Neutral Citation Number: 2019 EWHC 1494 (Admin)

IN THE CARDIFF ADMINISTRATIVE COURT

Case No: CO/4931/2018

Courtroom No. 2

2 Park Street
Cardiff
CF10 1ET

Thursday, 9th May 2019

Before:
THE RIGHT HONOURABLE LORD JUSTICE HADDON-CAVE
THE HONOURABLE MR JUSTICE STUART-SMITH

B E T W E E N:

THE QUEEN ON THE APPLICATION OF CARWYN JONES

and

HM SENIOR CORONER FOR NORTH WALES (EAST & CENTRAL) & ORS

MISS McGAHEY QC appeared on behalf of the Applicant
MISS CARTWRIGHT appeared on behalf of the Respondent
MISS COLLIER appeared on behalf of a Third Interested Party (Labour Party)

JUDGMENT

LORD JUSTICE HADDON-CAVE:

1. This is the judgment of the Court. The claimant, the former First Minister of Wales, challenges the decision of the defendant, HM Coroner for North Wales (East and Central), on 28 and 29 November 2018, made during the course of the inquest into the death of Carl Sargeant AM, to refuse to admit the evidence of four witnesses. The claimant further challenges the failure of the Coroner to take steps to enquire whether a witness had provided dishonest evidence during the inquest.

2. Appearing today on behalf of the claimant is Miss McGahey QC. Appearing on behalf of the Coroner is Miss Cartwright. Appearing on behalf of the Labour Party, who are the third interested party, is Miss Collier.

**Background**

3. This claim arises from the inquest into the death of Carl Sargeant AM, who tragically died on 7 November 2017 at home in Connah's Quay in North Wales. His death took place four days after his removal from the Welsh Government Cabinet by the claimant, who was acting in his capacity as First Minister of Wales. The reason for the removal was that the First Minister had become aware that three women had made allegations that Mr Sargeant had behaved in a sexually inappropriate manner towards them. The three women who made the allegations consented to their allegations being known to the claimant on the basis that he would treat the information in confidence. The claimant referred the allegations to the Labour Party for investigation.

4. It is ultimately a matter for the Coroner, but there appears to be no question that, sadly, Mr Sargeant then took his own life. The inquest is being held in North Wales. The Coroner is sitting without a jury. The inquest was listed for five days beginning on 26 November 2018. It was adjourned part heard pending the outcome of this application.

5. The claimant's application put forward by Miss McGahey QC relates to evidence which the Coroner wrongly, she submits, refused to admit from two witnesses, Mr Bernie Attridge and Mr Aaron Shotton, who, it is said, appeared to have knowledge of sexual misconduct on the part of Carl Sargeant that would have caused him real anxiety if it was made public. Mr Shotton provided a witness statement, to which he exhibited a series of text messages that Mr Attridge had sent to him between 1 and 6 November 2017.

6. Miss McGahey QC also sought to adduce before the Coroner evidence from two other witnesses, Louise Magee and Michelle Perfect, which it was submitted indicated that

Mr Attridge had himself wanted to make complaints about Mr Sargeant's conduct towards women. She also submitted that the evidence of Mr Shotton, Miss Magee and Miss Perfect indicated that Mr Attridge may have lied to the Coroner in witness statements verified with a statement of truth.

7. On 28 November 2018, Miss McGahey QC applied to the Coroner for the evidence of Mr Attridge, Mr Shotton, Miss Magee and Miss Perfect to be admitted. Other parties present were neutral on the application. For reasons which we will come to, the Coroner refused the application, finding that there was be sufficiency of evidence before him without the additional evidence of the four witnesses. Overnight there was extensive media reporting of the application. The next morning, in the light of that publicity, Miss McGahey QC renewed her application for the admission of these witnesses' evidence. The Coroner again rejected her application, relying on the reasons that he had given on the previous day and stating that there was nothing in the renewed application to cause him to change his mind. The claimant lodged an application for judicial review. It was initially refused on paper and then granted by another judge after an oral hearing.

