

Orgreave

Ruling

Introduction

1. At issue in these applications is whether two topics relating to the gathering of evidence following the policing by South Yorkshire Police (“SYP”) of events at Orgreave coking plant during the miners’ strike in 1984 should feature in the inquests.

Background

2. I substantially rely on the summary prepared by Mr. Hough QC, counsel to the inquests.
3. On 19 March 2015, solicitors to the inquests circulated to interested persons an IPCC document entitled “IPCC review of matters relating to the policing of events at Orgreave coking plant in 1984”. An associated IPCC decision document was also provided. Disclosure was later given of three original documents referenced by the IPCC which concern individuals who have given or are to give evidence in these inquests. The material was disclosed very shortly after receipt, but after awaiting approval from the IPCC.
4. On 24 March 2015, representatives of the 22 families, with the support of the 75 families, applied for permission to deploy the three original documents which had been disclosed. They reserved their position as to deploying the contents of the IPCC reports. The application was further refined in oral submissions.

A short summary of the relevant events

5. In the course of the NUM strike against job cuts in the mining industry, there were significant clashes between police and miners at the Orgreave coking plant. Picketing there began around 23 May 1984 and it escalated. In the following weeks, there were several incidents which resulted in people being arrested and charged with unlawful assembly and riot. On 18 June 1984, the so-called “Battle of Orgreave” took place, in which 95 people were arrested and 55 charged with riot. The events at Orgreave remain highly controversial to this day, with some claiming that the police sought to provoke a serious clash in which a symbolic defeat could be inflicted on the NUM.

6. After those events, there were four trials of people arrested during the dispute. These are described in the IPCC documents and in the SYP document “Report into Methodology of Evidence Gathering during NUM Dispute 1984” (“the SYP Report”). In the fourth trial, the prosecution collapsed after 48 days. During the course of the trials, there was extensive and critical cross-examination of officers as to both the form and substance of their accounts. One of the points criticised was that many statements had opening sections which were in identical form. A second was that there was confusion as to whether the signature of statements by a second officer was intended to corroborate the account or merely to witness the signature of the officer whose statement it was. A third was that some statements were lacking in detail and some officers could recollect little more than was in their statements. It appears that there were also allegations that officers had given dishonest evidence.
7. Following the failure of the fourth prosecution, a decision was made not to proceed with further charges. ACC Jackson prepared the SYP Report, which he delivered to DCC Hayes and in which he sought to document and explain some of the failures of evidence-gathering. Meanwhile, 39 of those charged brought civil claims against SYP, alleging unlawful arrest and malicious prosecution. Peter Metcalf of Hammond Suddards acted for the force in defending those claims, which were ultimately settled.
8. The IPCC have been considering complaints of a number of possible criminal and disciplinary offences arising out of the events at Orgreave. The documents which have recently been disclosed were prepared in the course of the IPCC review of those complaints.

The general principles

9. There is no dispute about the general principles. Evidence on the gathering and vetting of evidence by 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. Third, 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.

10. This is a matter for my discretion. There are unlikely to be specific findings in respect of evidence gathering or the alleged cover up. Possible evidence must be approached in a proportionate way bearing that in mind. The inquests cannot be a general inquiry into the way evidence was gathered. If individuals have committed criminal or disciplinary offences, it is for the IPCC to take or recommend appropriate action.

The evidence sought to be admitted

11. The first piece of Orgreave evidence sought to be admitted relates to paragraph 47 of the SYP Report. Mr. Jackson has given evidence. Mr. Hayes is doing so. The report was dated 12 September 1989. The paragraph states:

“During the course of [the fourth]...trial the evidence of the arresting officers together with the method by which that evidence had been gathered was critically examined....Having regard to the lapse of time from the event to the date of the hearing, and due also...to the fact that many of the officers were on picket line duty they were unable to provide [much]...detail. If circumstances and time had allowed full detailed statements to have been prepared and submitted by officers at the time of arrest then possibly these problems may not have occurred.”

12. Mr. Weatherby QC on behalf of 22 of the families submitted that he wished to ask Mr. Hayes (and in a slightly different form former Chief Superintendent Denton), as the second most senior officer intimately concerned from the outset in the Hillsborough investigation, about what had happened in respect of SYP’s previous major inquiry, namely Orgreave. He wanted to put to the witnesses that a key problem regarding Orgreave was that police officers had not provided full and detailed statements at the time of the incident leading to the failure of the criminal proceedings. That is relevant to the inquests, as he submitted, because, as at Orgreave there is a real issue about the way the evidence of the police officers at Hillsborough was gathered. Pocket book entries were not normally made. Mostly undated, self-taken plain paper accounts were prepared. Normal police procedure was not followed. Mr. Hayes was told not long before Hillsborough about the problem at Orgreave resulting in the failure of the trials. The evidence about Orgreave would tend to rebut the explanation that Hillsborough was extraordinary, that there was nothing in the circumstances particularly unusual or improper about the way the Hillsborough evidence was gathered. Mr. Weatherby emphasised that the questions would be very limited. He had no intention of seeking to investigate Orgreave which he accepted

would be outside the scope of the inquests. Mr. Wilcock QC on behalf of 75 of the families adopted Mr. Weatherby's submissions.

