

Ruling on evidence gathering

The general principles

1. As I have previously emphasised, the evidence on the gathering and vetting of evidence by South Yorkshire Police (SYP) has limited relevance. First, it is relevant for the jury to know which was the most complete and/or reliable earlier account of a witness. Second, modification of a statement might affect the witness' credibility. Thirdly, and of particular importance for present purposes, if there were evidence of SYP adopting a policy of suppressing or substantively altering evidence in any sort of consistent way, the jury could infer that might reflect a view of the facts of the disaster being taken by senior officers, including those officers directly involved. That in its turn, the jury could infer, might be relevant to the cause of the deaths and their circumstances.
2. As Mr Hough QC has submitted, this aspect of the evidence must be approached in a proportionate way. There are unlikely to be specific findings in respect of evidence gathering or the alleged cover up. In my view that is generally rightly reflected by calling as witnesses those SYP officers who were key decision makers in relation to the gathering and vetting of evidence and other witnesses who are directly relevant to their evidence. The inquests cannot be a general inquiry into the way evidence was gathered. As Mr Hough submitted, if individuals have committed criminal or disciplinary offences, it is for the IPCC to take or recommend appropriate action. These are all matters being investigated by the IPCC.

Who should be called

3. It is agreed that the following witnesses are relevant for these purposes: former Chief Superintendent Wain, who took the lead role in the process of evidence gathering; former Chief Superintendent Denton who was in charge of the team which performed the task of amending statements; former Chief Inspector Foster, who managed the team of officers charged with amending statements; former Detective Inspector Philip Jones, as an example of one of the officers directly involved in amending statements; Inspector Clive Davis, who says that Mr. Wain at an early meeting expressed an intention to blame Liverpool fans; former Detective Constable Paul Middup, who as the Police Federation representative appears to have relevant evidence to give; Peter Metcalf, the partner of Hammond Suddards, the force solicitor, who advised SYP in respect of the amendments; former Deputy Chief Constable Hayes, the most senior

surviving officer, who took part in several significant meetings; and former Assistant Chief Constable Anderson, who also took part in many of the meetings after the disaster. The dispute revolves around four witnesses. They are William Woodward QC, who was leading counsel instructed by Hammond Suddards on behalf of SYP; Mervyn Jones, who was Assistant Chief Constable of West Midlands Police which carried out the investigations on behalf of Lord Justice Taylor for his Inquiry; former Chief Inspector and during the relevant period Superintendent Norman Bettison (now Sir Norman Bettison); and related witnesses John Barry, Mark Ellaby and former Police Constable Mark Lewis; and former Detective Chief Inspector McGinley, to whom various relevant comments were said to have been made.

4. I shall take each in turn.

William Woodward QC

5. Mr Woodward was instructed and involved from around 21 April 1989. He gave advice in a substantial conference on 26 April 1989. As I have said, his instructing solicitors were Hammond Suddards. Mr Metcalf, the relevant partner, is an Interested Person in the Inquests and will be a witness in this phase. The present evidence suggests that all of Mr Woodward's contact with SYP was through Hammond Suddards. Any advice he gave to SYP was in the presence of Hammond Suddards (normally Mr Metcalf). It was fully noted. Mr Daw QC, who represents former Chief Superintendents Wain and Denton, has helpfully set out extracts from the seemingly full attendance notes of the detailed advice given by Mr Woodward as to how SYP should respond, in particular to the Taylor Inquiry. It is quite clear that Mr. Woodward was deeply involved in that response.

Why Mr Daw submits Mr Woodward should be called

6. Mr Daw submits that it was Mr Woodward who advised that SYP should obtain "*self serving statements*" from its officers as opposed to Criminal Justice Act statements. He advised that the recollections of officers so obtained could be edited or vetted. He advised too that what was said would be confidential and privileged. He provided the direction for the SYP team which produced the Chief Constable's report for the Taylor Inquiry. He was aware of and approved the vetting of SYP officer statements in the period after 10 May 1989. He was, in short, at the heart of the SYP evidence gathering process from no later than 21 April 1989. It was his advice which dictated the course that was adopted by Hammond Suddards. It is the product of that advice

which has been the subject of severe criticism during the course of the Inquest. Mr Woodward's advice was therefore of crucial importance, submits Mr. Daw. Only he can explain it. His motivation in giving that advice was crucial. It cannot be judged from documents or attendance notes. As Mr Daw put it, if Mr Woodward's advice was well intentioned and an honest exercise of professional judgement and integrity from which flowed the action of those who followed the advice, then the entire edifice of a cover up would fall apart. Mr Woodward was the key decision maker in respect of all the matters about which it is now said there was an orchestrated and coordinated cover up by senior officers of SYP. He should be entitled to question Mr Woodward so that the jury have the fullest picture of the motivations of the key polices.

