

## **The video**

### **Introduction**

1. This ruling should be read with my ruling of 1 July 2014. Hopefully the formatting and paragraph numbering on this occasion will not go awry as it did previously.
2. In the ruling I accepted that the Match Commanders had a valid point in arguing that a short compilation of video evidence could convey most vividly the types of incident of football disorder which conditioned the approach and reaction of police officers at Hillsborough. I indicated that there would be strong grounds for introducing the evidence if officers gave evidence that their relevant perceptions, decisions and reactions were influenced either by general concerns about football hooliganism or by relevant specific events or phenomena. I subsequently indicated that I would consider this matter when further evidence had been called and I was better able to give an informed final decision.

### **The position as it now is**

3. First, there is no question of hooliganism having played any part in the disaster at Hillsborough.
4. Second, there is now no basis to play any training videos. There is very little evidence that they formed part of the training of relevant police officers and still less that these videos (as opposed to concerns about hooliganism more broadly) influenced officers or others.
5. Third, and significantly, a number of aspects of the policing of the semi-final are clearly in issue and will have to be resolved by the jury.
6. Very many witnesses have said that they initially perceived the situation at the Leppings Lane end of the ground in terms of public disorder, in particular a pitch invasion, although some, as Ms Williams pointed out, did not. I take one example of many. Assistant Chief Constable Jackson in his account of events to the West Midlands Police, described going into the police control box as events were unfolding. He said he asked the Match Commander, Chief Superintendent Duckenfield what the problem was. Mr. Duckenfield told him, 'It looks like a pitch invasion or a possible pitch invasion...I think there was a short conversation about the possibility of a pitch invasion.' Mr. Beggs on Mr. Duckenfield's behalf has

accepted in submissions that Mr. Duckenfield did not appreciate initially what was happening.

7. Many of the witnesses have quite properly been questioned on the basis that they should have realised this was a medical emergency and not a pitch invasion sooner. The point made directly or implicitly, is that the response and so the consequences might have been different in the early, critical period if reactions had been quicker. It seems possible that such a suggestion will be made to Mr. Duckenfield when he gives evidence later this week.
8. Moreover, witnesses, again perfectly properly, have been tested on the basis that both in planning for the semi-final and on the day, there was too great a focus on crowd hooliganism and an insufficient focus on crowd safety. One topic raised, for example, is the nature of the (emphatic) instruction in the police Operational Order to Serial 1 officers not to open the pitch perimeter gates to permit fans to leave the pens; also the restrictive way that the instruction was allegedly delivered by Mr. Duckenfield at his pre-match briefing. It seems possible Mr. Duckenfield will face criticism for that too when he gives evidence.
9. Finally, it has been suggested to witnesses that the police cordon set up across the pitch separating the two sets of fans after the disaster began to unfold was not necessary or appropriate. Officers deployed on the cordon should have been responding to the medical emergency in the pens. Many police officers disagreed. Former Chief Superintendent Nesbit, for example, justified the cordon to deter Nottingham fans from climbing over the fencing and on to the pitch. He said he did not want a group of Liverpool fans to get towards the fencing and have any sort of confrontation either verbally or physically with Nottingham fans; a public order situation on top of what had already happened.
10. In short, on the basis of the evidence they have heard and the issues raised the jury is bound to have to consider the timeliness and nature of the initial and later police response to the emergency, and the appropriateness of the balance drawn between safety and hooliganism by the police both before and on the day of the disaster. In resolving those issues, the extent to which individually and as a whole, officers were conditioned by the prevailing football culture in 1989 will, it seems to me, be an essential element of the jury's consideration. Crucially, the jury will have to resolve the issues not in hindsight or by reference to the football culture of 2015, with which

they may well be familiar, but by the standards of 1989, with which they are unlikely to be familiar.

### **The families' objections**

11. The families object to the jury seeing the video. They make a number of points which I shall summarise. The disaster had nothing to do with hooliganism. A video of depicting hooliganism is therefore irrelevant, prejudicial and distracting. The jury have sufficient evidence about hooliganism anyway properly to assess the actions of police officers, who have explained what they did and why. If the video has any probative value, its prejudicial effect substantially outweighs it. No witness has said he saw the material depicted. No-one has said that his reaction was necessarily conditioned by previous hooliganism. My ruling of 1 July 2014 was in any event wrong and irrational.

