



Neutral Citation Number: [2023] EWHC 80 (Admin)

Case No: CO/521/2022

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**DIVISIONAL COURT**  
**SITTING IN MANCHESTER**

Manchester Civil Justice Centre  
1 Bridge Street West, Manchester M60 9DJ

Friday, 20<sup>th</sup> January 2023

**Before:**

**LADY JUSTICE MACUR**  
**MR JUSTICE FORDHAM**

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**Between:**

**THE KING (on the application of GHALEB  
MAKKI)**

**Claimant**

**- and -**

**HM SENIOR CORONER FOR SOUTH  
MANCHESTER**

**Defendant**

**- and -**

**(1) JOSHUA MOLNAR  
(2) ADAM CHOWDHARY  
(3) GREATER MANCHESTER POLICE**

**Interested  
Parties**

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**Pete Weatherby KC and Matthew Stanbury** (instructed by  
Watson Woodhouse Ltd) for the **Claimant**

The **Defendant** did not appear and was not represented

**Alistair Webster KC** (instructed by Olliers Solicitors) for the **1<sup>st</sup> Interested Party**

The **2<sup>nd</sup> Interested Party** did not appear and was not represented

**Caroline Jones** (instructed by GMP Legal Service) for the **3<sup>rd</sup> Interested Party**

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Hearing date: 7/11/22  
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**APPROVED JUDGMENT**

**Macur LJ:**

1. The Claimant is the father of Yousef Makki (“YM”) who died as a result of a single stab wound to the chest on 2 March 2019. He was aged 17.
2. Joshua Molnar, (“JM”), the Interested Party, accepted that he wielded the flick knife which caused the fatal injury during a confrontation with YM in the street. He was also aged 17 at the time. He was tried for murder in 2019 and claimed that he was acting in self-defence when he stabbed YM accidentally in the chest. He was acquitted.
3. The Defendant is His Majesty’s Senior Coroner (“HMSC”) for South Manchester, Ms Alison Mutch. She resumed the inquest into YM’s death between 8 and 17 November 2021. She concluded that there was insufficient evidence to determine whether the killing was lawful or unlawful, and returned a narrative conclusion indicating that YM had died from “complications of a stab wound to the chest. The precise circumstances in which he was wounded cannot, on the balance of probabilities, be ascertained.”
4. This application for judicial review challenges the finding that there was an insufficiency of evidence on the ‘central issue,’ that is whether the killing was unlawful, as Wednesbury unreasonable because HMSC failed to properly consider all the evidence in reaching that conclusion. The relief sought is to quash the decision and direct a fresh inquest before a different Coroner.
5. I would accede to the application and grant relief for the reasons I give below.

**Background**

6. YM was friends with Adam Choudhury (“AC”). AC had purchased two flick knives. He and YM had one each. They had the knives with them on 2 March 2019 when they went to meet JM. JM was known to both of them. There was no evidence of previous animosity between them.
7. JM had a penknife with him when he met with YM and AC. He acquired one of the two flick knives during the course of the day. The evidence of AC at the inquest was that he provided the flick knife to JM and, after the stabbing, retrieved from YM’s inside jacket pocket the other, and still retracted, flick knife which he dropped down a nearby grid. JM in evidence to the inquest said that it was AC who had provided him with the knife. In a previous statement prepared prior to police interview, he said that YM had provided him with the flick knife. JM disposed of the flick knife used in the stabbing and his pen knife in gardens nearby.
8. On the relevant day, YM, AC and JM first met together in a shopping precinct on their bicycles. They cycled together to a motorway bridge. It was there that JM was assaulted by two men and robbed of his bicycle. AC made off. YM remained but did not participate in the assault or defence of JM. JM suspected that he had been set up by AC. When AC returned, JM took his coat in recompense, or more accurately ransom, for his missing bicycle.
9. The three youths, YM, AC and JM, made off along Gorse Bank Road. CCTV footage tracked their movements.
10. Thereafter, an eyewitness, Mr Bowman, gave evidence that he saw “three males in the middle of the road, they looked to be pushing and shoving, not too

aggressively but like there was an altercation brewing.” AC denied seeing what occurred and JM has provided inconsistent accounts.