The approach of others

7. Mr Harris on behalf of former Chief Inspector Foster adopted Mr Daw's submissions. Mr Metcalf is neutral as to the proposal to call Mr Woodward. The families do not submit that I should call Mr Woodward.

My view

8. In my view, it is unnecessary and would be disproportionate to call Mr Woodward. I accept of course that it is relevant for the inquests to know about the legal advice given to SYP regarding the gathering of evidence. Such evidence may rebut the charge of a cover up. It may, if officers went substantially beyond that advice, support it. The advice is therefore important. The advice Mr Woodward gave could hardly be clearer. It is set out in detailed attendance notes. It does not require further explanation. No doubt Mr Metcalf will speak of it. He does not suggest Mr Woodward's evidence is necessary to explain it. There is nothing to suggest that Mr Woodward gave any advice which is not clearly documented; or which was not communicated by Mr Metcalf to SYP; or which was communicated directly to SYP without Hammond Suddards's involvement. The point that it may be said Mr Woodward was a more eminent source of advice than Mr Metcalf can be made from the documents. The correctness of the advice does not presently seem to me a matter of relevance for the jury. Its substance does and there is a great deal of evidence about it. Moreover, as Mr. Hough observed, Mr Woodward's motivation is not the issue. The issue is the motivation of SYP officers. If they can show that their actions were based entirely on legal advice which they followed to the letter, that will be a

point very substantially in their favour. For no one suggests Mr Woodward's advice was given in bad faith.

9. In short, it is my clear view that Mr Woodward should not be called.

Mervyn Jones

10. Mr Jones is shortly to be interviewed by the IPCC. Any views I express in respect of him are provisional. They may need to be revisited after the interview. In the circumstances I shall take this shortly.

11. I am presently persuaded (having initially been a little uncertain) that in fairness to Mr Wain and Mr Denton, Mr Jones should be called. I can set out my reasoning shortly.

12. The original self taken accounts of SYP officers were originally intended only for use by SYP internally in preparing its submission to the Taylor Inquiry. West Midlands Police asked for copies. For they did not have sufficient resources to interview everyone in time for the start of the Taylor Inquiry hearings. There is evidence that the West Midlands Police understood and countenanced the fact that SYP and its lawyers would be vetting the accounts before passing them on; that they knew amendments were being made in the vetting process. So, it is said, they effectively approved the process followed by SYP. That, I accept, may rebut the argument that the process was devised and managed so as to allow a cover up or false narrative to be spread.

13. In submissions on behalf of West Midlands Police it is submitted that if Mr Jones is to be called, so too must lawyers from the Taylor Inquiry; that is to say the solicitors from the Treasury Solicitor and Mr Justice Collins (as he now is) who was counsel to the inquiry. For there is evidence of their knowledge and approval of this process.

14. It seems to me, as Mr. Hough submits, the key question is whether SYP received approval of their evidence gathering process from those engaged in the investigation on behalf of the Taylor Inquiry. Mr Jones was involved from shortly after the disaster. He liaised directly with SYP officers. He is likely to have had greater knowledge of the procedure being followed. Whether the inquiry lawyers also gave their approval may have less relevance for the jury. In any event, there are statements and letters from the lawyers on the point which can properly be deployed in the course of the inquests.

15. I emphasise that these observations are provisional. I understand Mr Weatherby's concern about the scope being widened in light of the fact that Mr Jones' involvement takes the matter outside SYP to the West Midlands Police. It seems to me absolutely plain that on any view we cannot in the course of these inquests embark on a detailed inquiry into the way West Midlands Police acted.

