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| **Neutral Citation No: [2018] NIQB …**<br><br>*Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Ref:* **McC10781**<br><br>*Delivered: 16/11/18* |

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**
**QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

_____

**IN THE MATTER OF AN APPLICATION BY JURA STEPONAVICIENE FOR JUDICIAL REVIEW**

**-v-**

**ONE OF THE CORONERS FOR NORTHERN IRELAND**

_____

**McCloskey J**

## Introduction

[1] This challenge is brought by Jura Steponaviciene (hereinafter "the Applicant"), a national of Lithuania and the mother and next of kin of Laurynas Steponavicius deceased ("the deceased"), also a Lithuanian national, who died on 11 February 2016 at HMP Maghaberry where he was detained on remand. This death is the subject of a pending inquest. The substantive hearing was conducted on 05 November 2018.

[2] The Respondent is one of the Coroners for Northern Ireland (hereinafter "the Coroner"). The inquest into the death of the deceased, involving the Coroner and a jury, was scheduled to commence on 28 August 2018. The Applicant is challenging the preliminary ruling of the Coroner promulgated on this date at the outset of the proceedings, in the absence of the jury. One of the elements of the context in which this ruling was made is the Coroner's proposal, itself uncontroversial, that one of the questions which the jury will be invited to answer is whether the deceased died by his own act i.e. by suicide. By his preliminary ruling the Coroner decided that the jury would be directed to answer this question by the application of the civil standard of proof, namely the balance of probabilities.

[3] Contending that the appropriate standard of proof is the criminal one, namely proof beyond reasonable doubt, the Applicant's case is that in making the impugned ruling the Coroner erred in law.

**Parties And Procedure**

[4] These proceedings were initiated later in the day upon which the Coroner made the impugned ruling. There were two further material developments on this date. First, leave to apply for judicial review was granted, *inter - partes,* by McAlinden J. Second, the Coroner determined to adjourn the inquest and, in doing so, to discharge the jury which had been sworn. Given these circumstances, this case has been progressed on a fast track ever since.

[5] Two interested parties, each of which is legally represented in the inquest arena, have signified their interest to this court. They are, respectively, the Northern Ireland Prison Service (represented by Ms Fee, of counsel) and the Belfast Health and Social Care Trust (represented by Mr Corrigan, of counsel). Properly, neither party has sought the court's permission for an active role involving the provision of evidence and/or argument. Evidence from neither was required, given that the relevant factual matrix is complete and, further, both interested parties recognised that the court would receive full legal argument from the two protagonist parties.

[6] The court enquired whether the appropriate *legitimus contradictor* in this type of litigation context is an agency other than the Coroner (see Re Darley's Application [1997] NI 384). I refer also to the observations of the Court of Appeal in Re Jordan's Applications [2016] NI 107, in which the coroner appealed against a first instance decision of the High Court on judicial review quashing a jury inquest verdict. On behalf of the judicial review claimant, the Coroner's entitlement to bring such an appeal was challenged. This challenge was rejected by the Court of Appeal: see [14] – [22] generally. The following passages are of some resonance in the present context:

> *"**[16]** It is apparent from the extensive litigation concerning the conduct of inquest proceedings that difficult and complex issues arise in such proceedings with some regularity. The coroner will often welcome the direction of the supervisory court on the law and procedure that he should follow. It is not difficult to conceive of a case stated procedure whereby the coroner could pose questions for the opinion of the Court of Appeal or Divisional Court as appropriate. By that mechanism the coroner could proactively determine the issues on which he sought guidance and his involvement need not be adversarial.*
>
> ***[17]** However in the absence of such a mechanism the coroner, as in this case, generally becomes a party to an adversarial process. We agree with the Divisional Court in R v HM Coroner for Lincoln, ex p Hay [2000] Lloyd's Rep Med 264 that the coroner should, where possible, assist the court by deposing to what took place before him, setting out the reasons for his decisions, and if appropriate*