11. At the inquest JM said he was not sure who had produced a knife first. However, in police interview he maintained that YM had goaded him by calling him “pussy.” He pushed YM who then pulled out a knife and struck him with his fist to the left side of JM’s head shouting words to the effect ‘come on then.’ JM then pulled out his knife and YM moved onto the knife. JM claimed to be acting in self-defence.
12. In the 999 call AC made to the police he denied seeing the stabbing but asserted that the offender had made off in an unknown direction, and that he had seen a car which had been involved. In his police interviews, he said that he saw YM and JM “...spring back in and out of each other...as if they were about to fight or as if they were fighting...I saw their shoulders touch each other...[JM] was slightly in front”.
13. At the scene, and within minutes of the stabbing, JM initially implicated “a gentleman in a grey hatchback/a blue hatchback...” but subsequently told police that he thought “four Black guys” from Stretford were involved, and that he had seen what he thought was a Polo car driving away. He told a Special Constable that he and “his mate” came across YM against the tree already stabbed.
14. In a subsequently prepared statement to the police, he said: “I took [AC]’s coat and said I wouldn’t give it back until he had found my bike. Yousef called me a ‘pussy.’ I was upset and pushed Yousef away with my open palm , then I backed away because as far as I was concerned that was the end of the matter. Yousef is hot tempered. He is also a few inches taller than me. He can be violent.

Yousef pulled his knife out. He swung at me with his fist, striking me to the left side of my head. He shouted, ‘come on then,’ or words to that effect. I was terrified. He came towards me. I pulled the knife Yousef had given me. I moved my arm forwards with the knife in my hand. I think he came on to the knife, which made things worse, I was acting in self-defence.”

15. As indicated above, JM was indicted and tried for the murder of YM. AC was tried for perverting the course of justice. JM was acquitted of murder and, alternately, manslaughter. He was convicted of perverting the course of justice for the false account he gave at the scene. AC was acquitted.

#### The Inquest

16. At the resumed inquest HMSC received “a substantial amount of evidence...in relation to the 2<sup>nd</sup> March 2019” over five days and heard submissions on the sixth day. In relating her determinations and conclusions on the seventh day, HMSC did not “seek to summarise each and every aspect of the evidence” but said she had reread her notes made during the course of the inquest, viewed CCTV and body worn camera footage and taken into account the submissions of all relevant participants. Nevertheless, her summary made extensive reference to the contextual evidence including YM and AC’s meeting with JM, the confrontation on the motorway bridge between JM and the Chaudhry brothers in the presence of YM, the possibility of a thwarted drugs deal, the loss of JM’s bicycle, JM’s subsequent antipathy towards AC who had left the scene and angry reaction in taking possession of AC’s coat upon his return to join JM and YM.

17. The findings of fact made by HMSC are interspersed throughout her summary of the evidence and are not always explicitly described as such but, rather, are discerned from the narrative, for example, “there is nothing to suggest that that account is incorrect.” So far as they appear relevant to the application they include the following : (i) AC had ordered two flick knives from the internet; (ii) the flick knives are offensive weapons per se; (iii) those knives were available to YM and AC on the 2<sup>nd</sup> March; (iv) YM and AC knew JM; (v) contact was made by AC with JM on the 2 March 2019 and a meeting arranged; (vi) in the meantime contact was made by AC with another individual to arrange the purchase and delivery of drugs later that day to a specified location; (vii) YM , AC and JM met on their bicycles and proceeded to an underground car park; (viii) there were three knives in total: the two flick knives and JM’s folding pen knife ; (ix) JM was in possession of the penknife, AC and YM were in possession of the flick knives when they first met; (x) the meeting on the motorway bridge was a “pivotal moment for the relationship between” YM, AC and JM ; (xi) JM was assaulted by two other individuals (the Chaudhry brothers) on the bridge; (xii) YM was unaware that this would happen; he stayed at the scene but played no part in the assault other than “what appears to be a peaceful role”; (xiii) AC left the scene and was absent for approximately 90 minutes; (xiv) YM had not fallen out with anyone; he made contact with AC and appeared to almost be the contact point between AC and JM; (xv) AC returned to meet with YM and JM who had left the motorway bridge; (xvi) JM was annoyed at losing his bicycle and removed AC’s coat from him as a ransom to ensure he assisted in locating the bicycle; (xvii) AC did not have time to remove possessions from his coat pockets.

