Neutral Citation Number: [2025] EWHC 236 (Admin)

Case No: AC-2024-LON-002177

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 February 2025

Before:

LORD JUSTICE COULSON
MRS JUSTICE CUTTS DBE

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Between:

Mr Christopher Whittle	**Claimant**
- and -	
HM Coroner for North West Wales	**Defendant**
- and -	
(1) Betsi Cadwaladr University Local Health Board	**Interested Parties**
(2) North Wales Police	

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Ms Hannah Noyce (instructed by **RWK Goodman**) for the **Claimant**
Mr David Pojur (instructed by of **HM Senior Coroner for North West Wales by Cyngor Gwynedd (Gwynedd Council)**) for the **Defendant**
Mr Sebastian Naughton (instructed by **NHS Wales Shared Services Partnership - Legal & Risk Services**) for the **First Interested Party**
The Second Interested Party was not represented and did not attend

Hearing date: 4 February 2025

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Approved Judgment

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LORD JUSTICE COULSON

LORD JUSTICE COULSON and MRS JUSTICE CUTTS DBE:

INTRODUCTION

1. This is the judgment of the court, to which we have both contributed. There are two matters for us to decide: the substantive application for a fresh inquest, and the application to get over a fundamental procedural problem that has occurred. Unless there is an answer to the latter, our conclusions as to the former may not matter.

THE SUBSTANTIVE APPLICATION

2. The substantive application is made pursuant to section 13(1)(b) of the Coroners Act 1988 ("the Act"), to quash the original inquest and for the court to direct a fresh inquest to be held into the death of Mr Anthony Joseph Whittle ("the deceased"). The application is made by the deceased's brother, Mr Christopher Whittle, on the basis that it is necessary or, in the alternative desirable, in the interests of justice that another investigation be held, as there was insufficient inquiry at the original inquest.

3. As required by section 13 of the Act, the Attorney General's authority was sought and a fiat granted on 5 January 2024.

4. As was clear from the submissions to the Attorney General dated 26 October 2023, the defendant, HM Coroner for North West Wales, agrees that, in the interests of justice, a fresh inquest is necessary or at the very least, desirable. Mr Pojur confirmed that in his oral submissions today. In submissions to the Attorney General made on the same date, Betsi Cadwaladr University Health Board ("the Health Board"), the first of the interested parties, indicated that they were neutral on the application, in circumstances where there are no longer any medical or staff records retained from the material time. Again, Mr Naughton confirmed that at the hearing today. In an email dated 3 February 2025, the Chief Constable of North Wales, the second interested party, has adopted a neutral position.

The Original Inquest

5. The original inquest was heard at Bangor Coroner's Court in the Eryri District of Gwynedd (now North West Wales) on 22 February 1995.

6. As to the time, place and circumstances at or in which injury was sustained, the Coroner recorder in box 3 of the Inquisition: "Deceased had been admitted to the psychiatric unit at Ysbyty Gwynedd, Bangor but left through the window of an interview room and climbed over the roof and away. He was found the following morning flat on his back on a concrete track underneath a bridge carrying the A55 expressway. He was found at 7.50 AM on 25 November 1994."

7. The Coroner recorded an "open verdict, there being no evidence to show how he came to be where he was found."

The Apparent Facts and Circumstances

8. The deceased was born on 3 November 1964 and aged 30 years at the time of his death. In his late teens he was diagnosed with paranoid schizophrenia. His medical history included an attempt to take his own life and two occasions of having been sectioned under the Mental Health Act.