**Grounds**

8. The grounds put forward by the claimant are that the Coroner erred in law in that he, (i) failed to take into account matters which he should have taken into account; (ii) took into account matters that he should not have taken into account; (iii) failed to give reasons for his decisions; (iv) failed to ensure that there was a full, fair and fearless investigation; (v) placed too great a weight on the statutory questions; and, (vi) reached a decision that was irrational. The Coroner adopts a neutral position, as indeed do the other parties to the case.

**The Coroner's Reasons**

9. We cite in full the two sets of reasons given by the Coroner for his decision made on 28 November and, as we said, 29 November 2017, because we regard it as important that close regard is had to the actual reasons that the Coroner gave. In refusing Ms McGahey QC's applications, after hearing submissions on 28 November 2017, the Coroner said this:

> 'I have had representations made to me by the interested persons and their advocates, with a view to assisting my decision in relation to whether or not it is necessary for me to hear evidence in the course of the inquest from certain witnesses, whose additional evidence has been provided to me over the course, roughly, of the last two weeks or so. I have been

advised by set[?] of the advocates, Mr Thomas on behalf of Carl's wife and son; and Mr Andy Sargeant on behalf of the remainder of the Sargeant family, who remain neutral and, thirdly, [Miss Wolfe?] on behalf of the Labour Party and Miss McGahey on behalf of the First Minister. It was suggested to me that there are two important considerations in relation to my decision making at this stage those being, firstly, relevance and, secondly, the question of credibility.

I have taken the opportunity also, and I now remind myself in an open court of law, which dictates the responsibility that I have as a coroner and that the Coroners and Justice Act', and that is the Coroners and Justice Act 2009, 'and I remind myself in particular of Section 5 and Section 10 of that piece of legislation, whereby Section 5 defines for me the matters to be ascertained by the investigation. That is to ascertain who the deceased was, how, when and where the deceased came by his death.

In addition, I remind myself of Section 5.3 which tells me,

"neither the senior coroner conducting an investigation of this part into a person's death … may express any opinion on any matter other than - a, the questions mentioned in subsection 1(a) and (b)".

Section 10.2 of the Act says that a determination of Section 10(1)(a) may not be framed in such a way as to appear to determine criminal liability on the part of a named person or civil liability. With that in mind, I consider that the question that I must now make in full falls into a two-stage test. I must firstly consider the question of relevance, and then having determined the question of relevance, then and only then if I believe the evidence is relevant to me is it necessary for me to go on to consider the second level of representations, that of credibility.

I have reminded myself also of Law Sheet Number 5, which the advocates will be familiar with. Mr Sargeant, you will not necessarily, but it is a law sheet issued by the Chief Coroner, and it assists coroners. Revised on 16 January 2016, the copy I am looking at now, as to the discretion that exists for coroners in a number of areas. It focuses, particularly by reference to case law, which, again, the advocates will be familiar with, you not so Mr Sargeant, but I will assist where I can, that the coroner has a wide discretion in setting the scope of an investigation and that the scope and breadth of a coroner's enquiry is a matter for the coroner. In the case of *Jamieson*, Sir Thomas Bingham helpfully reminded coroners that the responsibility is for the coroner that he must set the bounds of the enquiry, and he must rule on the procedures to be followed. So, clearly with regards to discretion which exists in terms of scope it is very much a matter for myself.

In relation to the calling of witnesses, the Law Sheet also provides me with

some guidance and assistance there. Again, it indicates to me, as I know already, it reminds me that the coroner has a broad discretion over which witnesses call [sic] in order to satisfy the investigation and inquest requirement of the Coroners and Justice Act 2009. As I have set out already, and it is for the coroner to decide how to adduce the necessary evidence, the coroner is not required to call every witness who might have relevant evidence, but sufficient witnesses to undertake a proper enquiry.