18. However, I find HMSC's summary of the evidence that she took into account regarding the incident itself, and two findings of fact that she made, to be of more particular relevance.
19. HMSC related JM's account of the time immediately preceding the stabbing as: "he was feeling pretty hard done by at the time, that [YM] spoke to him, and he was fed up, he said he wanted to go home, and he didn't really remember what had been said and it escalated. He indicated his recollection was that [YM] pushed him, he said he got annoyed, and there was quite a lot of swearing, he thought he might have pushed [YM] back, one of them...there was some swearing. He said he couldn't remember who pulled out a knife. He thought [YM] had hit him and he thought at some point [YM] had moved towards him and reacted to that by pushing him away, and he said he walked away, not really registering what had happened."
20. For accuracy, the transcript of his evidence on this point is to the effect that he could not remember "if I pulled out my knife first or [YM] did." (Emphasis provided).
21. As to the account given by JM to the police at the scene, HMSC recorded that it "was clearly not correct and, indeed, that matter has been dealt with in another jurisdiction.... the account given by [JM] could only be seen as an attempt to mislead attention away from himself and it was a false suggestion that those responsible for the stabbing had made good their escape in a grey motor vehicle."

22. In relation to AC, HMSC recounted that “he didn’t see what happened and became aware of the aftermath, and he was asked about that extensively but that remained his account...” Subsequently in her summary she said “In relation to the knives, [YM] on [AC]’s account, went to the ground and he saw the knife. Accepting [AC]’s account, in relation to that knife, he hadn’t seen the knife out in [YM]’s hand and certainly his evidence was that when he put it...took it from [YM] and put it down the drain the knife was folded.” (Emphasis provided)
23. The transcript of AC’s evidence on this point contains other significant detail. That is, that the knife came from “[YM]’s pocket, or his jacket...well, inside jacket pocket, I believe.”
24. Noting that Mr Webster KC, on behalf of JM, challenges HMSC’s interpretation of *R (Maughan) v Oxfordshire Senior Coroner v Chief Coroner of EW and Another [2021] AC 454* and its interplay with Paragraph 8(5) of Schedule 1 of the Coroners and Justice Act, 2009, and to which I refer in more detail in discussion below, I consider the substance of HMSC’s self-directions upon aspects of ‘coronial’ and ‘criminal’ law to be uncontroversial. That said, I question the relevance of the application of *R (SSJ) v HM Dep Coroner for Eastern District of West Yorkshire [2012] EWHC 1634 (Admin)* in circumstances where a coroner sits without a jury. However, Mr Weatherby KC advances no argument that this self-direction is indicative of an error in making an analysis of the evidence and findings of fact and needs no further consideration.
25. Consequent to her self-direction upon the law, HMSC determined that the conclusions open to her were lawful killing, unlawful killing, accidental death,



misadventure, open and narrative. Ultimately, as indicated above, she determined that “a narrative conclusion is the only conclusion.”

26. Since the challenge to her decision is based upon her lack of analysis of the evidence it is appropriate to highlight the manner in which she approached her task. That is, HMSC said she had:

“reflected very carefully on all of the evidence put before me, and in particular the evidence that's available for the period leading up to when Yousef was stabbed, the limited evidence for the point at which the actual stabbing took place, in conjunction with the evidence of the pathologist, and have asked myself can I be satisfied that the two limbs as set out in Duggan [that is, whether JM had an honest, even if mistaken, belief that it was necessary to use force to defend himself and that his response was proportionate] are met on the balance of probabilities so as to allow me to be satisfied that I should return a conclusion of lawful killing...When considering the totality of the evidence, I am not satisfied that even applying the test of the balance of probabilities that I can be satisfied as to the events at that point so as to be able to return a conclusion of lawful killing. I now turn to the opposite side of the coin which is unlawful killing ... In order to find unlawful killing I have to consider ...the relevant offences [murder and manslaughter] and in each of those have to be satisfied that each element of those is established to the civil standard...And the elements of unlawful act manslaughter of course are a deliberate act which is unlawful...the act is dangerous in that it's from an objective standard, one which was sober, reason and responsible person of the perpetrator's age and gender would inevitably realise ...is likely to cause the deceased some physical harm, albeit not serious harm, and the unlawful dangerous act causes death...I have carefully reflected upon all the evidence before me in relation to such a conclusion and I've asked myself if I can be satisfied, on the balance of probabilities, that his death was an unlawful killing... I've carefully considered all the evidence that I've heard during the course of the inquest...having reflected and considered all of the evidence I am not satisfied, even on the balance of probabilities that I can be satisfied as to the precise sequence of events to such an extent that I can be satisfied , on the balance of probabilities that his death was an unlawful killing...I next considered whether ...death has resulted from an unintended act or omission. On the evidence before me, again reflecting on all the evidence I've heard I'm not satisfied that I can be satisfied on the balance of probabilities, that his death was an accident death ...Its generally

