. If it could, any warning I would have to give to the jury to protect Mr. Duckenfield's position would inevitably further reduce the value of the admissions to the jury. I have no doubt that the prejudicial effect of admitting the evidence would substantially outweigh any probative value. (I shortly return to this topic in paragraph 73 below).

70. The jury has heard a series of SYP officers of relatively senior rank, who had direct involvement with the events, admit specific failures of systems and specific individual errors. Evidence of this kind is likely to be far more helpful to the jury than unparticularised admissions of negligence in civil actions two decades ago or generalised statements of responsibility by different chief constables without direct involvements.

Further aspects of the admission in the civil proceedings

71. Mr. Hough has rightly highlighted further difficulties in adducing the civil admissions. In *White* each particular of negligence was denied. It is not clear what allegations the jury could fairly or safely infer were being admitted. That substantially diminishes their probative value. The admissions in the civil proceedings were made expressly and solely for the purposes of the civil actions in question. To admit them into evidence would amount to treating them as general admissions for all purposes. That was plainly not the intention.

Further comment on admissions and apologies in general

72. In my view it is impossible sensibly to divorce the different admissions and apologies from the findings of various investigations. While the admission in question may have been voluntary in the sense the chief constable was not forced to make it, it was inevitably wholly or substantially based on findings of previous inquiries and often made in response to the publication of those findings. It would have been difficult for a chief constable to say nothing in such circumstances. Mr. Wright on 4 August 1989 in terms accepted the Taylor findings. His statement was a response to them. Mr. Wells, on different occasions, including in his comments to Lord Justice Stuart-Smith, relied on the Taylor findings. He was bound to say something to Lord Justice Stuart-Smith. The different admissions of 12 September (including that of Mr. Crompton, the present chief constable) were in response to the HIP report.

73. Properly to put any admission or apology into context could well lead to the findings upon which the admission or apology is based being adduced. For the reasons I have explained that would be highly undesirable. It is worth too highlighting how difficult this could be for some of the IPs. Mr. Crompton plainly on the basis of the HIP report, stated that the police told disgraceful lies and sought to change the record of events. These are very live issues for the jury. I agree with Mr. Daw QC, who represents the senior officers involved in taking the statements, that the admission of Mr. Crompton's opinion would be deeply unfair to those officers. It would be distracting for the jury now to have to analyse the basis upon which Mr. Crompton expressed these opinions. Indeed, it is not inconceivable it could lead on to consideration of how HIP came to say what it did on these topics.

My conclusion

74. In the result I have come to the clear conclusion that for a number of different (and independent) reasons it would be wrong to admit this evidence. It would have no or little probative value. It would be highly prejudicial. It would divert the jury into complex avenues which would be collateral to the real issues. It would for no good reason further prolong the inquests. Moreover, I do not think that Ms Barton's conduct of the chief constable's case would justify the admission of such evidence. Her criticisms of SWFC and SCC were not necessarily inconsistent with the admissions made by the chief constable. While her questioning regarding the perimeter gates might not have been wise, it does not begin to justify the admission of this evidence. As to a suggestion that the jury could make findings which are inconsistent with the admissions or apologies, that could happen for a number of perfectly proper reasons, not least that the jury's decision will be based on the evidence it hears, not on someone else's opinion formed on a different basis.

John Goldring
31 October 2014