> *appearing in court to assist in an amicus role. The opposing parties should then conduct the adversarial argument. No perception of bias could arise in those circumstances.*
> *[2016] NI 107 at 114*
>
> ***[18]*** *On occasions there may be no opposing parties concerned with coronial decisions. In those circumstances, if the supervisory jurisdiction of the Divisional Court is invoked, it may be that the coroner is the only realistic opposing party. There are also circumstances where an applicant raises in judicial review proceedings an issue of general importance to coroners concerning the substantive or procedural law governing the conduct of inquests. In such cases a coroner may feel it appropriate to support a particular view and thereby enter into the adversarial argument. The danger is that depending upon the circumstances a justified perception of bias may arise."*

[7] The present case is a typical illustration of a fast track inquest judicial review which, imperceptibly, has developed its own litigation structure. Leave to apply for judicial review was granted later on the date when the impugned decision was promulgated. Thereafter, the court's primary concern was expedition, as the ensuing timetable confirms. No specific directions were given as to parties. The Coroner was the Applicant's nominated judicial review respondent. During the pre-substantive hearing phase, the court acknowledged the interest of the third and fourth parties noted in [5] above following notification from them. In this context I refer to Order 53, Rule 5(3), the "*all persons directly affected*" provision and Rule 9(1), the "*proper person to be heard*" provision. Neither was raised from any quarter. At that stage all necessary preliminary and preparatory steps were being completed by the two protagonist parties.

[8] I take into account that having regard to the issue to be determined by the court no perception of bias objection could properly be directed to the Coroner. Furthermore, guidance from the court on an important question of law will benefit all concerned and will apply to other inquests. One adds to the mix the essentially prosaic factors outlined immediately above. In these circumstances I consider that the Coroner is an appropriate judicial review respondent, consonant with the Re Jordan guidance.

[9] There is one further and final introductory issue. I am satisfied that this challenge is not blighted by the satellite litigation virus which was at one time prevalent in the history of this court. See Re McLuckie's Application [2011] NICA 34 at [26] and Re Officers C and Others Application [2012] NICA 47 at [8]. Given that both the factual and the legal matrices for bringing this challenge are complete and having regard to the guidance factor noted above, I consider this is one of those rare

instances in which the invocation of the supervisory jurisdiction of the High Court in advance of the substantive commencement of an inquest is appropriate.

**Factual Matrix**

[10] In response to the Court's direction that the parties provide a schedule of agreed material facts, the following has been received:

(i) The Applicant, who is a Lithuanian national, who resides in Lithuania, is the mother and next of kin of Laurynas Steponavicius, deceased.

(ii) The Applicant lives in Lithuania.

(iii) Laurynas Steponavicius, who was a Lithuanian national, was a remand prisoner at HMP Maghaberry from 5 January 2016.

(iv) He was 23 years old at the time of his imprisonment.

(v) On 6 February 2016 Mr Steponavicius was seen by Nurse 'A' complaining of anxiety and a fast heartbeat, he described anxiety about being in prison and difficulty in sleeping. Nurse 'A' offered him a GP appointment for 17 February 2016.

(vi) On 11 February 2016 Mr Steponavicius attended Nurse 'B' and requested help for his insomnia, he was again offered a GP appointment, this time for 24 February 2016. Nurse B was unaware of the pending GP appointment. This consultation was conducted at the entrance to the treatment room as Mr Steponavicius was reluctant to enter. Nurse B described Mr Steponavicius as being in a 'poor' mood.

(vii) On the same date Nurse M attended a meeting with Senior Officer Moore. Mr Steponavicius wanted to be transferred from his current cell.

(viii) On the same date Mr Steponavicius was found hanging from a ligature in a toilet in an exercise yard at HMP Maghaberry.

(ix) Mr Steponavicius died at Craigavon Area Hospital on 22 February 2016.

