

# Maughan: Coronial clarity or crises?

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2020 has been an interesting year for Coronial law. Despite Covid-19, there has been an influx of significant cases including *Maguire v Her Majesty's Senior Coroner for Blackpool and Flyde and ors* [2020] EWCA CIV 738, *R (Carole Smith) v HM Assistant Coroner for North West Wales* [2020] EWHC 781 (Admin), *Rushbrooke v HM Coroner for West London* [2020] EWHC 1612 (Admin) and six new Chief Coroner's Guidance to cope with the changing backdrop of Covid-19.

But the case that is really causing reverberations is *R (on the application of Maughan) (AP) v. Her Majesty's Senior Coroner for Oxfordshire* [2020] UKSC 46. Many Coroners and lawyers up and down the Country are trying to understand the true impact of this case.

So let's go through the law. What has changed?

## Facts and Law

James Maughan was a prisoner held in HMP Bullingdon. Sadly on 11 July 2016 he was found hanging in his cell from a ligature and he was pronounced dead. At the inquest the Senior Coroner concluded that the jury could not safely reach a short form conclusion of suicide on the criminal standard of proof. However he gave the jury an opportunity to return a narrative conclusion setting out the circumstances of Mr Maughan's death on the balance of probabilities. The jury, in its narrative concluded by saying that the deceased had a history of mental health issues and on the balance of probabilities the deceased intended fatally to hang himself. There was no short form conclusion of suicide. Mr Maughan's family appealed the jury's conclusion on the basis that they had applied the wrong standard of proof in reaching a narrative verdict, which indicated suicide.

The case journeyed through the High Court and then the Court of Appeal. It became clear that we had all misinterpreted the common law on the standard of proof for suicide. The Supreme Court cemented the decision by confirming that for all short form conclusions the civil standard of proof is applicable, including for suicide and unlawful killing. It also confirmed that note (iii)

on the mandatory Record of Inquest Form did not constitute a statutory statement of the standard of proof.

## Comment

In one sense, the change in law has brought consistency and clarity. For all conclusions, there is one standard of proof and that is 'on a balance of probabilities'. It is also important to remember that the Coroner's Court differs from other courts. Inquests are fact finding exercises, inquisitorial and civil in nature.

In relation to suicide, of course this makes good sense. The standard of proof of 'beyond reasonable doubt' was out of sync with the other conclusions particularly as suicide had been decriminalised since 1961. With a lower standard of proof, conclusions of suicide may surely rise. Although this may help us better understand the numbers of people taking their own lives, it may also be difficult for families to accept such a distressing finding.

However how does the decision affect possible 'unlawful killing' inquests? In reality Coroners up and down the country are likely to be hearing more cases on unlawful killing and returning more conclusions on this issue. In addition, there are likely to be less open conclusions and accident conclusions in cases which previously did not meet the 'beyond reasonable doubt' test. This decision will not necessarily cause concern in murder cases or unlawful acts of manslaughter where the outcome may be obvious but what about a death following serious clinical failings? What does it mean for organisations such as NHS Trusts, care homes or Doctors where their standards have fallen so badly below what is expected of them? With the lowering standard of proof, families are now likely to push for Coroners to consider short form conclusions on both unlawful killing and neglect.

Will the choice of which conclusion to reach be an easy one? The answer may not be as straightforward as it seems. To make a finding of neglect, the act or omission must be a 'gross failure'. This is a high threshold to overcome. However the elements for proving gross negligence manslaughter are just as onerous. Only time will tell how easily Coroners will feel able to differentiate between neglect and unlawful killing.

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