accepted that misadventure is the unintended consequence of a deliberate act or omission, again I've reflected on all the evidence before me and I am not satisfied on the balance of probabilities, that this conclusion reflects the evidence...Recording an open conclusion isn't a failure of the process if it's reached because of the absence of necessary evidence even if the guidance suggests it should be avoided, if possible. If I've been unable, on the evidence, to reach any findings of fact as to Yousef's cause of death and how it came about an open conclusion may well have been appropriate, however, given I have a clear cause of death, taking into account the submissions before me, I am of the view that an open conclusion would be inappropriate... a narrative conclusion is the only conclusion, in my view, that reflects my findings..."

### Submissions

27. Mr Weatherby KC, on behalf of the claimant, challenges HMSC's lack of analysis of the evidence and the findings of fact that were, or should have been, drawn if the correct analysis had been made. He relies upon the following guidance and authorities in support of his submissions.
  
28. The function of an inquest is to seek out and record as many of the facts concerning the death as the public interest requires. (See *R v South London Coroner ex p Thompson* (1982) 126 SJ 625.) The logical and required process for HMSC to follow to reach a conclusion is described in Chief Coroner's Guidance No. 17, which provides at [18] a 3-stage process should be followed, namely:
  - (1) To make findings of fact based upon the evidence;
  
  - (2) To distil from the findings of fact "how" the deceased came by his or her death; and
  
  - (3) To record a conclusion, which must flow from and be consistent with (1) and (2) above.

Narrative conclusions should be directed at the disputed factual issues at the heart of the case but are not to be confused with making findings of fact; see [36] and [38].

29. He cites, *Earl v HM Senior Coroner for East Sussex* [2021] EWHC 3468 at [78] and [80] for the principles that : (i) “insufficiency of inquiry is fact-specific but examples would be an inquiry which leaves too many questions unanswered and too many issues unresolved: *R v HM Coroner for Coventry ex parte O’Reilly* (1996) 35 BMLR 48 at 53”; and, (ii) “a failure to take into account relevant evidence which points to a specific conclusion (or which rules out certain conclusions) can support a submission that the ultimate verdict was unreasonable. ...it is a reviewable error if without explanation a coroner comes to a verdict wholly inconsistent with such evidence, applying the appropriate standard of proof...”
30. In *In the Matter of an Application by Teresa Jordan for Leave to Apply for Judicial Review* [2018] NICA 34, at [110] it was said that “a Coroner should strive to make a finding and if he cannot do so then he should explain why he cannot”. In Jordan’s application, the Coroner was found to have conducted a careful assessment of the credibility of the key witnesses, before declaring himself “profoundly unsure” on an issue that was critical to deciding whether the deceased had been unlawfully killed. The Court of Appeal in Northern Ireland were satisfied that the Coroner had “striven hard” to make a finding about the issues and explained the basis for his conclusion that it was not possible for him to do so. Accordingly, he had not abdicated his statutory duty.