**The Impugned Decision**

[11] The Coroner's preliminary ruling was read into the record and transcribed thereafter. The evidence includes a transcript of the ruling and the surrounding proceedings. For the purpose of identifying the issues to be decided by this Court, the following exerts will suffice:

> "*[3] For many years coroners in Northern Ireland have directed juries that the standard of proof when considering the question of suicide is the criminal standard, beyond reasonable doubt. No authority for this principle exists in Northern Ireland and the legislation is silent on this issue. It seems that this practice has originated from the fact that suicide historically constituted a criminal offence …*
>
> *[c] R v West London Coroner, ex parte Gray ….*
>
> *[4] On 26 July 2018 the English Divisional Court in …… R (Maughan) v HM Senior Coroner for Oxfordshire …. ruled that Gray had been wrongly decided and that the standard of proof to be applied in inquests concerned with suicide should be the civil standard ….*
>
> *[12] I … agree entirely with the reasoning of the Court* (in Maughan). *I consider that the word 'proved' in rule 22(2) of the 1963 Rules should be interpreted as meaning 'proved on the balance of probabilities'. The jury in this inquest will be directed to find accordingly.*"

**Statutory Framework**

[12] The rather elderly statutory framework governing inquest proceedings in this jurisdiction has generated much controversy and extensive litigation. In 2012 the Northern Ireland Law Commission, in formulating its second statutory Programme for Law Reform, enthusiastically proposed coronial law as one of its subjects. To this end much time and resources, including a specially convened conference with an international flavour, were invested. By statute ministerial approval for each programme of law reform was required. Disappointingly this proposal elicited a negative ministerial response from the Northern Ireland Executive.

[13] As a result, whatever its frailties and shortcomings, the coronial/inquest statutory framework in Northern Ireland remains as it has been for some 60 years, being constituted by the Coroners Act (NI) 1959 (the "1959 Act") and the Coroners (Practice and Procedure) Rules (NI) 1963 (the "1963 Rules").

[14] The inquisition in the present case involves the Coroner and a jury by virtue of section 18(1)(b) of the 1959 Act, whereunder a jury is mandatory in every case where "*… it appears to the Coroner …. that there is reason to suspect that …. the death*

*occurred in prison ….*" Inquest jury verdicts are governed by section 31 of the 1959 Act, which provides:

> *"Where all members of the jury at an inquest are agreed they shall give, in the form prescribed by rules under section thirty-six, their verdict setting forth, so far as such particulars have been proved to them, who the deceased person was and how, when and where he came to his death.*
>
> *(2) Where all members of the jury at an inquest fail, within such reasonable time as the coroner may determine, to agree upon a verdict as aforesaid, the coroner may discharge the jury and instruct the Juries Officer for the division where the inquest is held to summon another jury in accordance with the Juries (Northern Ireland) Order 1996, and thereupon the inquest shall proceed in all respects as if the proceedings which terminated in the disagreement had not taken place (save that none of the former jurors shall be eligible to serve on it); and in this subsection "Juries Officer" and "division" have the same meanings as in the Juries (Northern Ireland) Order 1996."*

[15] The prominent role and influence of the 1963 Rules in the juridical matrix derives from the enabling power in the parent statute, section 36(1), which provides:

> *"36.- (1) Rules under this section may-*
>
> *(a) make provision with respect to the records, accounts and returns which the relevant authority may require coroners to keep and submit to it and with respect to information to be supplied by coroners;*
>
> *(b) regulate the practice and procedure at or in connection with inquests and, in particular (without prejudice to the generality of the foregoing provisions), such rules may contain provisions-*
>
> *(i) as to the procedure at inquests held with a jury;*
> *(ii) as to the procedure at inquests held without a jury;*
> *(iii) as to the issue by coroners of orders authorising exhumations or burials;*

(iv) *for empowering a coroner to alter the date fixed for the holding of any adjourned inquest within the jurisdiction of the coroner;*

(v) *as to the procedure to be followed where a coroner decides not to resume an adjourned inquest;*

(vi) *as to the notices to be given to jurymen or witnesses where the date fixed for an adjourned inquest is altered or where a coroner decides not to resume an adjourned inquest; and*

(vii) *for prescribing forms of verdicts for use at inquests"*

The breadth of this enabling provision is striking.

