Neutral Citation Number: [2019] EWHC 2897 (Admin)

Case No: CO/3140/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Leeds Combined Court Centre
1 Oxford Row, Leeds, LS1 3BG

Date:30th October 2019

Before :

MRS JUSTICE JEFFORD

- -

Between :

THE QUEEN **(on the application of NATALIE DYER)**	**Claimant**
- and –	
HM ASSISTANT CORONER FOR WEST YORKSHIRE (WESTERN)	**Defendant**
1. THE CHIEF CONSTABLE OF WEST YORKSHIRE POLICE and B, C AND E **2. THE POLICE FEDERATION OF ENGLAND AND WALES and OFFICERS D, F, G, H, J, K, L, M, N, O, P and Q** **3. CALDERDALE AND HUDDERSFIELD NHS FOUNDATION TRUST** **4. THE PRESS ASSOCIATION**	**Interested Parties**

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Mr Leslie Thomas QC and Mr Adam Straw (instructed by **Broudie Jackson Canter**) for the **Claimant**
Mr Jonathan Hough QC (instructed by **Legal Services Department, City of Bradford Metropolitan District Council**) for the **Defendant**
Mr Hugh Davies QC (instructed by **Legal Services West Yorkshire Police**) for the **First Interested Party**
Mr Brian Dean (instructed by **Precedence Law**) for the **Second Interested Party**

Hearing date: 11th October

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Mrs Justice Jefford
Approved Judgment

Mrs Justice Jefford :

1. Andrew Hall died on 13 September 2016 at Huddersfield Royal Infirmary ("HRI"). He was 43 years old. An inquest into Mr Hall's death is scheduled to commence on 4 November 2019, the inquest to be held at Bradford Crown Court. This judicial review arises out of certain directions for the use of screens which have been made by the Assistant Coroner, Oliver Longstaff, who has the conduct of this inquest. The claimant is Mr Hall's partner and the mother of one of his children. Although she alone makes this application, it is, in effect, also made on behalf of 6 other members of Mr Hall's family including his mother (Pamela Hall), father (Franklyn Lindor), three siblings (Tracey Nash, Daniel Priestly and Bianca Priestly) and an adult son (Joseph Hall), collectively referred to as "the family".

Background

2. The background to Mr Hall's death was, in summary, as follows. I emphasise that what I say below is largely taken from the coroner's Submissions (filed with his Acknowledgment of Service) and skeleton argument; that, other than the post mortem reports and the statement of Ms Dyer that I refer to below, there was no evidence before me about the circumstances and cause of Mr Hall's death; and that nothing I say in this judgment is to be regarded as any expression of views on the facts.

3. In the early hours of 13 September 2016, Mr Hall was found, by the claimant, collapsed at home. He had taken prescription medication and consumed some alcohol which the claimant says was to help him sleep. Paramedics attended and found him unresponsive and he was taken to A&E at HRI. There he received medication and his condition improved. However, he became agitated and was alleged to have slapped a nurse. The claimant went with Mr Hall to the hospital and provided a witness statement in 2017 in which she gave her impression of what had happened, how Mr Hall was disorientated, frustrated and panicking and, thus, the circumstances in which this slap happened. In any case, the police were called and Mr Hall was arrested and taken to Huddersfield police station arriving at about 7.30am.

4. At 8.35am, Mr Hall was taken from a holding area to a custody area where his handcuffs were removed. He indicated that he felt unwell and was going to be sick. He was taken to a cell where he could, if necessary, vomit. He was later assessed by a nurse. At 10.10am, he was taken back to the cell by 3 officers. While that was happening, Mr Hall freed one of his arms and took hold of a barred gate. The officers forcibly moved him and then restrained him and it appears that during this struggle one of more of the officers stuck Andrew Hall multiple times. He may have struck back. By 10.18am, the officers had restrained Andrew Hall and taken him back to his cell. The nurse observed the latter stages of what happened and says that he formed the view that Andrew needed to be taken back to hospital.

5. Paramedics arrived at 10.42am and Andrew was taken back to hospital wearing handcuffs and with leg restraints. He was sedated and medicated and arrangements were made for him to have a CT scan. While he was waiting for the scan his condition deteriorated and clinical staff could not feel a pulse. CPR was performed. Andrew Hall was declared dead at 12.44pm.

6. Andrew's death, therefore, occurred shortly after he had been in police custody and restrained. He was a black man. As Mr Thomas QC submitted there is significant

public interest in an inquest into the death of a black man in custody (or, as in this case, shortly after being in custody).

The applications before the Coroner

7. It is anticipated that 16 police officers will give evidence of fact at the inquest. On 8 March 2019 the first Interested Party ("the Chief Constable") made an application for anonymity, and for the officers to give evidence from behind screens, on behalf of 3 officers, B, C and E. That was followed by a like application, on behalf of 12 further officers, by the second Interested Party ("the Police Federation"). No application appears to have been made on behalf of person A and one officer, although, as I understand it, the orders made relate to person A and all 16 police officers.

8. The application for anonymity was not contested by the family and an order was duly made. Further orders have been made that, in CCTV in which the officers feature, the audio played in open court will be "redacted" so that their names cannot be heard and their faces will be pixelated. The coroner, jury and legal representatives of the family will, however, have access to unedited copies of the CCTV.