9. In October 1994, the deceased began a forestry degree at the University of Wales in Bangor, Gwynedd. His family recall that, although he initially seemed to settle well, by the end of November he was frequently phoning home and was often tearful. On 24 November 1994 he failed to meet his father and brother at a train station as agreed. They drove to Bangor to find him. They found his flat in disarray, his belongings packed and signs of minor drug use. A scribbled note on his desk read *"the devil is coming to kill me but god will protect me."*

10. The police had located the deceased on Prestatyn Beach and taken him to the police station in Rhyl. The family report that the police told his father and brother that he had been found wandering on the sand dunes and caravan park wearing only one sock. He was described as very frantic, quite frightened and constantly screaming or crying. He was saying that the devil was going to kill him but god was with him to guide him to the fishing boat and that he could walk on water. The deceased's family were told that he had been seen by a doctor at the police station and transferred to Bangor Hospital for assessment.

11. At 11.30 PM the deceased's father and brother saw him with a psychiatrist, Dr McMonagle, at the Hergest Unit at Gwynedd Hospital. They noted him to be dishevelled, quiet and melancholic. The doctor told them that he was seriously ill and required further psychiatric evaluation before being discharged. They recall that he hugged them both and was escorted to his room. When the deceased's father asked if they could take him home, the doctor said he would speak to the deceased. He returned to say that the deceased had decided to stay at the hospital for treatment.

12. The deceased's father and brother then heard a loud bang. They were informed that he had broken a window, climbed down a sloping roof and left. The claimant disputes the assertion, understood to have been given by Dr McMonagle at the original inquest, that the deceased had signed himself out of the unit.

13. The deceased was found the next morning, 25 November 1994, by a passing cyclist under the North Wales Expressway close to the Halfway Bridge and the village of Llandygai.

The Legal Framework

Section 13 Coroners Act 1988

14. This section, insofar as is relevant, as amended provides:

> "(1) This section applies where…under the authority of the

> Attorney-General the High Court is satisfied as respects a coroner ("the coroner concerned") either –
>
> ….
> (b) where an inquest or an investigation has been held by him, that (whether by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, the discovery of new facts or evidence or otherwise) it is necessary or desirable in the interests of justice that an investigation (or as the case may be, another investigation) should be held.
>
> (2) The High Court may –
>
> (a) order an investigation under part 1 of the Coroners and Justice Act 2009 to be held into the death
>
> …
>
> (ii) by a senior coroner, area coroner or assistant coroner in the coroner area
>
> …
>
> (c) where an inquest has been held, quash any inquisition on, or determination or finding made at that inquest."

15. In *HM Attorney General v HM Coroner South Yorkshire and others* [2012] EWHC 3783 the court held that the single question for the High Court is whether the interests of justice make a further inquest either necessary or desirable. It is not necessary for the court to anticipate that a different verdict will be returned.

16. The "simple starting point" for an insufficient inquiry, as stated in *R (O'Reilly) v HM Coroner for Coventry* (1996) 160 JP 746, is an inquiry which leaves too many questions unanswered and too many issues unresolved.

17. The current test for causation is whether an act or omission more than minimally, trivially or negligently contributed to the death: see *R (Tainton) v HM Senior Coroner for Preston* [2016] EWHC 1396 at [41].

18. Finally, we note that, if a fresh inquest was resumed under Article 2 of the ECHR, an operational duty may be owed to a voluntary psychiatric inpatient as well as a patient detained under the Mental Health Act 1983: see *Rabone v Pennine Care NHS Foundation Trust* [2012] UKSC 2.

Ground for Application

19. The sole ground relied upon in this application is that there was an insufficient inquiry into the deceased's death at the original inquest into the following:

> "(i) The risk the deceased posed to himself;

(ii) Whether the deceased required formal detention under the Mental Health Act 1983;

(iii) Whether the deceased was, in fact, detained despite his formal status as a voluntary patient;

(iv) Whether acts or omissions by Dr McMonagle and other staff caused or contributed to the death of the deceased;

(v) How, as a matter of fact, the deceased was able to abscond from a psychiatric unit through a window and

(vi) The steps taken (if any) to search for the deceased following his absconsion."

20. The existence or otherwise of medical records will be a matter for the coroner. Even assuming that the evidence did not change at all, which is said to be unlikely, the probability or even possibility of a different conclusion means that a fresh inquest is necessary/desirable in the interests of justice.