Sir Norman Bettison and related witnesses

16. Norman Bettison was a Chief Inspector in the South Yorkshire Police. In 1990 he became a Superintendent. He became Assistant Chief Constable of West Yorkshire Police in 1993, Chief Constable of Merseyside Police in 1998. As Mr Hough rightly observes, whether or not he should be called should depend on his actions after April 1989 when a Chief Inspector and then a Superintendent.

Mr Bettison's role in evidence gathering

17. I summarise. Mr Bettison, as he then was, drafted parts of the Wain Report which comprised the response of SYP to the disaster. He disputes writing what he describes as the "*less dispassionate analysis*" of what happened on the day. He was a member of Mr Wain's team of officers. He had some tasks in collecting documents and contacting officers whose statements were being sought in the early stages after the disaster. He was involved in the Taylor Inquiry. He acted as liaison between SYP and its lawyers. He drafted Inquiry updates for officers which were reviewed and issued by more senior officers. He attended the Inquiry each day. He made suggestions regarding the final submissions of counsel. He requested a copy of counsel's submissions to review before they were delivered. After the Taylor Inquiry hearings and up to around early November, he assisted a committee of South Yorkshire Police which was implementing the proposals of the Taylor interim report. He provided some assistance in the preparations of the force for contribution hearings in civil proceedings.

Why Mr Hough submits Sir Norman Bettison should not be called

18. Mr Hough submits that Mr. Bettison was not one of the key decision makers in the evidence gathering process. That is the essential test. His role was no more significant than other officers of the Wain team who are not to be called. Mr Wain will give evidence and questions about any allegedly improper tactics used by the team can be put to him. The fact that Mr. Bettison subsequently rose to a high position and has a high profile should not influence any decision as to whether or not

to call him. Moreover, his conduct is part of a wide-ranging investigation by the IPCC which at its conclusion will consider any appropriate action to recommend.

19. In his oral submissions, while accepting this was a difficult matter of judgement, Mr Hough emphasised there is nothing to suggest that Sir Norman played a more proactive role than other members of the Wain team. The conference notes with leading counsel do not suggest he made a material contribution. It is not surprising as police liaison officer at the Taylor Inquests that he requested Mr Woodward's closing submissions. The fact he was involved in drafting the Wain Report is not a matter of great importance. Its contents are a matter of record. Chief Inspector Beal played at least as large a role in preparing the report. He was barely asked about it. While there are actions in respect of evidence gathering attributable to Mr Bettison, they do not suggest any substantial role. There is nothing to suggest that Mr Bettison himself was directly involved in amending any specific statements other than that of a former Chief Superintendent after the Taylor Inquiry. There are many other officers actually involved in the amendment of statements who it is not suggested should be called.

Mr Barry and Mr Ellaby

20. These witnesses are relevant in my judgement to my decision. Mr Barry made a witness statement on 27 February 2014. Mr Ellaby made one on 2 April 2014. Both Mr Barry and Mr Ellaby had been on an MBA course at Sheffield Business School. Mr Bettison was on the course too. Mr Barry recounts a conversation said to have taken place between him and Mr Bettison. He says Mr Bettison told him, "*I have been asked by my senior officers to pull together the South Yorkshire Police evidence for the public inquiry and we are going to try to concoct a story that all the Liverpool fans were drunk and we were afraid they were going to break down the gates. So we decided to open them.*" Mr Barry said he was "*gobsmacked*" by what Mr. Bettison said. He turned the comment over for many days in his head. He was wracked with guilt for many years for not saying anything about it. Without going into detail, he finally did.
21. Mr Ellaby recounts that Mr Bettison told him, "*That he had been placed as a member of the team to look at Hillsborough. He said South Yorkshire Police had selected him to do work on Hillsborough to ensure that South Yorkshire Police didn't take any responsibility and that it was the fault of the fans.*" Again, without going into detail, Mr Ellaby first reported that conversation when he heard Sir Norman Bettison's denial on the news of Mr Barry's account.

Mark Lewis

22. Mr Lewis was a former police constable in South Yorkshire Police. He was the driver of a staff car taking Mr Dear (as he then was), the Chief Constable of West Midlands Police and Lord Justice Taylor. On 12 April 1990 Mr Lewis sent a memo to the Chief Constable of SYP. He claimed that Lord Justice Taylor said to Mr Dear, "*I suppose you realise that to give this inquiry any credibility we have to apportion the majority of the blame on the police?*" Mr Dear's response, he claimed, was "*I suppose we do.*" It is said that Mr Lewis was encouraged by Mr Bettison to submit that report to the Chief Constable.