9. The applications for the officers to give their oral evidence from behind screens were opposed by the family. The applications were heard by the coroner on 6 June 2019. At the time, he had available to him a first and second statement of Inspector Danny Rotchell which contained his risk assessment; open statements of officers B, C and E; and other closed statements from officers on whose behalf the applications were made.

10. The coroner further had written submissions from counsel on behalf of the Chief Constable and the Police Federation in support of the applications and counsel on behalf of the family in opposition. I have a transcript of the oral hearing on 6 June 2019. The coroner gave a written ruling on 7 June 2019.

11. The basis for the application for screens was to ensure the anonymity of the officers. If they were seen (as well as heard) they might be identified (despite the order for anonymity). If they were identified, they might be identified by or to Qassim Hall. Qassim Hall is a brother of Andrew Hall (but not one of the family members who are involved in this application). He has a lengthy criminal record; he is well known to the police in Huddersfield; and he has a history of making threats. There was ample evidence before the coroner of genuine fear and concern on the part of the police officers concerned as to what Qassim Hall might do in terms of threats or actions directed against them or their families if they were identified.

12. The conclusion of the coroner's ruling was that the officers were to be screened when giving their evidence so that they could be seen only by the coroner, the jury, court / coroner's staff, and legal representatives. The officers will, therefore, be screened and not seen by the public including the family. In making that direction the coroner exercised his powers under Rule 18(1) of the Coroners (Inquests) Rules 2013.

The present proceedings

13. The claimant advanced 5 grounds on which the coroner's decision should be judicially reviewed. The Claimant was refused permission on ground 3 and has permission to apply for judicial review of the coroner's decision on 4 grounds. As set out in the claimant's statement of facts and Grounds, they are as follows:

(i) Ground 1: *"The Defendant misdirected himself, in that he failed to recognise (i) the fundamental importance of open justice and to give it great weight; (ii) the particular importance of open justice in this inquest, as it involves a controversial death in police custody of a black man following police restraint; (iii) that his decision interfered with the rights of the press within article 10 of the European Conventions on Human Rights; (iv) that screening is only permitted in exceptional circumstances; and (v) that in this context screening, particularly screening of all factual police witnesses, is a serious incursion into open justice."*

(ii) Ground 2: *"The decision to screen the 16 officers from the family and public was a greater intrusion into open justice than was strictly necessary. It follows from the Defendant's ruling that here was no rational basis for screening the witnesses from anyone other than Qassim Hall. There was a less intrusive means of achieving the aim pursued, which was to screen the witnesses from Qassim Hall alone."*

(iii) Ground 4: *"The Defendant proceeded on the basis that screening is permitted if that would improve the quality of evidence, and thereby misdirected himself."*

(iv) Ground 5: *"The decision was not compatible with the procedural duty within Article 2 ECHR; was not correct as a matter of common law; or alternatively was disproportionate."*

I note that the Press Association did not make any submissions and that arguments in relation to Article 10 were, in effect, subsumed into the other arguments.

Misdirection (grounds 1 and 4)

14. The claimant took these two grounds together. In order to consider the grounds, it is first necessary to address the legal framework in which the coroner made his decision.

15. There is no dispute that the principle of open justice is a fundamental principle of common law, as applicable in the coroner's court as it is in other courts – for example, *Al-Rawi v Security Service* [2011] UKSC 34 at [10-11]; *A v British Broadcasting Corporation* [2014] UKSC 25 at [27]; *R(T) v West Yorkshire Senior Coroner* [2017] EWCA Civ 318 at [55] and [63-64]; *Re LM* [2007] EWHC 1902 (Fam) at [26-40].

16. The principle or concept of open justice is multi-faceted and encompasses matters such as public access to court or tribunal proceedings (including inquests); the ability of those present to see and hear the evidence being given and the conduct of the court; and the freedom of the press both to access hearings and report them to the wider public. Anything which amounts, as it was put, to an incursion into this principle is to be approached with care. It does not seem to me particularly helpful to frame this approach in terms that an incursion should only be allowed in exceptional circumstances, although such terminology appears in the authorities cited to me. The point is that where there is a balancing exercise to be undertaken, particular weight is to be attached to this fundamental principle and one of the consequences of attaching particular weight to that consideration is that the incursion into openness should be no more than necessary.

17. So far as the ability to observe witnesses giving their evidence is concerned, in the Statement of Facts and Grounds, the claimant submitted that the use of screens (or any other mechanism which prevented witnesses being seen) was a significant incursion into open justice for four reasons: (i) it undermines the effectiveness of the investigation because the public would not be prompted to bring forward further

evidence; (ii) the observing of the witnesses is an important part of the investigative process (not limited to the process undertaken by the decision makers); (iii) preventing the witnesses being seen undermines public confidence in the process; (iv) not being able to see the witnesses reduces the prospect of catharsis for the family of the deceased. In the event, the claimant placed no reliance on the first of these points but continued to rely on the balance.