31. Mr Weatherby submits that HMSC had not had due regard to the implications of (i) the incident on the bridge; (ii) the altercation regarding AC's coat; (iii) the manner in which the group were seen to progress along Gorse Bank Road; (iv) the stabbing; and (v) the aftermath. In summary, Mr Weatherby contends that the evidence regarding the incidents (i) to (iii) demonstrated that JM was angry, vengeful, and aggressive. The evidence of Mr Bottomley (the force review officer) to HMSC was that he deduced, in the course of his review of the evidence, that JM was 'not impressed' with [YM] failing to intervene to assist him in the altercation on the bridge with the Chaudhry brothers. By contrast, there was no independent and objective evidence of [YM]'s aggression. If the whole of this evidence had been analysed HMSC would be able to assess that JM drew the knife first, which was a "fundamental issue."
32. Significantly, HMSC failed to address the credibility of JM in light of his inconsistent accounts, and thereafter its impact upon the reliability of his account at the inquest. Further, HMSC should have considered JM's account against AC's evidence, which she said she accepted, concerning the retracted knife being removed from YM's inner pocket as he lay mortally wounded.
33. JM's brandishing of an obviously illegal flick knife was manifestly unlawful, and an inherently dangerous act, even if his intent was in doubt. HMSC had conspicuously failed to strive to reach a conclusion on the evidence. She had not analysed the accounts sufficiently or at all to address the preponderance of the evidence in one direction or another. There was no explanation as to why she was "profoundly unsure" in these respects. Taken together, the evidence presented a compelling picture of an unlawful killing. HMSC's decision that

she was unable to reach a conclusion on whether the stabbing was lawful/unlawful was *Wednesbury* unreasonable.

34. Mr Webster KC, on behalf of JM, submits that in actuality the claimant invites this Court to say that HMSC should have speculated rather than striven to reach a decision. There was no significant piece of information that HMSC had not referred to. Her self-directions in law were, in the main, substantively correct. She structured her reasoning by asking whether she could reach a determination on the balance of probabilities and was simply unable to do so. HMSC's findings were consistent with the results of the criminal trial and no legitimate purpose would be served by yet another examination of the facts. The jury's verdicts of not guilty were in accordance with the evidence. HMSC heard evidence from JM, which was tested by cross-examination, followed by full submissions upon the evidence. HMSC was entitled to find that it was impossible to determine exactly what had occurred in the vital seconds prior to the sustaining of the fatal wound.
35. HMSC had clearly identified that JM had given a false account at the scene and had been convicted in relation to that. It was not incumbent upon her to state expressly that it had been taken into account in her assessment of the evidence. If HMSC had accepted JM's evidence she would have found the killing to be lawful. HMSC had the evidence as to JM's state of mind well in mind. She referred to his evidence in detail. HMSC was entitled to take the view that it was not possible to come to a concluded view as to who drew a knife first. Her decision was not *Wednesbury* unreasonable.

36. Further, the Claimant's submissions in relation to unlawful act manslaughter are misconceived and HMSC misdirected herself since, once she found that self-defence could not be ruled out, unlawful killing was not a conclusion she could reach. In any event, HMSC was precluded from considering a conclusion that the death was an unlawful killing. JM was the only person whose actions were causative of the death of YM and the provisions of Paragraph 8(5) of Schedule 1 of the Coroners and Justice Act, 2009 prohibits a conclusion which is directly contrary to the outcome of the criminal trial. The Supreme Court in *Maughan* did not consider the effect of Paragraph 8(5) of Schedule 1 of the Coroners and Justice Act, 2009.

#### Discussion

37. Paragraph 8(5) of Schedule 1 of the 2009 Act provides that in the case of a resumed inquest, a determination of "how, when and where" the deceased came to his death may not be inconsistent with the outcome of criminal proceedings. However, I reject Mr Webster's submissions that JM's acquittal by the jury prevented HMSC from considering the conclusion of unlawful killing per se. *Maughan* establishes that the Coroner's determination of whether an unlawful killing has occurred is to be made on the civil standard of proof. A conclusion made on the civil standard of proof of an unlawful killing does not run contrary to a jury's acquittal of the offence applying the criminal standard of proof. Such a conclusion does not undermine the criminal process. In contradistinction, a coronial finding that the killing was 'lawful' would be contrary to a jury's conviction of murder or manslaughter.

