

Confirmation of the new balance of probabilities test for suicide conclusions in Inquests

The purpose of a coroner's inquest is to ascertain:

- who the deceased was
- how, when and where the deceased came by his or her death
- certain particulars required to be registered concerning the death
- where necessary to avoid a breach of any rights under the European Convention on Human Rights, "in what circumstances" the deceased came by his or her death

R (On the application of Thomas Maughan) v Her Majesty's Senior Coroner for Oxfordshire

At the inquest into the death of James Maughan, found hanging in his prison cell in July 2016, the Senior Coroner accepted that there was insufficient evidence upon which the jury could be sure that the deceased intended to kill himself. He invited the jury to record a narrative conclusion, and the narrative conclusion returned included that "on the balance of probabilities, it is more likely than not that James intended to fatally hang himself that night". The Coroner directed the Jury to apply the civil standard of proof (the balance of probabilities), as opposed to the criminal standard (beyond reasonable doubt).

On appeal in the High Court, the Court held that the civil standard of proof applied to suicide conclusions, whether in short or narrative form. The deceased's brother appealed against the dismissal by the High Court of the claim for judicial review.

Question: Whether a coroner or a coroner's jury, after hearing the evidence at an inquest into a death, may lawfully record a conclusion to the effect that the deceased committed suicide reached on the balance of probabilities; or whether such a conclusion is only permissible if it has been proved to the criminal standard of proof.

In answering the above question, the Court of Appeal considered previous cases and guidance. Guidance issued to Coroners suggested that a jury could be directed to consider a narrative conclusion on the balance of probabilities, in circumstances such as in a prison death where the deceased has died by hanging.

In relation to flexibility in the civil standard of proof, the Court acknowledged an assumption in previous case law that there is "a necessary connection between the seriousness of an allegation and its inherent probability", but considered it now clearly established that there is no flexible or variable standard of proof in civil proceedings. The judgment stated that it was "not for the law in this area to adopt one conception of human dignity in preference to another". When considering the position at common law and the submission that case law establishes that a verdict of suicide at an inquest can only be returned on the criminal standard of proof, the Court held that the case law cited did not bear this out.

The Court of Appeal's judgment now makes it clear that at an inquest, a coroner or coroner's jury may lawfully record a conclusion of suicide reached on the balance of probabilities. However, it was emphasised that suicide should never be presumed; such a conclusion should only be reached if there is sufficient evidence to justify it.

Where are we at?

It had been considered well established by practitioners, through case law, that the criminal standard of proof was necessary for a conclusion of suicide or unlawful killing. In contrast, the civil standard of proof was considered applicable to other short form conclusions and narrative statements. The awaited judgment has changed this.

It can reasonably be assumed that the higher, criminal standard of proof was considered applicable to conclusions of suicide due to the potential stigma and upset such a conclusion may cause. Arguments have been made in favour of the criminal standard of proof relating to the difficulties of looking into the complexities of the human mind. However, the Court found that "the fact that the human mind is often hard to fathom cannot be a reason for imposing a higher than normal standard of proof". Suicide has not been a criminal offence for many years. The new balance of probabilities test for suicide conclusions in Inquests recognises this shift in the law and changing attitudes towards the emotive topic. Going forward, there is likely to be a statistical increase in recorded instances of suicide.



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