18. There is no doubt that the screening of a witness who cannot, therefore, be seen by the general public and/or the press is an incursion. Being able to see a witness give evidence is an important factor in assessing the witness' demeanour and, if it is in issue, credibility. For most people, the combination of the visual and aural elements is significant – only being able to hear what is being said is not the same thing as being able to see the witness as well and does not have the same impact. Screening of witnesses in criminal trials is nonetheless common because the courts have recognised both the need to protect the interests of vulnerable witnesses and those who may be innocent bystanders offering evidence in difficult circumstances and the benefit to the quality of their evidence of their being made more comfortable in giving that evidence out of the view of the public gallery and the defendants. That is not seen as undermining public confidence in the system of justice or the openness of the process.

19. The position here is significantly different by some measure. Where the inquest concerns a death in custody or shortly following custody, the public interest in seeing the police officers (however they were involved with the events that happened) is of a different nature and measure from the public interest in seeing a vulnerable complainant or witness give evidence and the risk of undermining public confidence in the process all the more obvious. Nonetheless the recognition that the quality of evidence may be improved if it is given without fear is a material factor.

20. The screening of witnesses in a coroner's inquest is specifically dealt with in the Coroners (Inquests) Rules 2013. Two rules are relevant in the present context:

    (i) Rule 11 – Inquest hearings to be held in public

    "(1) The coroner must open an inquest in public

    .....

    (3) An inquest hearing and any pre-inquest hearing must be held in public unless paragraph unless paragraph (4) or (5) applies.

    (4) A coroner may direct that the public be excluded from an inquest hearing, or any part of an inquest hearing if the coroner considers it would be in the interest of national security to do so.

    (5) A coroner may direct that the public be excluded from a pre-inquest hearing if the coroner considers it would be in the interests of justice or national security."

    (ii) Rule 18 – Evidence given from behind a screen

    (1) A coroner may direct that a witness may give evidence at an inquest hearing from behind a screen

    (2) A direction may not be given under paragraph (1) unless the coroner determines that giving evidence in the way proposed would be likely to improve the quality of the evidence given by the witness or allow the inquest to proceed more expediently.

> *(3) In making that determination, the coroner must consider all the circumstances of the case, including in particular –*
>
> *(a) any view expressed by the witness or an interested person;*
>
> *(b) whether it would be in the interests of justice or national security to allow evidence to be given from behind a screen; and*
>
> *(c) whether the giving of evidence from behind a screen would impede the effectiveness of the questioning of the witness by an interested party or a representative of the interested person.*

21. Rule 11 reflects the principle of open justice. Indeed the only basis on which the inquest may not be held in public is the interests of national security. A clear distinction is drawn between the inquest and pre-inquest hearings and, only in the latter case, may the more generally expressed interests of justice provide a reason not to hold an inquest in public.

22. Rule 18 provides, no doubt for similar reasons to those expressed above at paragraph [18], for the coroner to direct that a witness may be screened when giving his/her evidence. That provision must be read against the background of the requirement for the hearing to be in public. During the course of the hearing, it became common ground that rule 18 was not happily drafted:

    (i) Under rule (2) the coroner may give a direction only if he determines either (a) that giving evidence in the way proposed would be likely to improve the quality of the evidence given by the witness or (b) that it will allow the inquest to proceed more expediently.

    (ii) Paragraph (3) then provides that the coroner must consider all the circumstances of the case and, in particular the matters at (3)(a) to (c), in making "that determination".

    (iii) Strictly read "that determination" can only be a reference to the determination referred to at (2)(a) or (b) as to quality of evidence or expediency. The effect of rules Rule 18(2 and 3) would, therefore, seem to be, somewhat oddly, to require the consideration of the interests of justice (which I take to include the interest in open justice) only in the context of that determination. But there is no express requirement to consider the interests of justice in the overall consideration of whether to make such an order pursuant to rule 18(1).

    (iv) Thus on the basis of that reading, the rule does not expressly require any overarching consideration to be given to the principle of open justice.

23. Mr Straw in his submissions on behalf of the applicant submitted that there must be such an overarching consideration. That must be so, he submits, because the principle of open justice is of such fundamental importance and that that principle applies in the coroner's court is not in doubt.

24. As I consider further below, Mr Straw submits, in summary, that the coroner followed the structure of rule 18(2) and (3) and as a consequence never gave his direction for

screens such scrutiny and/or failed to weigh in the balance the fundamental importance of open justice.

Discussion

25. In my judgment, the applicant is right to say that the principle or importance of open justice must always have a place in the decision making process and be given appropriate weight in what is in essence a balancing exercise between the potential benefits and detriments of the provision of screens. That consideration is, it seems to me, encompassed in the consideration, under rule 18(3)(b), of the interests of justice. However, as set out above, the literal reading of rule 18(3) requires the interests of justice to be taken into account only in the determination of whether the direction of screens would be likely to improve the quality of the evidence given or to allow the inquest to proceed more expediently. Mr Hough QC who appeared on behalf of the coroner (who adopted a neutral stance on this application) suggested that the concept of expediency might extend to the principle of open justice but it seems to me that the concept of the expedient process of the inquiry is more directed at considerations of efficiency and practicality.

26. The determination under rule 18(2) is, as the claimant submitted, a necessary condition for the directing of screens but not a sufficient condition. There remains for the coroner an exercise of discretion under rule 18(1) as to whether to direct screens once that necessary condition is met and, it seems to me that, in the exercise of the discretion, the principle of open justice must be taken into account. It is at that stage in the exercise of the discretion that the balancing exercise must be undertaken.

