



Standard of Proof for Suicide in Inquests: *R (on the application of Thomas Maughan) v Senior Coroner for Oxfordshire [2018] EWHC 1955 (Admin)*

By Freya Foster

On 26 July, Leggatt LJ, sitting with Nicol J, handed down a judgment that challenges the long-held view that suicide must be proved to the criminal standard of proof in an inquest. Leggatt LJ, considering the purpose of modern coroner's courts and the relevant jurisprudence, held that the correct standard of proof to be applied is the normal civil standard of balance of probabilities.

Background

1. This case arose out of an inquest into the death of the Claimant's brother while in custody at HMP Bullingdon.
2. At the inquest the coroner accepted that the evidence was not sufficient for the jury to be sure that the deceased intended to end his life and therefore they could not consider a 'short-form' verdict of suicide. However he directed the jury that they could record a narrative conclusion which considered, *inter alia*, whether it was "more likely than not" that the

deceased intended his actions to be fatal. The instructions accompanying the questions for consideration by the jury stated that the standard of proof to be applied when considering these questions was the balance of probabilities. The jury accordingly found that, on the balance of probabilities, the deceased had intended to fatally hang himself.

The Challenge

3. The Claimant sought to review this verdict on the basis that the coroner had erred in law by instructing the jury to apply the civil, rather than the criminal, standard of proof. The Claimant's position was that the criminal standard was applicable, regardless of whether the verdict was to be recorded in short-form or as a narrative verdict.
4. The Defendant relied on the express guidance given in the June 2015 edition of the Coroner Bench Book and the Chief Coroner's Guidance No 17, but took a neutral stance on whether the directions and verdict were lawful.

Consideration by the Court

5. The Court considered the purpose of the coroner's investigation (paras. 10-11) before proceeding to consider the relevant legal principles, the nature of an inquest, and the relevant guidance, before examining the case-law that was said to establish the rule that a verdict of suicide at an inquest can only be delivered on the discharge of the criminal standard of proof.

Standards of Proof in Criminal and Civil proceedings

6. Leggatt LJ considered the reasoning behind the standards of proof applied in civil and criminal proceedings. He found that it was clearly established that the standard of proof in civil proceedings was not variable, regardless of the

seriousness of the allegation or consequences of the decision. While the seriousness of the allegation may go to the ‘inherent probabilities’ it does not alter the standard of proof to be applied (paras. 27-33).

Nature of Inquests and Relevant Guidance

7. While the coroner’s verdict historically had a role in the criminal justice process, the role of the coroner today is to “*seek out and record as many of the facts concerning the death as public interest requires.*” (para. 37 citing Lane LCJ in *R v South London Coroner, ex p Thompson* (1982) 126 SJ 625.) Accordingly there was no longer any analogy to be drawn with criminal proceedings so as to justify the application of the criminal standard of proof (paras. 34-38).
8. Leggatt LJ drew further support for the Court’s conclusion from the differences between coroner and civil proceedings, adding that the decriminalisation of suicide in 1961 supported the application of the civil standard. The Court acknowledged that the consequences of a finding of suicide are far-reaching and can be devastating to the family of the deceased, but maintained this should not alter the applicable legal standard of proof (paras. 39-43).
9. It was noted that the Coroner Bench Book and the Chief Coroner’s Guidance, simply provide guidance and do not have legal force. Leggatt LJ also noted that while the Guidance indicates that the Ministry of Justice is considering what the correct standard of proof is, no active review of the matter was being undertaken at the time (paras. 14-20).
10. The Court expressly considered the notes to ‘Form 2’ provided for in the Schedule to the Coroners (Inquests) Rules 2013, which states that the standard of proof for the short-form conclusion of suicide is the criminal

standard of proof while the civil standard applies to all other short form and narrative verdicts. Leggatt LJ reasoned that this provision would have been included within the Rules themselves had the legislature intended it to be binding. Instead it was simply a statement of what the standard of proof was understood to be. An understanding that appears to have been mistaken in the Court's view (paras. 45-48).

Consideration of the Jurisprudence

11. The Court concluded that the authorities cited in support of the principle that the criminal standard of proof applies to a coroner's verdict do not establish such a rule. Instead they simply establish a principle, in accordance with the civil standard of proof, that suicide should never be presumed; a verdict of suicide can only be justified if it is proved by evidence and not just because other explanations appear improbable. Leggatt LJ surmises that this illustrates a general point about the civil standard of proof, namely that it is not a simple exercise of choosing the most probable, or least improbable, theory but requires an analysis of the sufficiency or weight of evidence (paras. 50-57).
12. The decision then turned to the case of *R v West London Coroner, ex p Gray* [1988] QB 467. Leggatt LJ found that the dicta in *ex parte Gray* that concluded that the criminal standard of proof should apply were not part of the *ratio decidendi*. However, even if those comments were not *obiter*, they were not binding as the Divisional Court considered that this conclusion was based on a misinterpretation of the preceding case-law (para. 61, 64). In support of this, Leggatt LJ suggested that the Divisional Court in *ex parte Gray* erred in the following ways:
 - a. First that it misread Widgery LCJ's judgment in *R v City of London Coroner, ex p Barber* [1975] 1 WLR 1310. Leggatt LJ suggested that the

“stringent test” referred to is not the criminal standard of proof, but the test of whether “any reasonable coroner could have reached the conclusion that the proper answer was suicide.” (para. 62).

- b. Second, despite citing Lane LCJ’s dicta in *ex parte Thompson* emphasising the difference between a criminal trial and an inquest, no reference was made to the general rule that it is the civil standard of proof that applies where a criminal offence is to be proved in civil proceedings, despite the fact that the relevant authority (*Hornal v Neuberger Products Ltd* [1957] 1 QB 247) for this rule was cited in argument before the Court in *ex parte Gray* (para. 63).

13. Leggatt LJ also noted that the standard of proof suggested in *ex parte Gray* has been disapproved by the Court of Appeal and Supreme Court in *Braganza v BP Shipping Ltd* ([2015] UKSC 17), where it was suggested the relevant dicta was “a little outdated.” Furthermore, other common law jurisdictions have declined to follow it, instead holding that the civil standard of proof should apply (para. 65). In addressing two cases that followed *ex parte Gray*, Leggatt LJ distinguished one as simply reaffirming the principle that suicide should not be presumed and concluded that the second had understandably followed the precedent in *ex parte Gray* but, nonetheless, had been wrongly decided (paras. 66-74).

Conclusions and Impact

14. The Court’s conclusion that the applicable standard of proof required for a verdict of suicide in the Coroner’s Court is the balance of probabilities, regardless of whether that verdict is to be recorded in a short-form or narrative verdict, is significant – overturning as it does the commonly-held view that the correct standard of proof in such cases is the criminal standard. Leggatt LJ effectively concludes that the standard of proof may

have been incorrectly applied for decades, at least since the 1988 decision in *ex parte Gray*.

15. The potential implications of this decision and any future decisions on appeal are far-reaching, not just for future inquests but, given the significance of suicide verdicts, for previously decided cases. This decision has the potential to affect other aspects of proceedings in the coroner's court: Leggatt LJ's reasoning as to the application of the civil standard of proof more generally could lead to further arguments as to whether the applicable standard of proof for a verdict of unlawful killing is criminal or civil. The decision also calls into question the accuracy of the guidance notes to Form 2, contained in secondary legislation, which now arguably misstates the standard of proof for suicide.
16. Given the significance of this decision, it seems likely that this case will progress to the Court of Appeal and possibly further. It is not yet confirmed whether permission to appeal has been sought or granted.

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¹ Any views or opinions contained in this document are the author's own.