Mr Hough's submissions in respect of Mr Barry, Mr Ellaby, and Mr Lewis

23. Mr Hough submits that if Mr Bettison's role was not so significant that he should be called, Mr Barry's and Mr Ellaby's evidence falls away. The evidence of Mr Lewis is at one further remove. The suggestion that Mr Bettison may have put up Mr Lewis to concoct what is obviously a false account is, submits Mr Hough, mere speculation. To call Mr Lewis would be to engage on an entirely collateral inquiry.

The views of the Police Federation

24. Mr Greaney QC, on behalf of the Police Federation, supports Mr Hough's analysis. He adds that because of the notoriety of the witness, there must be a real risk that his evidence would become a side show and take substantial time in circumstances where time is valuable.

My view

25. As Mr Wilcock QC on behalf of the families agreed, that the witness may have symbolic or iconic value to the families is not a sufficient basis to call him. That said, not without some hesitation, I have concluded there is substance in Mr Wilcock's submission that if Mr Bettison, Mr. Barry and Mr. Ellaby are not called, the evidence gathering phase of the inquests will be vulnerable to the reasonable criticism that the suspicion of unjustified and deliberate wrongdoing by SYP was not as thoroughly investigated as it should have been. In saying that, I have considered the evidence concerning Mr. Bettison in the round. His role, it could be inferred, was not insignificant. He was present at significant meetings (including briefings with counsel). Apparently of his own volition he requested a copy of counsel's submissions to the Taylor Inquiry before they were lodged. He sent a detailed analysis to Mr

Woodward suggesting ways in which the SYP case could be analysed. He was chosen to go to Merseyside with some AV material when there was concern about what the Merseyside officers might say in their witness statements. The original SYP suggestion was that Mr Metcalf, the solicitor, should go and see them. Those aspects alone might not be a sufficient basis to call Sir Norman. However, it seems to me difficult when investigating the SYP narrative following the disaster, to ignore what Mr Barry and Mr Ellaby have said in their witness statements. On any view, Mr Bettison (whether in a strategic role or not) was deeply involved in and knew about the SYP narrative response to the disaster. The jury could infer from their evidence that someone who knew precisely what was going was saying that a false narrative was being prepared and would be advanced. That, as it seems to me, puts Mr. Bettison in a different category to others in the Wain team.

26. I agree with Mr Hough's submissions in respect of former PC Lewis. Calling him would be likely quickly to degenerate into a collateral trial as to the truth of his account. Moreover that Mr Bettison played a part in advancing that account is, as it presently seems to me, mere speculation. There is in my view no justification at present for calling him.
27. In short, I have decided that Sir Norman Bettison, Mr. Barry and Mr. Ellaby will be called.

Patrick McGinley

28. Former Detective Chief Inspector McGinley states, and I summarise very shortly, he was present with other senior officers at headquarters after the disaster when it was said generally that Liverpool supporters had arrived late, been consuming much alcohol and were without tickets. He states that later that evening Mr. Denton told him that on legal advice pocket book entries would not be made. There would be plain paper accounts. He said he was immediately dubious. Finally, he says as the Police Federation representative he was told confidentially by a number of officers that they objected to their accounts being altered and had been accused by Mr. Wain of insubordination. Mr. Weatherby submits that this is all relevant evidence for the jury to consider. Among other things, it would counterbalance the explanation anticipated that the procedures adopted were innocent in the circumstances.
29. I agree with Mr. Hough's submissions in respect of this witness. The documentary evidence plainly contradicts what he says about the decision to have self-taken

statements on the evening of the disaster. His evidence about officers being placed under pressure to accept amendments is all hearsay. In any event there is direct evidence of such pressure which the jury has heard and is to hear.

Some final observations

30. It is crucial this area of the evidence is kept within bounds and does not overrun the timetable set for it. It will therefore be strictly timetabled. I should add that the questioning of Sir Norman Bettison, for example, will not be permitted to wander far and wide.

John Goldring

2 February 2015