27. It by no means follows from that, however, that the coroner misdirected himself in law. Firstly, these arguments were fully ventilated at the hearing before the coroner both in written submissions and in oral argument. It cannot be suggested that the coroner was not, at the very least, aware of the matters which the claimant submits he had to take into account. Having said that, this was certainly not the way the matter was put to him by the Chief Constable. Mr Davies QC submitted to the coroner that the application under rule 18 did not, unlike the application for anonymity, involve the exercise of a discretion at common law and was in a different category of argument from those relating to open justice and fair reporting. Rule 18, he argued, set up "an open-textured, flexible power" which reflected developments in the criminal courts. He submitted that it was in the interests of justice for the evidence of witnesses B, C and E (whom he, in effect, represented) to give evidence from behind screens and that there was nothing in that that would impede the effectiveness of the questioning of these witnesses.

28. Secondly, it seems to me that the coroner's decision must be read with a degree of benevolence or pragmatism. The background submissions are relevant to that approach – in other words, the coroner may be taken to have had in mind the arguments that had been advanced to him even if he did not set each of them out in detail. Further, if he took account of the relevant factors, he cannot be said to have misdirected himself in law even if he did not articulate the legal principles in the way the claimant would have formulated them.

29. The claimant argues that, because the coroner followed the structure of rule 18(2 and 3), once he had determined that the quality of the evidence of the police officers would be improved by the giving of evidence from behind screens, he proceeded without more

to direct that there should be screens. To the extent that he took any account of the principle of open justice, he only did so at the stage of making that determination and thus never undertook any or any proper balancing exercise.

The coroner's ruling

30. Turning then to the coroner's ruling, at paragraph 10 of his ruling, the coroner summarised the factual evidence relating to Qassim Hall. At paragraphs 11-32, he set out the competing arguments of counsel. In the course of doing so, he recorded the submission of Mr Dean for the Police Federation (Mr Davies QC having made the same submission), that the use of screens would not impede effective questioning by the family's legal representatives. He referred to Mr Dean's not accepting that the use of screens would cause "substantial harm" to the inquest, as Mr Thomas QC contended, but acknowledging that the use of screens involved a significant departure from an important principle of "natural justice". What he meant by natural justice in that context is illuminated by his reference to Mr Thomas QC's submission that, in opposing the application, "the family were asking for no more than the application of the ordinary rules of natural justice" and the similar submission that the use of screens "impacted on the interests of justice as a matter of principle" (paragraph 19; paragraph 29).

31. At paragraph 33 of his ruling, the coroner then began to set out his decision. He noted first that the authorities that had been presented to him demonstrated that such applications were immensely fact sensitive.

32. At paragraphs 35 – 36, he then said this:
"Instinctively, the proposition that the family of a deceased who has died in circumstances that call into question the state's discharge of its Article 2 obligations should not see the agents of the state who are implicated in that death, while they are giving evidence to the inquest into it, offends what can be appropriately described as natural justice, in the sense of the fair and impartial application of law and procedure to all parties to a particular legal process.

That instinct is all the stronger where the application is not based upon any sufficient evidence or intelligence that reflects adversely on the family members most likely to the affected by it."

33. The coroner then, entirely correctly said that the application was based upon fears of the officers that Qassim Hall would seek to harm them. He found that threat to be credible and the officers' fears genuine.

34. His conclusions were to be found in paragraphs 41 to 44 and 47-48 which I set out in full:
"41. Rule 18(2) permits a departure from that presumption for the purposes of this inquest if I determine that the use of screen will be likely to improve the quality of the evidence given by the officers or allow the inquest to proceed more expeditiously. .....

42. Considering the evidence as a whole, and acknowledging that I have the advantage of seeing evidence that has not been shared with all the PIPs. I conclude that permitting the officers to give evidence from behind a screen would be likely to improve the quality of their evidence overall.

43. I take the view that witnesses who are fearful for their safety, or the safety of their families, in the event that they are identified, are more likely to be straightforward and forthcoming in their evidence if they are confident that they will not be identified. The quality of the evidence of such witnesses is likely to be improved if appropriate steps are taken to minimise those fears. In this case, that can be done by directing that the officers give their evidence from behind a screen.

44. I cannot make that determination without considering all the circumstances of the case, and in particular, the matters set out at Rule 18(3). As to those matters, I have summarised in this written ruling the views expressed on behalf of the witnesses and other PIPs who may be affected by it (Rule 18(3)(a)). Further, I have considered whether the use of screen will impede the effectiveness of the questioning of any witness by a PIP or his representative (Rule 18(3)(c)). In that regard, the retention by the family of Mr Thomas QC (who will be able to see all witnesses who are called) obviates the risk of any such impediment.

…..

47. As to the other limb of Rule 18(3)(b) is concerned, my starting point is that the interests of justice generally, and the interests of anyone concerned in a particular legal process are best served when those charged with making findings of fact and reaching conclusion based upon those findings are able to do so on the basis of the best evidence. In this case, I consider the best evidence will be given if the officers who are the subject of this application give their evidence from behind screens. Witnesses who are fearful of the consequences of being identified will give more reliable evidence if they know they will not be identified.