Submissions of Defendant (HM Coroner for North West Wales)

21. As we have already said, HM Coroner for North West Wales accepts that there was insufficiency of inquiry at the original inquest and supports the application to quash that inquest and order a fresh one.

22. She also accepts that the question of whether the deceased was effectively detained at the hospital is important, and potentially relevant to whether Article 2 of the ECHR could be engaged at a new inquest. The obligations thereunder were not in existence at the time of the original inquest, as the Human Rights Act 1998 came into force in October 2000, incorporating the rights and liberties contained in the ECHR into domestic law. If it were to be an Article 2 compliant inquest, the enhanced investigation, in addition to the four statutory questions common to all inquests (being who the deceased was and when, how and where he came by his death), would have to examine in what circumstances the deceased came by his death. In any event, a full and fearless inquiry would need to address the factual matrix of his mental health deterioration, including conversations with his fellow student and police surgeon, his movements the previous day, and activities during the 24 and 25 November 1994, all against the backdrop of his mental health diagnosis when he was younger.

23. Important questions are whether the deceased was detained, whether he had capacity, how he was able to escape, what action was taken by the hospital to recover him, what the high risk strategy being instituted was, and what was done by the police in order to locate someone about whom they also had concerns. These aspects would be required to be determined for it to be a meaningful inquest, particularly for the family.

24. In the view of HM Coroner for North West Wales, these are core issues in any fresh inquest, and the coroner would be expected to examine and determine each of them with a finding of fact. Even if a fresh inquest is not necessary in the interests of justice, the same factors mean that it would be desirable for there to be a fresh inquest. She is of the view that a meaningful inquest can be conducted, even if some issues

remain ultimately unresolved and even where there may be no access to records and statements due to the passage of time.

Conclusion on Substantive Application

25. We are grateful for the helpful submissions from both the claimant, defendant and first interested party. We are satisfied that, for all the reasons that they have set out, there was an insufficiency of inquiry at the original inquest, in that the coroner failed to address and make findings of fact on important questions concerning the circumstances of Mr Anthony Whittle's death.

26. We are satisfied in those circumstances that a fresh inquest is not only desirable but necessary in the interests of justice. We therefore turn to address the procedural position, to see if meaningful effect can be given to that conclusion.

THE PROCEDURAL POSITION

27. As noted above, s.13(1) of the Coroners Act 1988 enables the High Court to grant a claim for a fresh inquest "on an application…under the authority of the Attorney-General". Practice Direction 49E, at paragraph 20.3, states that for an application under s.13, "the claim form must… (2) be filed at the Administrative Courts; and (3) be served upon all persons directly affected by the application within six weeks of grant of Attorney-General's fiat".

28. In this case the Attorney General's fiat was issued on 5 January 2024. The six weeks therefore expired on 16 February 2024. The Part 8 claim form and accompanying documents were filed in person at the Bristol Civic Justice Centre on 14 February 2024. Also on 14 February, unsealed copies of the claim form and application were served on HM Coroner for North West Wales, and the two interested parties.

29. The claim form was not issued by the court by 16 February 2024. It appears that Bristol Civic Justice Centre subsequently said that the documents should have been filed by way of CE File. The claim form and accompanying documents were refiled and issued on 7 March 2024.

30. The claimant's solicitors immediately acknowledged that they were out of time because the 16 February date had not been met. On 7 March, they made an application seeking "permission to issue Part 8 proceedings outside of the 6 week deadline of 16 February 2024". The accompanying statement from Ms Scheel, the senior partner with the claimant's solicitors, sought relief from sanctions. It was not clear from the papers whether the sealed claim form, issued on 7 March, had ever been served. Ms Noyce confirmed in answer to a question from the court that the sealed claim form was served on the defendant, HM Coroner for North West Wales, on or about 10 June 2024, together with the application for a fresh inquest dated 24 May 2024.