[16] In the present litigation context the most important provision of the 1963 Rules is Rule 22. This provides:

> *"22.- (1) After hearing the evidence the coroner, or where the inquest is held by a coroner with a jury, the jury, after hearing the summing up of the coroner shall give a verdict in writing, which verdict shall, so far as such particulars have been proved, be confined to a statement of the matters specified in Rule 15. [Amended by SR (NI) 1980/444]*
>
> *(2) When it is proved that the deceased took his own life the verdict shall be that the deceased died by his own act, and where in the course of the proceedings it appears from the evidence that at the time the deceased died by his own act the balance of his mind was disturbed, the words "whilst the balance of his-mind was disturbed" may be added as part of the verdict."*

Rule 23(1) provides:

> "*Any verdict given in pursuance of Rule 22 shall be recorded in the form set out in the Third Schedule.*"

[17] The Third Schedule contains a series of forms, designed for sundry purposes. Form 22 is the "Verdict on Inquest" pro-forma. This, when completed, is signed by both the Coroner and the members of the jury. It must contain *inter alia*, the "*cause of death*" and "*findings*". The following is the text of Form 22:

> *"Form 22.*

*VERDICT ON INQUEST*
*On an inquest for our Sovereign lady the Queen, at ..... ..... in the [administrative] Division of ..... ..... ..... on ..... the ..... day of ..... 20.... , [and by adjournment on the ..... day of ..... 20.....] before me, ..... ..... Coroner for the district of ..... [and under mentioned jurors] touching the death of ..... ..... ..... to inquire how, when and where the said ..... ..... ..... came to his/her death, the following matters were found:*
*[same as in Form 21]*
*Date ..... .....*
*Signed _____ Coroner for ..... .....*
*Jurors*

*1..... .....*
*2. ..... .....*
*3. ..... .....*
*4. ..... .....*
*5. ..... .....*
*6. ..... .....*
*7. ..... .....*
*8. ..... .....*
*9. ..... .....*
*10. ..... .....*
*11. ..... .....*
*12. ..... .....”*

[18] Given that the spotlight falls particularly on two decisions emanating from the jurisdiction of England and Wales where a different – though broadly comparable - statutory regime prevails, it is appropriate to insert at this juncture certain legislative provisions of note from that jurisdiction. The first is section 10 of the Coroners and Justice Act 2009:

***“Outcome of investigation***

***10 Determinations and findings to be made***

*(1) After hearing the evidence at an inquest into a death, the senior coroner (if there is no jury) or the jury (if there is one) must –*

*(a) make a determination as to the questions mentioned in section 5(1)(a) and (b) (read with section 5(2) where applicable), and*

*(b) if particulars are required by the 1953 Act to be registered concerning the death, make a finding as to those particulars.*

*(2) A determination under subsection (1)(a) may not be framed in such a way as to appear to determine any question of –*

*(a) criminal liability on the part of a named person, or*

*(b) civil liability.*

*(3) In subsection (2) "criminal liability" includes liability in respect of a service offence."*

[19] Second, by Rule 34 of the Coroners (Inquests) Rules 2013:

> "***34.*** *A coroner or in the case of an inquest heard with a jury, the jury, must make a determination and any findings required under section 10 using Form 2."*

Form 2 is as follows:

> *"Record of an inquest*
>
> *The following is the record of the inquest (including the statutory determination and, where required, findings)-*
>
> *1. Name of the deceased (if known):*
>
> *2. Medical cause of death:*
>
> *3. How, when and where, and for the investigations where section 5(2) of the Coroners and Justice Act 2009 applies, in what circumstances the deceased can by his or her death: (see note (ii)):*
>
> *4. Conclusion of the coroner/jury as to the death (see notes (i) and (ii)):*
>
> *5. Further particulars required by the Births and Deaths Registration Act 1953 to be registered concerning the death:*
>
> ---
>
> *1. 2. 3. 4. 5. 6.*

| *Date and place of death* | *Name and surname of deceased and address* | *Sex* | *Maiden surname of woman who has married* | *Date and place of birth* | *Occupation usual* |
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*Signature of coroner (and jurors):*