48. To the extent that my decision has involved a balancing of competing interests between the officers and the family, I take the view that the wider interests of justice as set out above justify my decision, having regard to the purpose of my decision as per Rule 18(2) and the provisions of Rule 18(3)(c), which provide protection for the family."

35. The claimant submits that what the coroner did was set out the competing submissions but did not then evaluate the comparative importance of the various factors or weigh them against each other. In paragraph 44, the determination he was making was that referred to in paragraph 41 (as to whether the use of screens was likely to improve the quality of the evidence); he made no further reference to paragraph 35; and he did not weigh in the balance the interests of open justice.

36. As I have said, the coroner's ruling should not be minutely dissected and should be given what is sometimes referred to as a benevolent reading. In this case, it seems to me that the coroner's references to principles of natural justice are, in context, clearly references to the principle of open justice on which submissions had been made to him on behalf of the family. Alternatively, they are references to procedural fairness which was submitted to encompass the same principles of open justice. In particular, he made clear his instinctive difficulty or discomfort with the proposition that the family (at least) would not see the witnesses implicated in the death of their relative if evidence was given from behind screens. His determination in paragraph 44, in which he considers all the circumstances of the case, may well be read as having inherent in it a balancing exercise in which the principle of open justice in all its facets played a part.

37. The difficulty with this reading of the ruling, however, lies in paragraph 48. That is the only paragraph in which the coroner makes specific reference to balancing the competing interests of the officers and the family. The exercise which he then undertakes is a binary one in which he weighs the purpose of his decision "as per Rule 18(2)" and the provisions of Rule 18(3)(c). By the purpose of his decision as per Rule 18(2), he appears to mean that the quality of the evidence is likely to be improved by the use of screens (which is itself in the interests of justice) and he weighs against it simply whether the effectiveness of questioning will be impeded by the presence of a screen. That, in my judgment, is too limited a balancing exercise. If those were the only factors to be taken into account, it would have the almost invariable consequence that if a witness genuinely expressed fear but the family of the deceased were able to cross examine, screens would be directed. That would not, and in the present case does not, take into account the interest that the public and the family has in seeing those who may be implicated in the death give evidence - an interest the coroner had already recognised – and it takes no account of the fundamental importance of public confidence in the process of the inquest particularly where the death involved raises issues of more general public concern.

38. The exercise is not, so to speak, saved by reference to the broader submissions that were made to the coroner in the absence of findings as to which submissions were accepted or rejected, not least because the Chief Constable's submissions put the matter on a very different basis from those of the claimant.

Conclusion of grounds 1 and 4

39. Accordingly, I find that coroner did misdirect himself in law and that the challenge on the basis of ground 1 succeeds. I do not consider that the coroner made the specific error identified in ground 4 but, in light of my decision on ground 1, the issue does not arise.
40. The claimant's position was that, in that case, I should make my own decision about the use of screens if I considered there was only one possible outcome but that I could remit the matter to the coroner if I considered that there was a range of possible outcomes. As I understood it, there was no real dispute that that was the appropriate course. To deal with this issue, it is easiest if I next address what my decision would have been on the remaining grounds 2 and 5 had I reached the view that the coroner had not misdirected himself.

Grounds 2 and 5

The legal arguments

41. Ground 2 articulates a *Wednesbury* irrationality challenge to the coroner's decision. It is argued that, even if he did not misdirect himself in law, his decision was irrational. That argument was put in a number of ways but principally on the basis that there were less intrusive measures that could have been directed - directions could have been given to screen the officers from Qassim Hall only or to restrict his entry to the courtroom; even if screens to protect the officers from the view of the general public was rational, it was irrational to direct screens that prevented the identified family members from seeing them give evidence.

42. Ground 5 was argued together with ground 2 because it was similar and turned on similar facts, albeit in law different. The claimant's case is that the decision to order

screens is neither compliant with the common law duty of fairness in the conduct of proceedings nor with the Article 2 procedural duty.

43. Both of those are arguments that the decision was unlawful rather than irrational but they raise the same arguments that the direction for screens for all the officers was, to put it broadly, a disproportionate measure for the same reasons that are relied on under ground 2.

44. The Article 2 procedural duty includes that there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability, maintain public confidence and prevent any appearance of collusion or tolerance of unlawful acts (*Ramsahai v The Netherlands* [2008] 46 EHRR 43 at [321]). Further the family must be able to participate effectively in the inquest – see *R (Humberstone) v Legal Services Commission* [2010] EWCA Civ 1479; *R(D) v Home Secretary* [2006] EWCA Civ 143.

45. What the authorities serve to do is focus attention on the interests of the family in participation in the inquest. Their primary interest may well be in the ability to question the witnesses but there is a significant interest also in being able to see the witnesses as that happens. *R(D)* (at [42]) makes clear that that does not extend to a right to cross-examine or, it would therefore seem, a right to observe witnesses giving evidence. But the interest in doing so remains a factor to be taken into account.

46. It was common ground that the decision as to compliance with the common law duty of fairness and/or proportionality was one for the court (and in that sense not an irrationality challenge) – see *R (Wiggins) v HM Assistant Coroner for Nottinghamshire* [2015] EWHC 2841 (Admin). It seems to me that if I considered the use of screens irrational, it would follow that I would also conclude that it was not in accordance with common law principles and was a disproportionate incursion into the procedural duty inherent in Article 2. In the overall result, in each instance, it was open to me to substitute my own decision and that was, as I understood it, common ground.