38. Further, whilst pursuant to section 10(2) of the 2009 Act, a determination may not be framed in such a way as to appear to determine any question of criminal (or civil) liability on the part of a named person, it is recognised that it may be obvious from the circumstances who is regarded as responsible. This is inevitable in the majority of cases and acceptable provided that no express finding is made against the person responsible (See *R (Evans) v HM Coroner for Cardiff and Glamorgan* [2010] EWHC 3478 (Admin) [2011] EWCA Civ 719).
39. HMSC resumed the inquest after JM and AC's criminal trial, rejecting their representations and those made on behalf of the Greater Manchester Police that she should not, and against which no appeal was made. In these circumstances it appears to me to be clearly in the public interest for HMSC to 'strive' to reach a conclusion on the balance of probabilities or explain why she could not do so in accordance with *Jordan*. Notably, the Chief Coroner's Guidance No. 17 provides at [26] that : "Wherever possible coroners should conclude with a short-form conclusion. This has the advantage of being simple, accessible for bereaved families and public alike, and also clear for statistical purposes" and at [68] that "open conclusions are to be discouraged, save where strictly necessary...only used as a last resort, notably when the coroner [or jury] is simply unable to reach any conclusion on the balance of probabilities as between two competing verdicts." Yet although HMSC disavows the same, the narrative verdict she entered is to all intents and purpose an open verdict.
40. The cause of YM's death was obvious. The predominant issue in the case was whether JM acted in self-defence and/or accidentally inflicted the wound.

Unless HMSC reached a determination on these matters, I agree with Mr Webster that, in the circumstances of this case, it would not be open to her to reach a conclusion of unlawful killing. That is, it was the lawfulness of the assault which dictated whether either murder or manslaughter had been committed. In this respect, I do not find the reasoning clear in HMSC's determination, which merely recites all possible conclusions from the Chief Coroner's Law Sheet No 1. Nevertheless, HMSC's determination, framed in almost the exact terms throughout, is at least consistent with the point, namely "I am not satisfied, even on the balance of probabilities that I can be satisfied as to the precise sequence of events to such an extent that I can be satisfied , on the balance of probabilities that this was a (lawful/unlawful) killing."

41. However, I agree with Mr Weatherby that the internal consistency of the conclusion does not identify the ultimate conclusion as 'Wednesbury reasonable.' HMSC's extensive narration of the evidence does reveal the depth of her inquiry, but it is insufficiently distilled. There is no explanation of how HMSC's findings of fact, including those referred to in [17] above, were relevant to her ultimate determination of the stabbing, and in what respect. There is no explanation of why HMSC regarded the incident on the motorway bridge to be a "pivotal moment for the relationship between" YM, JM and AC, and in what respect it played any part in the fatal stabbing.
42. I do not discern any attempt to analyse the "precise sequence of events" immediately leading to the fatal stabbing. There is no indication that HMSC assessed the reliability of JM's evidence to the inquest. (I do not accept Mr Webster's submission that she must obviously have rejected it, for otherwise



she would have found self-defence, since it is not possible to discern what consideration she gave to the two elements of self-defence and which evidence she regarded to be relevant and reliable.) HMSC noted that JM lied immediately after the stabbing “to mislead attention away from himself,” but seemingly disregards this factor because it was dealt with in “another jurisdiction.” She recounts his evidence, including that he was “feeling hard done by” and was angry and provoked by YM’s name calling immediately prior to drawing his knife, but she does indicate what conclusions, if any, she draws from his evidence.

43. Significantly, whilst indicating that she accepted AC’s evidence regarding the other retracted flick knife which he removed from YM, HMSC is silent as to what conclusions she draws from this finding of fact, or how she has weighed JM’s account against it. As a matter of law, the question of who drew their knife first does not determine the issue of self-defence but is obviously of some weight in determining JM’s claim that he believed he needed to defend himself, and, if he did, the proportionality of his response. One interpretation of AC’s evidence would be that YM had not drawn his knife at all. Another, that YM’s request of AC to dispose of the flick knife reflects he had drawn it. HMSC does not deal with the point one way or another.
44. Consequently, whilst I do not consider that the evidence necessarily all points in one direction, neither can I be satisfied that HMSC has assessed all relevant evidence or analysed the findings of fact she made. HMSC’s generic reference to her consideration of the “totality” of the evidence is inadequate to convey

that she did ‘strive’ to reach a conclusion upon the evidence. If she did so but was left profoundly unsure then she did not explain why.

Relief

45. For the reasons above, and subject to my Lord, Fordham J, I would grant the following relief:

(1) quash the decision of 17 November 2021;

(2) direct a fresh inquest before a different Coroner.

**Fordham J:**

46. I agree.