*NOTES*

*(i) One of the following short-form conclusions may be adopted:-*

*I. accident or misadventure*

*II. alcohol/drug related*

*III. industrial disease*

*IV. lawful/unlawful killing*

*V. natural causes*

*VI. open*

*VII. road traffic collision*

*VIII. stillbirth*

*IX. suicide*

*(ii) As an alternative, or in addition to one of the short-form conclusions listed under NOTE (i) the coroner or where applicable the jury, may make a brief narrative conclusion.*

*(iii) The standard of proof required for the short form conclusions of 'unlawful killing' and 'suicide' is the criminal standard of proof. For all other short-form conclusions and a narrative statement the standard of proof is the civil standard of proof."*

**The Doctrine Of Precedent**

[20] The starting point in any review of the decided cases is the absence of any definition of the word "*proved*" in rule 22(2) of the 1963 Rules. In particular, there is no mention of standard of proof. The core function which this challenge requires of the court is to determine the appropriate standard of proof in this legislative void.

[21] I propose to examine the leading English cases in chronological order not least because, in the common law tradition, the two critical decisions, in the Gray and Maughan cases (*infra*), were, through a classic process of analysis and interpretation, structured upon a review of the case law that preceded both in circumstances where neither of the two deciding courts was compelled by binding precedent to make its decision in a particular way.

[22] I begin with the contours of the doctrine of precedent. Writing in Halsbury's Laws of England Centenary Essays [2007], Lord Neuberger of Abbotsbury provided the following scholarly exposition, at page 70:

> "*The essential feature of common law is that it is judge made. The common law is established and developed through the medium of judicial decisions, which apply or adapt principles laid down in earlier cases to contemporary problems. Inherent in this is the doctrine of precedent or, to use the Latin, stare decisis, which is central to the common law. This is because, unless judicial decisions on issues of law are (at least in general) binding on inferior courts (and, to an extent, on court of co-ordinate jurisdiction), the notion of a corpus of law, built up in a reasonably coherent and consistent way by the judiciary, becomes a dead letter.*
>
> *Precedent involves rules or principles of law being made by decisions of the courts. In general, a court is bound by the essential legal reasoning, or ratio decidendi, of decisions made by courts superior to it, and it is either bound or normally will follow the ratio of decisions of courts of co-ordinate jurisdiction. This ensures a degree of predictability for those who give legal advice, as well as helping to enable orderly development and change in the law. It should; but it does not always do so. The arguments for and against a strong stare decisis rule reflect the familiar competing issues of certainty and fairness.*"

[23] In later passages of his enlightening essay, Lord Neuberger comments on the "*relatively strict approach to the doctrine of precedent*". While he links the proper operation of the doctrine to "*competent law reporting*", he might not, at the time of writing, have experienced one of the unfortunate repercussions of the internet

explosion, exemplified to some extent in the present case, namely the routine inundation of electronically available judicial decisions belonging to multiple levels in the hierarchy of the legal system without proper regard to the doctrine of precedent. It is timely to observe that in cases where this occurs – a regrettably high proportion – this is manifestly antithetical to the overriding objective. Courts have on occasions reflected their disapproval of this in the formulation of cost orders and, prioritisation of listings and time limits for oral hearings.

[24] The immediately preceding observations perhaps explain why the senior courts in this jurisdiction are so rarely referred to Re Rice's Application [1998] NI 265 and the exegesis of the doctrine of precedent contained in the judgment of Carswell LCJ at 270 – 271. As the judgment explains, the doctrine is rooted in the values of certainty and finality – to which one might deferentially add predictability – which possess a "*high value*" in our legal system. Having traced the jurisprudential route whereby the Northern Ireland Court of Appeal considers itself bound to follow its own decisions save in the limited classes of case enumerated in Young v Bristol Aeroplanes [1944] KB 718, the court declined the invitation to depart from one of its earlier decisions. The terms in which it did so are noteworthy (at page 274):