Authorities

47. I was referred to numerous authorities but of particular importance were the following. Firstly, in *R v Newcastle-upon-Tyne Coroner, ex parte A* (1997) JP 162, and before the provisions of rule 18 in the Coroner's (Inquests) Rules 2013, Tucker J held that the coroner had power to direct the use of screens. In that case, the coroner had already granted anonymity and the judge considered that to refuse screens would risk the officer losing that anonymity. The judge referred to it as an exceptional case. It was rightly not argued before me that the provision of screens was always the necessary corollary of anonymity and the position under rule 18 and/or at common law is plainly more nuanced.

48. The only case to which I was referred in which the use of screens (rather than anonymity) was specifically addressed was *R (Hicks) v Senior Coroner for Inner North London* [2016] EWHC 1726 (Admin). Henry Hicks died in a car crash when he was being followed by two police cars. The coroner ruled that members of the public (including the Hicks family) should be excluded from the hearing while the officers in the cars gave evidence. They were able to listen to the evidence by audio link. The coroner's preferred course had been for the family to be present but the officers screened – that had proved impractical but following the hearing in the High Court

suitable arrangements were made. Irwin J (as he then was) summarised the extensive evidence of expressions of hostility towards the police, often in obscene and graphic language, that had appeared on social media including positive threats of violence. Two family members were much involved in this traffic on social media and expressed great anger and hostility. They did not make direct threats but equally did not reject the threats made by others. The judge was satisfied that the tone and volume of the material was sufficient to give rise to a real apprehension of threat by the four officers. The Court upheld the coroner's decision. Irwin J observed at [37] that:
"As the provision of the Coroner's Rules made clear, there are circumstances where Orders such as those made by the Coroner can be justified. They should only be made where necessary and to the extent necessary".

In order to justify the making of such orders, it was not necessary for the coroner to find that the family themselves posed a deliberate and direct threat and she had found that there was a real risk of the threat arising from others, if the family learned the identity of the officers concerned. Thus her decision to prevent the officers being seen and potentially identified was correct and neither irrational nor unfair.

49. *In re Officer L* [2007] UKHL 36 was concerned with an application for anonymity and screens. The decision makes clear that subjective fears are a relevant consideration in the common law test of fairness to a witness, the more so if that has an adverse impact on health. As to the relationship between the common law position and Article 2, Lord Carswell said this at [29]:
".... I suggest that the exercise to be carried out by the tribunal faced with a request for anonymity should be the application of the common law test, with an excursion, if the facts require it, into the territory of article 2. Such an excursion would only be necessary if the tribunal found that, view objectively, a risk to the witness's life would be created or materially increased if they gave evidence without anonymity. If so, it should decide whether that increased risk would amount to a real and immediate risk to life. If it would, then the tribunal would ordinarily have little difficulty in determining that it would be reasonable in all the circumstances to give the witnesses a degree of anonymity. That would then conclude the exercise, for that anonymity would be required by article 2 and it would be unnecessary for the tribunal to give further consideration to the matter. If there would not be real and immediate threat to the witness's life, then article 2 would drop out of consideration and the tribunal would continue to give further consideration to the matter ...."

50. The case of *Bubbins v United Kingdom* (2005) 41 EHRR 24 concerned the death of a man named Michael Fitzgerald who was shot dead by police in his home. An intruder was reported in Fitzgerald's flat; officers thought they saw someone with a handgun; unsuccessful attempts were made to locate Fitzgerald and speak to the person in the flat; eventually that person was shot and turned out to be Fitzgerald in possession on a replica gun. The coroner granted anonymity for the 4 armed officers (including officer B who fired the fatal shot) and also ruled that they should give evidence from behind screens. The European Court of Human Rights found no violation of Article 2. The focus of the decision was very much on the order for anonymity and the decision of the Court says little about the use of screens per se. The fact that the officers gave evidence and the family's legal representatives were able to cross-examine them was regarded as counterbalancing any handicap they might otherwise have laboured under [at 157-158]. Although that supports the Interested Parties' position, it is apparent that the Court was satisfied that there had been a careful balancing of the competing

interests and it goes no further than to support the proposition that, where that has been undertaken, both anonymity and screens may be justified.

51. To summarise:

(i) There is nothing unlawful per se in the use of screens but there is, as I have already concluded above, a balancing exercise to be undertaken.

(ii) Amongst the factors in that balancing exercise is the fundamental importance of open justice. That is why the provision of screens should only be ordered where necessary and to the extent necessary. The fact that witnesses may still be available for cross-examination is relevant but not conclusive, as is the fact that the family may have the opportunity to cross-examine.

(iii) The impact on the witnesses is a further factor. That is itself multi-faceted. The consideration of the impact on the quality of their evidence (and thus the interests of justice) may bring into play their subjective fears and concerns. But it is also necessary to consider whether those fears and concerns are objectively justified and they may carry greater weight in the balance if they are.

Factual background

52. There was before the coroner and before me both open and closed evidence. Save as appears below, I refer in this judgment only to the open evidence.

53. All the relevant events happened in Huddersfield. Although hardly a small place, Huddersfield is a smaller community than, say, London or one of the country's other major cities. Qassim Hall is well known to the police in this town and had come into contact with many police officers.