In relation to the exercise of that discretion, I must exercise my discretion fairly and reasonably, and in accordance with Wednesbury principles. In particular, that I would fail in relation to those principles if I failed to take into account a relevant consideration, or I took into account an irrelevant consideration. Let me put that again in case I got that wrong. I would fail if I had taken into account an irrelevant consideration or failed to take into account a relevant consideration.

With all of those matters in mind, it is my considered opinion that there is sufficiency of investigation, there is sufficiency of evidence before me without the additional evidence that would have been provided by the supplementary statement of Louise Magee and Michelle Perfect; a statement by way of additional evidence of Mr Bernie Attridge; and, also, the statement of Mr Aaron Shotton.

I also feel that having regard to the matters that are now before me, and those which I anticipate in due course, particularly from Mr Jack Sargeant and Mrs Bernie Sargeant, there will be sufficient information before me that will allow me to conduct and fulfil the legal responsibility upon me to make the necessary determination in law to the appropriate legal standard as to how Mr Carl Sargeant came to his death, and for the reasons, therefore, that I have explained, it will not be necessary for me to hear from any of those witnesses in relation to that part of the evidence. I would, as I have indicated to Miss Wolfe, still like to speak to Miss Magee in relation to matters which are contained within the first statement provided previously.'

10. The following day, on 29 November 2018, the claimant's application having been renewed by Miss McGahey QC, the Coroner said as follows:

> 'I go back on the record with the inquest touching upon the death of Carl Sargeant at half past five on a Thursday evening. Again, I put on record my apologies for the lateness of the hour. There is still some outstanding business, which it is necessary for me to attend to this afternoon and the outstanding business, as I understand it, is that I have been asked, and I think primarily I am to be asked, and I think primarily the application comes from you, Miss McGahey, to give further consideration to a matter which I dealt with at the end of business yesterday which relates to my thoughts and, indeed, a decision regarding a requirement within the context of my investigation for evidence to be put before the inquest which related to Bernie Attridge and Aaron Shotton, and certain other witnesses. I believe that you wish to speak to me again in relation to this matter,

Miss McGahey.'

11. There were then yet further submissions made by Miss McGahey QC to the Coroner, and the Coroner then gave his decision as follows:

> 'Back on record in the inquest of Mr Carl Sargeant, after the short adjournment to allow me to give time to give consideration to the application, which has been renewed by Miss McGahey on behalf of the First Minister, that I should reconsider a decision I made, and I was about to say this time yesterday, it was even earlier than this time yesterday, which concerned my view that it was not necessary for the purposes of my investigation to hear evidence from Mr Bernie Attridge and Mr Aaron Shotton, and others I have mentioned previously.
>
> I have listened to that application very carefully, and I note that he position expressed to me by the other interested persons is a neutral position. Let me say, here and now, that this has not been an easy decision for me in relation to this matter. It is one that you gather, by the time I have taken to give it my full thought and consideration, it is not a decision that I have reached lightly at all.
>
> My view, however, is that the further matters which have been put before me by Miss McGahey, the reasons as to why she believes it is necessary for me to reverse the decision I made yesterday, and now to call these witnesses to give evidence, does not persuade me that it's necessary for the purposes of my investigation to hear evidence from those witnesses. I gave a detailed decision yesterday with regard to the reasons for my view in relation to the decision yesterday. I repeat those same reasons this afternoon.
>
> As I say, I do not believe as to what I have heard that matters have changed, such that it is now necessary for me to hear from Mr Attridge and Mr Shotton, and therefore by implication to read into the inquest the evidence of Miss Perfect and the supplementary statement of Louise Magee. The primary factor, in relation to my decision, is one which I raised with Miss McGahey when she was addressing me, and that is, that I have said previously, and you will all be bored by repetition of these matters, I am bound by the restrictions imposed upon me by the Coroners and Justice Act 2009. I have a discretion which I am able to exercise with regard to scope, the adducing of evidence and the calling of witnesses, subject to the reasons, which I gave yesterday, in relation to Wednesbury principles, and the truth of this matter remains for me that it is an inquest about Carl Sargeant.
>
> My decision in no way reflects the view that it was not right and proper for Miss McGahey to renew her application to me this afternoon, but for reasons I gave yesterday, and for the supplementary views I have expressed today, I do not intend to call Bernie Attridge or Aaron Shotton to give evidence at Carl Sargeant's inquest. Nevertheless, there remains before me now an application Miss McGahey has mentioned, it is an application by