### **My view**

12. I do not accept that for a piece of footage to be admissible, a police officer has actually to have seen it. Or that to render it admissible an officer has to say he has seen similar footage or been influenced by it. That seems to me not to reflect the ruling I gave, to be substantially too narrow an interpretation and be capable of resulting in unfairness. Moreover, the evidence has now thrown up specific examples where there are grounds for thinking that officers' perceptions and reactions were influenced by concerns about pitch invasion and confrontation between opposing fans, as my summary above makes clear.

13. I have reminded myself of the contents of the video. While of course different from the events at Hillsborough, and for the moment taking it as a whole, it seems to me capable of illustrating to a significant degree the broad nature of violence which the jury could infer was prevalent in the 1980s and informed police officers' thinking in planning the policing of the semi-final and conditioned their reaction to the events on the day. It can help the jury resolve the issues which on the evidence have been raised. It depicts something with which the jury is unlikely to be familiar in a more graphic way than any description could. In short, it is in my view relevant and of probative value.

### **Does the possible prejudicial effect of the video outweigh its probative value?**

14. In dealing with this aspect I shall consider, first, what the jury should be told about why they are seeing the video, second, whether the whole of the video should be

shown or whether there are reasons entirely to omit that part which concerns Heysel and, third, a provisional view as to when, if produced, it should be.

#### **What the jury should be told**

15. Whenever it is produced, I would make plain why. Among other things, I would make it absolutely plain there is no question of football hooliganism having played any part in the Hillsborough disaster; that no-one suggests as much. Counsel to the Inquests (in the October 2014 submissions) has suggested a number of specific observations which might be made to the jury to which no exception has been taken by the Match Commanders on which others might usefully make their observations.

#### **What parts of the video should be played**

16. I can well understand why there might be particular concern among the families about playing that part of the video which relates to events at Heysel, a notorious example of disorder in which Liverpool fans were directly involved (as the jury has heard). I have already indicated that no question arises of playing those parts of Heysel which illustrate those who were injured and died. Having looked at the remaining Heysel depiction and noted the limited amount of hooliganism it shows, it seems to me there is substance in the suggestion that its prejudicial effect outweighs its probative value. There is a risk of it undermining what has overwhelmingly been the evidence; that in 1989 Liverpool fans were not perceived as posing any greater risk in terms of hooliganism than any other club. Liverpool was not part of a group of clubs with a notorious reputation for hooliganism such as Leeds. In short, I have concluded that in any event nothing should be shown of Heysel.

17. As Mr. Hough has submitted, the one match post Hillsborough cannot be relevant and should be omitted. On the other hand, it does seem to me the match at Hampden Park in 1980 should form part of what is shown, albeit the disorder took place in Scotland.

#### **When the video should be produced**

18. Mr. Hough has made what presently seems to me a sensible suggestion: that the video should be played during the evidence of the policing expert, Mr. Hopkins. He gives evidence about the background to football policing in the 1980s, including disorder and hooliganism. Playing the video at that stage would put it into context and underline the limits of its relevance. It would be produced and explained in a calm, dispassionate and objective way. It would too be particularly helpful given, as I have decided, there would be no commentary. However, as I made clear to Mr. Roche, I

would of course hear any submissions to the contrary; in particular as to whether it should be played during the course of Mr. Duckenfield's evidence.

**Conclusion**

19. I have no doubt that for a jury, many if not most of whom will have had no experience of seeing and knowing about soccer hooliganism in the 1980s, seeing the video in the limited way I have decided will materially help in understanding the policing background to the decisions taken both before and on the day of the disaster. Given the extent of the video I have decided they should see and a careful direction from me, it seems to me there is no, or virtually no risk of prejudice to the families. Moreover it does seem to me that fairness to all Interested Persons does require the jury to see it.
  
20. I would lastly observe that it may be thought this issue needs to be kept in proportion. In the final analysis this is a silent video which will take about ten minutes to play in a case which so far has lasted almost twelve months and has a substantial time yet to go.