54. Qassim Hall has a lengthy criminal record. His convictions include:

(i) Discharging a noxious substance in the face of an individual in April 2000. This happened in the course of a burglary to enable him to escape. He was convicted but the seriousness of the offence is indicated by the sentence of "compensation, costs and 24 hours attendance centre".

(ii) Common assault upon his ex-partner in October 2002. He kicked her and pushed her to the ground and was sentenced to 3 months imprisonment.

(iii) Making threats to kill his ex-partner on 3 March 2003 for which he was sentenced to 2 years imprisonment.

(iv) Spitting in the fact of an arresting officer in April 2008.

(v) Throwing a catalogue in a person's face in August 2013. He received a prison sentence because the offence was committed on bail and he was unwilling to comply with a community order.

(vi) Acting as if to headbutt an officers and then kicking the officer, while Qassim Hall was being restrained on the ground, in January 2017.

55. The statement also identified a range of intelligence about Qassim Hall which included serious allegations such as making repeated threats to harm medical professionals involved in his care and social workers and foster carers involve with his children, that he had used knives and was in possession of firearms. Some of these instances involve repeated abusive and threatening messages by phone or on social media and, in one instance, he appears to obtained contact information by accessing medical notes.

56. Qassim Hall has, therefore, a history of making threats and, in particular, of threatening and harassing those in authority or those whom he considers responsible for his own problems. His threats are serious and disturbing. He has rarely acted on those threats. However, as Mr Dean submitted on behalf of the Police Federation, threats are harmful in themselves. They cause fear and distress and the fear may be not only for the individual threatened and harassed but also for their family members. Further Qassim Hall appears to suffer from a variety of mental health issues which may contribute to the unpredictability of his behaviour.

57. When Andrew Hall died, two police officers went to the home of Pamela Hall, mother of Andrew and Qassim, to tell her about his death. Qassim Hall was present. When he heard of his brother's death, he was highly agitated – he said the police had killed Andrew and he threatened to cut the officers' throats or shoot them. The table in Inspector Rotchell's statement also recorded that the following day Qassim Hall attempted to climb over the outer gate at Huddersfield police station. The table indicated that the records were to be checked. Mr Davies QC properly informed the court that the records had been checked and that no record of this incident had been found. He was unable to say what the source of this information had been but said that Inspector Rotchell continued to believe it to be true.

58. There was no further evidence that in the 3 years since Andrew Hall's death, Qassim Hall had taken any steps to identify or threaten any of the officers who might have been involved in the events of 13 September 2016.

59. As the coroner said, no concerns were expressed about the identified family members. Mr Davies QC in his submissions to the coroner expressly disavowed any case that any other family members represented any threat to the officers; he made no assertion that any of them would breach the anonymity order themselves; and he said that the Chief Constable was contending no more than that family members were vulnerable to "forced extraction" of the identity of the officers. Set against this is the fact that the family already know the identity of two of the officers who would give evidence and there is no suggestion that they have disclosed this information to Qassim Hall.

60. Qassim Hall, unlike other members of the family, has not attended any hearings to date. He is not, however, estranged from his family. Inspector Rotchell in his second statement draws attention to the fact that, on one particular occasion in 2005, his mother was charged with violent disorder and wounding following an incident outside her home address in which she and other family and friends attempted to prevent the arrest of Qassim Hall. She was not convicted or these offences other than damage to a vehicle. She was also arrested but not charged when Qassim Hall and his partner were under investigation for harassment offences. These incidents are the high point of the

evidence that a named family member might become engaged with Qassim Hall, out of a sense of loyalty, in steps against the officers by disclosing their identity or otherwise.

61. Inspector Rotchell concludes the risk assessment in his second statement dated 24 May 2019 as follows:
"Whilst I assess that these individuals [3 including Pamela Hall] *would not pose significant risk in their own right to officers it is my belief that any officers would be identifiable and there is an enduring risk that their identities may be disclosed to others if they are able to see the officers during the inquest proceedings and/or otherwise discover their names. This disclosure to family members such as Qassim, who I assess would pose a risk, would be either through a sense of loyalty or as a result of fear of what he may do to them if they did not tell him."*

Discussion

62. Drawing this evidence together, the position seems to me to be this.

63. There is genuine fear and concern amongst the officers who will give evidence about threats that Qassim Hall may make against them or their families and might carry through if they are identified. As the coroner concluded, that in itself is a factor that may adversely affect the quality of their evidence and it was certainly open to him to conclude that the quality of their evidence is likely to be improved if they are relieved of that fear and concern.

64. On the evidence before me, if the general public are able to see the officers give evidence, there is a real risk of their identification by or to Qassim Hall. The family (in the sense of the named members) are, however, in a different position. Although in one sense closer to Qassim Hall, it is accepted that they themselves pose no threat to the officers. Even if they are able to identify any of the officers, there is no obvious reason why they would identify the officers to Qassim Hall knowing the concern that there is about him. The identity of two of the officers is already known to the family and they have not disclosed this information. The suggestion that they may be forced by Qassim Hall to disclose the identities of the officers is pure speculation. In these respects, the case is factually very different from that in *Hicks* where the family members were expressing similar views to those making threats on social media.