> "*The feature which stands out most clearly from the judgment of the court in* Re Weir and Higgins's Application *is that the issues were thoroughly considered by it in coming to its conclusion. The applicant now challenges the correctness of that conclusion, but it is in our view impossible to say that it was reached* per incuriam *in the ordinary sense of the term. For us to reverse it now the applicant would have to demonstrate to us that the court went seriously wrong in its reasoning and that we could only sensibly reach the opposite conclusion if the matter were* res integra. *We do not consider that he has established that. The court was faced in* Re Weir and Higgins's Application *with a choice between different answers to the question before it. We do not agree that its choice was bound to be restricted to the alternatives propounded by Mr Smith on behalf of the applicant. It was in our opinion a tenable conclusion to hold that the Master was acting as an officer of the court but was not a* persona designata. *Once that is established, the case is a classic instance of* stare decisis, *and we are bound to follow the decision as a binding authority."*

[25] The decision in Re Rice is not, apart from its exposition of the doctrine of precedent, directly in point in the present case. However, I draw attention to it in the hope that greater alertness will have beneficial consequences in both the formulation of arguments and the composition of authorities bundles in future judicial review cases.

**The Leading Decided Cases**

[26] As [11] above makes clear, the impetus for the impugned decision of the Coroner was a recent decision of the English Divisional Court which I shall examine presently in some detail. As this decision, in tandem with additional cases brought to the attention of this court, makes clear, there is a proliferation of judicial decisions belonging to this discrete field. In reviewing these one is prompted to recall Lord Carswell's memorable observation that judgments, like judges, "*come in all shapes and sizes*" in his lecture given at the opening of the Northern Ireland Legal Year in September 2012 ("Reserve Thy Judgment"). The decided cases in this discrete sphere are an eclectic mix. Their main common denominator is that they are, for the most part, first instance decisions of various constitutions of the High Court of England and Wales, sitting as a divisional court. Notably, there is no binding Court of Appeal or Supreme Court decision in this group. I consider that there are three main decisions.

[27] I begin with R v City of London Coroner, ex parte Barber [1975] 1 WLR 1310. As this case and others demonstrate, inquest judicial reviews in England and Wales are decided by a divisional court composition of the Queen's Bench Division of the High Court. This was a challenge to the decision of a Coroner's jury that the deceased had died by suicide. Lord Widgery CJ, delivering the judgment of the court, adverted to the Coroner's summing up to the jury in which he engaged in some debate between competing verdicts of accidental death and death by suicide. The summing up evidently lent very heavily indeed in favour of the latter verdict. Lord Widgery CJ stated at 1313:

> '*If that is a fair statement of the coroner's approach, and I sincerely hope it is because I have no desire to be unfair to him, it seems to me to fail to recognise what is perhaps one of the most important rules that coroners should bear in mind in cases of this class, namely that suicide must never be presumed. If a person dies a violent death, the possibility of suicide may be there for all to see, but it must not be presumed merely because it seems on the face of it to be a likely explanation. Suicide must be proved by evidence, and if it is not proved by evidence, it is the duty of the coroner not to find suicide, but to find an open verdict. I approach this case, applying a stringent test, and asking myself whether on the evidence which was given in this case any reasonable coroner could have reached the conclusion that the proper answer was suicide.*'

The court ordered that the inquisition be quashed, to be followed by a new inquisition before a new coroner.

[28] Though not one of the three main decisions mentioned without particularisation in [26] above, for reasons of chronological convenience it is

convenient to interpose here the decision in R v HM Coroner for Dyfed, ex parte Evans [CO/1458/83]. Watkins LJ, delivering the judgment of the court which quashed the inquest jury's verdict and ordered a fresh inquisition, stated at page 5:

> "*It is, Mr Gareth Williams submits, not permissible for a Coroner's jury to bring in a finding of suicide on the balance of probabilities. I agree with him. It is not permissible for a Coroner's jury to bring in a verdict on the basis of it being likely that a person took his own life. It is only permissible for a Coroner's jury to return a verdict of suicide if they find, upon evidence proved to their satisfaction, that the deceased intended to, and in fact did, take his own life.*"

Although not articulated with maximum clarity, I consider the thrust of this passage to be that a verdict of suicide requires proof beyond reasonable doubt. This proposition, notably, identifies no underpinning in either statute or decided cases. Watkins LJ, however, as will become apparent, had more to say on this subject in later cases.