13. The second piece of evidence which Mr. Weatherby and Mr. Mansfield QC (on behalf of the 75 families) wished to adduce was an attendance note of Mr. Metcalf, the partner of Hammond Suddards, SYP's solicitors, both in respect of civil proceedings arising from the events at Orgreave and Hillsborough. The attendance note is dated 29 June 1988. It was made following a telephone conversation with Chief Inspector Drabble (who does not have a leading role at Hillsborough and is not currently a witness). The plaintiffs in the civil proceedings were two acquitted miners, Mr. Broomhead and Mr. Lingard. They were suing (as I understand it) for unlawful arrest and malicious prosecution. According to the attendance note, Mr. Drabble told Mr. Metcalf that there were videos showing the plaintiffs "in positions not compatible with the Arresting Officers' statements." The note continued:

"I asked [Mr. Drabble] to let me have a written report, but is rather reluctant to do this, because there would appear to be some opposition at Snig Hill [police headquarters] to our providing evidence which could cause the case to be lost...

I said I did not want to give anything away at this stage. Even if...one of these Plaintiffs had not been treated properly by the Police Officers and indeed if there was some perjury in the statements, it remained our argument that they were present at a riot when they had fair opportunity to disperse and, accordingly, were properly arrested and charged and indeed could have been lawfully struck by Police Officers in the course of a proper operation to clear an area of stone throwers and rioters.

For the time being, I suggested that he let me have a letter confirming that he had looked through all the films and could not identify any of the Plaintiffs as stone throwers. He might also mention that he had discussed certain matters with me, which we would be taking further at a later date..."

14. Mr. Weatherby submitted this evidence was relevant, because of the disclosure position of SYP in respect of highly pertinent matters to these proceedings and to the attitude taken by Mr. Metcalf. The jury could infer from the attendance note a reluctance or opposition at police headquarters and by Mr. Metcalf to disclose anything to the detriment of the police in respect of Orgreave. They could use that as evidence to support the suggestion of a similar reluctance or opposition in respect of Hillsborough. The approach disclosed by the attendance note, in other words, could

inform the jury of the approach of SYP and Mr. Metcalf to the way the Hillsborough statements were amended and disclosed. Again Mr. Weatherby submitted that he would not wish to go any further; that Orgreave was merely the context of such evidence of reluctance or opposition. It is something he would explore with Mr. Metcalf.

15. Mr. Mansfield went a little further. He submitted, and I summarise, that the attendance note was evidence of Mr. Metcalf's knowledge of perjury; that it revealed he was prepared to cover that up in respect of events at Orgreave. The jury could infer he would similarly be prepared to cover up or agree to a false narrative in respect of Hillsborough. Mr. Mansfield indicated he would wish to ask Mr. Metcalf about his awareness of the way the police at Orgreave gathered evidence as well as his approach to the amendment of statements as submitted by Mr. Weatherby.

My view

16. As I indicated in court, I am clear we cannot embark on the two areas of inquiry suggested.
17. First, it seems to me absolutely plain that these inquests cannot embark on an investigation of what happened at Orgreave or how evidence in respect of Orgreave was gathered. It would be highly contentious, involve consideration of a huge amount of material which would have to be disclosed and take an inordinate amount of time.
18. Second, as Mr. Hough submitted, however attractively Mr. Weatherby might put it, raising either line of inquiry would inevitably run much wider than he submits, as Mr. Mansfield's submissions in respect of his proposed investigation of the attendance note revealed.

Paragraph 97

19. At the heart of Mr. Weatherby's submissions is the suggested similarity in respect of evidence gathering as between Orgreave and Hillsborough. As it would be put in a criminal context, he would be seeking to use what happened regarding the gathering of evidence at Orgreave as similar fact evidence when considering the same topic at Hillsborough. That inevitably would require comparison between the two. That comparison could only take place by analysing the issues arising in respect of the gathering of evidence at Orgreave and comparing them to those at Hillsborough. That

would lead inexorably to an examination of what happened at Orgreave. The Pandora's box would be open.

20. Moreover, as Mr. Hough submitted, there were on the face of it substantial differences between events at Orgreave and those at Hillsborough. The officers were different. Any problems regarding the gathering of evidence were different. The way the evidence was gathered was different.
21. In short, once this topic is raised with Mr. Hayes, the inquests would be likely to be driven to investigate Orgreave. For Mr. Hayes (or those representing him) would have to be permitted to argue that having regard to the facts, Orgreave is irrelevant to any consideration of Hillsborough.

The attendance note

22. Any inquiry into the attendance note would also raise serious problems. While at first blush it may seem that it could be considered in isolation, that plainly could not fairly be so. It would have to be considered in the context of what was a continuing relationship between SYP and Mr. Metcalf. That would require consideration of all the relevant documentation (not least of all by Mr. Metcalf). Furthermore there would have to be some investigation regarding Mr. Drabble's comments. It is not clear, for example, whom he was referring to at Snig Hill, whether it was anyone who had any connection with Hillsborough. Such an investigation would seem to me wholly disproportionate.
23. Moreover, Mr. Mansfield has in terms submitted that he would wish to examine Mr. Metcalf's knowledge of evidence gathering at Orgreave, which itself would inevitably lead to consideration of events at Orgreave.
24. I should underline this in respect of Mr. Metcalf. The issue for the jury is what inference, if any, they can draw from SYP's conduct during the gathering of the evidence as to the circumstances in which those who died came to do so. Mr. Metcalf's conduct is only relevant insofar as it can throw light on that issue.

Conclusion

25. Evidence gathering is on any view at the limit of the scope of these inquests. It has to be kept strictly within bounds. In short, this evidence could only be of limited if any relevance to a topic itself at the limit of scope. I am clear it should not be introduced.

John Goldring
27 March 2015