65. The submission on behalf of the Interested Parties is that that looks at the position now and that the position may be entirely different after the evidence has been given at the inquest or indeed many years into the future. That is a risk which I recognise but it is one that will always arise and the matter to be taken into account is, I think, the likelihood of that risk arising. As Mr Thomas QC submits it involves a number of hypotheses – that the officers will be visually identified by the family; that the family members will breach the anonymity order and disclose their identity to Qassim Hall; that Qassim Hall will threaten or otherwise harass or attack them as a consequence. There is no compelling reason to think that this risk will materialise and the risk should be given less weight.

66. As I have said, I can see no criticism to be made of the coroner's conclusion that the officers who will give evidence have genuine fears and concerns for themselves and their families and, although there are competing arguments, he made a rational judgment that the quality of their evidence is likely to be improved by the presence of

screens. The quality of evidence must necessarily be a weighty factor since it is the evidence on which the inquest will reach a verdict. But it is a factor, and the interest in open justice is another weighty factor. When the balancing exercise comes to be done, the validity of any fears and concerns must also be factored in not least because it goes to the justification for the incursion into the public nature of the proceedings.

67. It seems to me that the coroner's decision was reached without any real consideration of that issue. The result was that the decision assumed that the acceptance that the fears and concerns of the officers were genuine necessarily meant that they were well-founded, when that involved the series of hypotheses that Mr Thomas QC identified, but without sufficient consideration of the evidence to support those hypotheses. The coroner's assessment of the evidence is to be found in paragraph 39 of his ruling. So far as the objective risk is concerned, he says simply that he finds the threat to be credible and continues:
"QH has convictions for offences of violence (including violence against the police), and a history of making threats of violence (including threats to kill). I accept that QH blames the police for Andrew Hall's death …."

That amounts to little more than a conclusion that, because Qassim Hall has some convictions for offences of violence and threats of violence, the threat to the police officers is a credible one. There is no consideration of the nature and context of those offences or of the events since Andrew Hall's death. More particularly, however, there is no consideration of the risk of the anonymity orders being breached by those who may be able to identify the officers. As a matter of common sense, that risk increases the greater the number of people who are able to see the officers give evidence and the more impracticable it becomes to enforce the orders for anonymity. But if the family only are permitted to see the officers give evidence, the position is very different because undertakings can be given by the individuals, there is no evidence that they are likely to breach those undertakings, and the assertion that they may be forced to do so is pure speculation.

68. Even if I had not concluded that the coroner misdirected himself in law, I would have found his decision irrational because it failed to take into account adequately or at all the objective risk to the officers in being seen by the family when giving their evidence and, in that sense, it made a greater incursion than was necessary into open justice.

69. Subject to the further points I make below, the coroner's decision to permit screens ought to be quashed to the extent, but only to the extent, that the screens prevent the identified family members from seeing the officers give evidence.

70. The coroner took a broad brush approach to the officers – once he had decided that screens were justified in principle, he drew no distinction between any of the officers. In considering the entirety of the evidence, however, I have reached the conclusion that the coroner's directions as to screens should continue to apply to particular officers, namely C and N.

71. It is therefore unnecessary for me to address Ground 5 as a distinct ground but I will say shortly that I would have come to the like conclusion that the screening of all the officers from the family was not in accordance with the common law duty of fairness or was a disproportionate measure.

72. The Chief Constable's written submissions made brief reference to the witnesses' Article 3 rights. In Mr Davies QC's oral submissions that argument took on greater prominence. He submitted that these rights were unqualified; that the evidence of the threat posed by Qassim Hall was sufficient to engage Article 3; and that the proceedings ought therefore to be ordered so as to protect the relevant witnesses. There was initially some dispute as to whether this issue had been raised before the coroner. Mr Thomas QC accepted that it had been raised in written submissions to the coroner but asserted that the coroner made no finding that Article 3 was engaged. That is clearly right on the face of the ruling and the closest is the finding that the threat posed by Qassim Hall was credible.

73. In *A v British Broadcasting Corp* [2014] UKSC 25, the issue was the publication of the identity of a sex offender who was subject to deportation. His was arguably at risk on deportation because of the nature of his offending but anonymity was granted to avert that risk. At [45] Lord Reed said:
"Article 6 is not the only provision of the Convention which is relevant to the principle of open justice. Articles 2 and 3 may for example apply where parties or witnesses are in physical danger. The rights guaranteed by those articles are, in this context, unqualified. The Convention therefore requires that proceedings must be organised in such a way that the interests protected by those articles are not unjustifiably imperilled …. In our domestic law, the court's power to prevent the identification of a witness is accordingly part of the structure of laws which enables the United Kingdom to comply with its obligations under those articles…."

The position in the present case is that anonymity has been granted for each of the officers and that is not challenged. No concession is made in respect of Article 3 rights but, if it is assumed that the witnesses' rights are engaged, the issue is a narrow one of whether the provision of screens is necessary to preserve that anonymity. That turns on the argument that the family will both identify further police officers and breach the anonymity order. There is no evidence that they will or are likely to do so and the argument is wholly speculative. Following the approach that Lord Carswell suggested in the case of Article 2 rights, that would simply lead me back to the common law position. The invocation of this argument does not, therefore, affect the decision I have reached.