31. The proceedings have had anything but a charmed life thereafter. They were transferred by Master Dagnall, without a hearing, from the King's Bench Division to the Administrative Court on 22 April 2024. It seems the case was transferred to Cardiff and then came back to London. Lengthy delays have ensued since the

application for a new inquest was formally made on 24 May 2024. None of those delays can be attributed to the parties.

32. Despite that, however, there are a number of real problems with the claimant's procedural position. First, the making of an application to issue the proceedings out of time was, with respect, misconceived. The claim form was issued by the court office on 7 March 2024: it bears a stamp to that effect. It has therefore been issued. The issue date cannot somehow be retrospectively altered.

33. Moreover, the application for relief from sanctions was wrong in law. *R (Good Law Project) v SoS for Health and Social Care* [2022] EWCA Civ 355 at [79] is authority for the proposition that the principles in respect of relief from sanctions, and the well-known authority of *Denton v TH White Limited* [2014] 1WLR 3927, do **not** apply to the service of an originating process like a Part 8 claim form. This has been confirmed more recently in *SoS for Levelling Up, Housing & Communities v Rogers* [2024] EWCA Civ 1554 at [20].

34. The problem here is an entirely different one. On the face of it, the sealed claim form should have been served by 16 February. It was not, because it had not been issued. Either the claimant needs to persuade us that the service of the unsealed claim form on 14 February was sufficient for the purposes of PD 49E, or he requires permission to serve the sealed claim form out of time (essentially, an extension of time). In addition, there is Ms Noyce's new argument, revealed yesterday afternoon, to the effect that Master Dagnall must be "impliedly" taken to have granted relief from sanctions when he transferred the case to the Administrative Court in April 2024.

Service of the Unsealed Claim Form

35. The first question is whether, under PD49E, valid service can be effected with an unsealed claim form. If so, since the unsealed claim form was served in time, the claimant does not require any assistance from the court.

36. The insurmountable difficulty with that argument is that all the provisions in the CPR anticipate the service of an issued claim form: see in particular r.7.5(1) and (2). Moreover, *Ideal Shopping Direct Ltd v Mastercard Inc* [2022] EWCA Civ 14 is authority for the proposition that, for the purposes of the provisions in the CPR dealing with methods of service, a claim form "is the original document issued by the court on which the court seal is placed". Sir Julian Flaux made that plain at [137], and went on at [144] to find that unsealed documents are not claim forms within the CPR. Thus, in the present case, the service of the unsealed claim form on 14 February 2024 was not good service.

37. Under r.6.15, we wondered whether the court could retrospectively authorise service by an alternative method, namely the service of the unsealed claim form. The fundamental problem with that option is that, as set out above, proper service can only be of the sealed claim form. The defect here was precisely the same defect which the claimant could not get round in *Ideal Shopping*, namely the service of an unsealed claim form. Furthermore, whilst r.6.15 does allow consideration of alternative methods of service, that is concerned with **how** service is effected, not the defects in that which is purportedly being served.

38. Accordingly, effective service did not take place on 14 February. It had not occurred by 16 February, which was the relevant expiry date. It occurred on or about 10th June 2024.

Other Potential Solutions

39. We also wondered whether, under r.6.16(1), the court could dispense with service of the claim form altogether. We have considered that, but we do not think we can. It would, we think, be wrong in principle to dispense with service altogether in a case where the time limit expressly expired on service. In addition, the authorities are firmly against that course: *Anderton v Clwyd CC (No.2)* [2002] EWCA Civ 933 says that a court cannot dispense with service where no attempt was made to serve the sealed claim form in time; and *Kuenyehia v International Hospitals Group Ltd* [2006] EWCA Civ 21 suggests that the power to dispense with service altogether is unlikely to be exercised unless some attempt has been made to serve by a permitted method.

40. The last option would be for this court to extend time for service pursuant to r.7.6(3)(b). There are some difficulties with that too: there is no formal application for an extension of time, and so rather limited evidence about whether the claimant's solicitors took all reasonable steps to serve timeously.