members of the press in relation to the disclosure of documentation.'

12. In the event, the latter application by the press was adjourned.

**Analysis of the Grounds of Appeal**

**Grounds One and Two**

13. Grounds one and two of the grounds of appeal are that the Coroner failed to take into account matters which he ought to have taken into account and took into account irrelevant matters. The matters relied upon by Miss McGahey QC, which it is submitted the Coroner should have, but failed to, take into account, were, (a) the importance of the Court investigating a situation in which there is credible evidence to the effect that a witness with relevant evidence to give had lied to the Court in statements verified by a statement of truth; (b) the fact that the learned Coroner had, until 28 November 2018, determined that Mr Attridge was a witness from whom he wanted to hear; (c) the fact that the evidence at the inquest is she submitted, so far, 'entirely one sided', with the public being given the impression that essentially the only relevant factors in Mr Sargeant's death were his history of depression and the inadequacy of support offered to him following his removal from office; (d) the view taken earlier by the learned Coroner that evidence of the 'acts' to which Mr Sargeant had referred in his note was relevant to the inquest. The Coroner had also asked one witness about those acts but had not intervened when counsel for the claimant had put a similar question to another witness (Miss Griffiths AM). The matter which Miss McGahey QC says the Coroner took into account which he should not have was, she submits, the Coroner wishing to avoid distress to the Sargeant family in the course of the inquest.

14. The starting point of any analysis is whether or not the Coroner directed himself properly in law. We have no doubt that he did, as is apparent from the quotations from his reasons that we have set out above. He directed himself properly in accordance with *Jamieson* and Law Sheet No.5.

15. The second and fundamental point that must be emphasised, as Miss Cartwright pointed out, is that this inquest is a *Jamieson* inquiry, not an Article 2 enquiry. It is limited to a fact-finding exercise under Section 5 of the Coroners Act, as the Coroner himself rightly pointed out. The Coroner was right to hold that he had four questions to ask under Section 5: who died, when, where and how? The question 'how' means in law 'by what

means' as Lord Brown reiterated in *R v Smith v Oxfordshire Assistant Deputy Coroner* [2011] 1 AC 1, at paragraph 153:

> 'As however I have also pointed out in *Hurst* [2007] 2 AC 189, paragraph 51, the verdict and findings' are not unlined, 'a matter for the coroner, these are severely circumscribed when an inquest in confined to ascertaining, "by what means" the deceased came by his death (a Jamieson inquest); not so where the inquest has fulfilled the Article 2 investigating obligation then it must ascertain "in what circumstances the deceased came by his death (a Middleton inquest)"'.

16. It is well known by all those who practice in this field, including Miss McGahey QC, that Coroners have a wide discretion when it comes to the admission of evidence. We do not consider it arguable that the Coroner failed to take into account relevant matters and took into account irrelevant matters as submitted under grounds one and two the grounds of appeal. The first three matters referred to by Miss McGahey QC, (items (a), (b) and (d) above) would have been self-evident to the Coroner from the material before him. As the first single judge said refusing permission, it is implausible to suggest that they were overlooked. As regards (c), the submission that the evidence in the inquest had been so far 'one sided' was a submission that had been made by Miss McGahey QC to the Coroner at the time, and therefore plainly could not have been overlooked. Miss McGahey QC made it clear before us that she was not, in any way, suggesting that the Coroner was not impartial, merely that there was further evidence which she submitted should be admitted.

