

## The new balance of probabilities test for suicide conclusions in Inquests

In 2017 the Coroner's annual statistics reported 229,700 Inquests with 11% of all conclusions recorded as a suicide. Following a High Court judgment on 26 July 2018 there is likely to be a statistical increase in reported instances of suicide as the standard of proof is now on the balance of probabilities.

Prior to this decision, in order for a Coroner or Jury to return a conclusion of suicide, they had to be satisfied beyond a reasonable doubt (the same as the standard for criminal convictions), that the deceased took their own life, and that they intended to do so. The latter aspect required a determination of the innermost thoughts of someone after their death; an enormously difficult task.

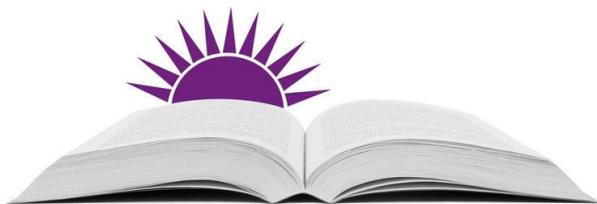
Whilst suicide has not been a criminal offence for over 60 years it still remains a difficult and emotive subject for many, although, some may argue that the change in the standard of proof for suicide was long overdue as the old law was inflexible and no longer applicable.

### ***R (on the application of Thomas Maughan) v Senior Coroner for Oxfordshire.***

This case arose from an inquest concerning the death of a prisoner, James Maughan who was found hanging in his prison cell in July 2016. Having considered the evidence over the course of a 4 day inquest in October 2017 the Jury returned a narrative conclusion which included the finding that "we find on the balance of probabilities, it is more likely than not, that James intended to fatally hang himself that night." This finding was following a direction from the Coroner to apply the civil standard of proof (balance of probabilities) as opposed to the criminal standard (beyond a reasonable doubt).

The High Court determined that "a narrative conclusion to the effect that on the balance of probabilities the deceased did a deliberate act which caused his own death intending the outcome to be fatal clearly amounts to a conclusion that the deceased committed suicide whether or not the word 'suicide' is used." The Court concluded this argument as "sophistry" because in reality the jury had concluded that it was suicide, the only issue to determine was whether they were entitled to do so on the basis of the legal test they had applied, being the balance of probabilities.

The Court considered previous cases and found that whilst none of these judgments highlighted that suicide should never be presumed, none of these cases asserted that suicide must be proved to the criminal standard. For this reason the Court in the interests of uniformity, consistency and simplicity concluded that a single standard should be applied to all civil cases, with a different, higher standard to all criminal cases.



### ***What is on the horizon?***

Permission to appeal the decision has been granted. Whilst this remains good law at present it is unlikely we have reached the end of the road. No date has yet been set for the hearing at the Court of Appeal.

In the interim this decision is likely to improve the accuracy of inquests recording deaths as suicide, where the evidence concludes that this was most probably the case. Consequently, the statistical increase may prompt a review of investment and priority of resources by the government to assist suicide reduction and prevention.

Whilst such an outcome is likely to be welcomed by providers and services within this sector, it may be difficult for some family members who do not wish a suicide finding in relation to a loved one. It follows that we are likely to see more families seeking legal representation at Inquests.

A further ramification from this decision will be a review of the Coroner's rules and guidance and revisions to the standard form which now arguably misstates the standard of proof for suicide conclusions (form 2).

The overturning of this established principle is likely to end lengthy, painful and complex inquests, like the Hillsborough inquest, as a jury's deliberations are likely to be shorter and less burdensome.

### ***Will the conclusion of unlawful killing survive this decision?***

Within the judgment observations are made, in passing, that the same approach should be adopted for the conclusion of unlawful killing.

*"We can see no justification in principle for weighting the fact-finding exercise against any particular conclusion and requiring proof to any higher standard than the balance of probabilities. That is so even if the facts found disclose the commission of a criminal offence. Given that in civil proceedings the standard of proof of criminal conduct remains the ordinary civil standard, we can see no principled reason for adopting a different approach in Coroner's proceedings."*

A theme running throughout the judgment is that coroner's proceedings are not criminal proceedings. Although prosecutions can precede or follow an inquest (similar to civil disputes) there is no relationship or analogy between Coroner's proceedings and criminal proceedings. The function of a modern inquest is "to seek out and record as many of the facts concerning the death as public interest requires."

For this reason it may be argued that no prejudice will arise in reducing the unlawful killing standard to a balance of probabilities. The individual or organisation are not recorded in the record of inquest, a Coroner's conclusion is inadmissible evidence and criminal proceedings do not always follow. However, the consensus at present remains that a higher standard of proof is understandably required for criminal matters, where the consequences can have potentially serious consequences for parties, including a loss of liberty.

The Court's observations are likely to prompt requests to the Coroner, in conclusions which include a rider of neglect, to also consider unlawful killing. A matter healthcare providers and social care organisations should be alert to in circumstances where the care provided, or absence of care, is causative of the death.

In the wake of these comments challenges are likely to follow where a Coroner is asked to return or leave to the Jury a conclusion of unlawful killing, the remaining conclusion subject to the criminal standard. Watch this space.



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