41. On the other hand, there are some elements of the evidence which suggest that time for the service of the claim form should be extended. We consider that the fact that the documents were filed with the court in time is a strong point in favour of an extension. So too is the fact that the unsealed claim form was served before the deadline, and the fact that, on the same day as they received the stamped claim form, the claimant's solicitors tried to rectify the position by making their application for relief. Moreover, we consider that the court office should have said on 14 February that the documents could only be filed on CE File: if HMCTS wish to adopt an entirely paper-free process, the least they can do is to explain that to a court user, who bothers to attend personally to file a paper claim. The relevant delay therefore occurred at the court office and nowhere else.

42. We accept that, in another sort of case, those facts alone may not justify an application to extend time for service under r.7.6(3)(b): *Rogers*, and the cases cited there, make that clear. But there is a unique feature of this case which does not exist in any of the reported cases. In all those cases, the defendant saw a positive advantage in seeking to rely on the failure to serve in time. That failure might give rise to a limitation defence. It might mean the end of a large claim that the defendant would otherwise have had to meet. A defendant in those circumstances has every incentive to rely on the procedural failings of the claimant and resist an extension of time for service. Where the service point is hotly disputed, the court must strike a balance between the parties.

43. But that is not this case. Here, there is no limitation issue. Here, the defendant does not challenge the need for a fresh inquest; indeed, she encourages the court to order a fresh inquest. Moreover, it is plain, for the reasons that we have given, that the interests of justice require a fresh inquest. In all those circumstances, there is nothing whatsoever to be gained by this court refusing to extend time for service. The claimant may lose his ability to claim altogether. Or he may have to start the process

all over again, with the raft of additional time and expense which that would bring with it.

44. Furthermore, we have in mind the overriding objective (r.1.1). In circumstances where the application is not challenged, it seems to us that it would be a triumph of procedure over substance if an extension of time for service was not granted in the very particular circumstances of this case. Such an outcome would not be just or proportionate.

45. Whilst that conclusion means that we do not strictly need to express a view about Ms Noyce's argument that the order for transfer to the Administrative Court impliedly granted relief from sanctions, we should say that, in our view, that submission was wholly without foundation. First, for the reasons already advertised, relief from sanctions is inappropriate and irrelevant when dealing with the service of originating proceedings. Secondly, the application for relief, which talked about obtaining permission to issue out of time, was itself misconceived because the claim form is issued by the court, not the solicitors, and had been issued anyway. Master Dagnall would therefore have had no jurisdiction to grant relief from sanctions in such a case. Thirdly, this cannot have been an argument that had occurred to the claimant's solicitors, let alone one that was relied on by them, since Ms Scheel's second witness statement of 25 May 2024, sworn after the transfer order, referred to the ongoing application for relief from sanctions, and did not suggest that that had been dealt with by Master Dagnall. Fourthly, it is wrong to suggest that, simply because a transfer was ordered at a time when an application for relief from sanctions was outstanding, everything that had happened before the transfer was somehow magically regularised. There is no authority for such a proposition. Fifthly, there is nothing to suggest that Master Dagnall gave – or should have given - any consideration to this procedural tangle. He simply transferred the case and gave liberty to apply.

CONCLUSIONS

46. For the reasons set out in paragraphs 27-45 above, we order that time for service of the sealed claim form on the defendant is extended to 12 June 2024. Out of an abundance of caution, time for service of the sealed claim form on the interested parties is extended to 29 January 2025.

47. For the reasons set out in paragraphs 2-26 above, pursuant to section 13 of the Coroners Act 1988, we quash the Record of Inquest and quash the findings and conclusions of the inquest in the case of Anthony Whittle dated 22 February 1995. We order a new investigation under Part 1 of the Coroners and Justice Act 2009 to be held into the death of Anthony Whittle by a senior coroner, area coroner or assistant coroner in the coroner area.