17. Further, we are bound to say that we find it a surprising submission that a Coroner, or any Coroner should not have regard to the need, if at all possible, to avoid unnecessary distress to those appearing before him or her. There is nothing we have seen in the evidence to suggest that the Coroner was 'unduly' influenced by this perfectly natural consideration at the expense of determining properly what evidence should and should not be admitted.

**Ground Three**

18. Ground three comprises a 'reasons' challenge. Miss McGahey QC submits that the Coroner failed to give sufficient reasons for his decision. We reject this challenge. It will be apparent from the extensive quotes that we have made that the Coroner gave very full reasons for his decision both on 28 November and on 29 November when the matter was revisited. The claimant's real complaint under ground three is that the Coroner rejected the claimant's submissions regarding the further evidence on their merits.

**Grounds Four and Five**

19. These grounds, in our view, add nothing to the earlier grounds. As we have said, the Coroner directed himself entirely correctly as to the law and once it is understood, as we have explained, that the nature of a Section 5 inquest is directed to the answering of some simple and clear questions, then the submission by Miss McGahey QC that the Coroner was not conducting a full, fair and fearless investigation entirely falls away. We note that the inquest is still only partway through, so it might also be said that such a submission is premature.

**Ground Six**

20. Fundamentally, what lies behind this application is a submission that the decision that the Coroner reached was one which was Wednesbury unreasonable, i.e., a decision which no reasonable Coroner could have reached. It would be apparent for the reasons that we have already given under grounds one to five that that submission is hopeless.

21. The decision refusing the application to admit evidence, which Coroners make day-in, day-out, up and down the country, cannot easily be characterised as irrational. In the present case, it was a conclusion reasonably open to the Coroner in light of the curtilage of the enquiry under Section 5 that he is required to carry out. Coroners are entitled to assess whether it is necessary to admit evidence and whether the evidence that they already have is sufficient to enable them to answer the questions before them.

22. It is accepted before us today that the Coroner has evidence before him touching upon the following matters: (i) Carl Sargeant had a history of depression; (ii) Carl Sargeant was dismissed from his post on 4 November 2017 amidst publicity; (iii) the First Minister had received allegations of sexual impropriety regarding him' and (iv) Carl Sargeant left a suicide note together with a note to his wife not to enter the room where he had applied a ligature.

23. In the light of all that evidence before him, we are entirely satisfied that the decision that the Coroner has made regarding what evidence to admit and what not to admit was well within the scope of his discretion as a Coroner, and in no way can be considered '*Wednesbury* unreasonable' or, in common parlance, 'irrational'.

24. We do not accept that the further evidence which Miss McGahey QC said should have been admitted is necessary, as a matter of law or discretion, to enable the Coroner to discharge his s.5 statutory function. Indeed, it seems to us that much of Miss McGahey QC's

submissions regarding this further evidence is based, essentially, on speculation as to what that evidence may or may not show. It is unfortunate that the bringing of this application may itself have given rise to further considerable and unnecessary speculation about this evidence. It is not appropriate for Courts to intervene, or to be asked to intervene, on the basis of speculation, or on the basis that at some future stage a Tribunal or a Coroner might act out with their duties or powers or act unfairly. We have seen nothing to suggest that the Coroner in this case has acted anything other than conspicuously fairly and in accordance with his statutory duties under Section 5 of the Coroners Act.

25. Finally, Carl Sargeant tragically died now almost exactly 18 months ago on 7 November 2017. It is important that there is no further delay and that the inquest is resumed and concluded as soon as possible. We gather that a suitable date, 8 July 2019 has been reserved.

26. For all those reasons, the application for judicial review is dismissed.

**End of Judgment**

Transcript from a recording by Ubiqus
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