[29] This brings me to the second of the main decisions in the trilogy noted above. R v West London Coroner, ex parte Gray and Others [1987] 2 All ER 129 concerned a challenge by judicial review to a jury inquest verdict arising out of a death in police custody involving allegations of excessive physical force by police officers and their delay in summoning an ambulance. A verdict of unlawful killing was recorded. The outcome of the judicial review was the quashing of the verdict and the ordering of a new inquest.

[30] The Divisional Court held, *inter alia*, that the verdict could not stand on account of the presiding Coroner's failure to direct the jury that a verdict involving a finding that a criminal offence had been committed could be returned only if they were thus satisfied beyond reasonable doubt. Watkins LJ delivered the judgment of the two Judge panel. The issue to which the first part of the judgment is directed is that of the Coroner's failure to provide the jury with a definition of manslaughter and an associated failure to emphasise the importance of differentiating between the conduct of the several police officers concerned. In this context the Court also considered the propriety of the Coroner providing the jury with his notes of his summing up in the absence of the parties' legal representatives. Watkins LJ expressed the following conclusion at 136 f/g:

> "*Other criticisms have also been voiced as to this all-important direction but I have, I think, said enough to indicate that the jury were gravely misdirected and cannot have been otherwise than confused by what they were told about this branch of the law and, of course, by what they had read from the notes which were handed in to them.*

> *This by itself must, it seems to me, inevitably cause the jury's verdict to be quashed.*"

His Lordship then formulated various aspects of the direction which should have been given by the Coroner. This was followed by, at 136i:

> "*Further, the jury should have been directed that they could return a verdict of unlawful killing only if they could attribute those ingredients to a single police officer ….*"

[31] Pausing at this juncture, it is convenient to note that one of the issues debated in the third case in the trilogy, Maughan, which occupies centre stage in these proceedings, was whether the correct analysis of Gray is that within the above passages one can identify a concluded decision of the court. This issue was considered important because an affirmative answer would relegate all that follows in the judgment on the subject of the standard of proof applicable to suicide verdicts to the abyss of *obiter dictum*.

[32] The second clearly identifiable discrete division in Gray begins with the next succeeding sentence, at 137a:

> "*I now turn to the standard of proof.*"

This passage continues:

> "*We heard much argument about this. There is a lack of direct authority on the point. We were referred to cases on suicide going back into the last century, all of which emphasise the presumption against suicide and the requirement of rebutting that presumption. Suicide was then a crime. It no longer is. But it is still a drastic action which often leaves in its wake serious social, economic and other consequences.*"

This is followed by, at 137b/e, a quotation from the decision in Barber reproduced in [22] above.

Watkins LJ continues:

> "*It will be noted that Lord Widgery CJ alluded to the stringent test, but without reference to what may be called the conventional standards of proof. I cannot believe, however, that he was regarding proof of suicide as other than beyond a reasonable doubt. I so hold that that was and remains the standard. It is unthinkable, in my*

> *estimation, that anything less will do. So it is in respect of a criminal offence. I regard as equally unthinkable, if not more so, that a jury should find the commission, although not identifying the offender, of a criminal offence without being satisfied beyond a reasonable doubt."*

Next, at 137f/g:

> "*As for the other verdicts open to a jury, the balance of probabilities test is surely appropriate save in respect, of course, of the open verdict. This standard should be left to the jury without any of the refined qualifications placed on it by some judges who have spoken to some such effect as 'the more serious the allegation the higher the degree of probability required'. These refinements would only serve to confuse juries and, in the context of a jury's role, are, I say with great respect to those who have given expression to them, I think, meaningless. Such matter as that led the coroner astray in this case, by providing the jury with no plain standard of proof to be guided by. He cannot be blamed for that, but it is another factor which must cause this verdict to be quashed.*"

The order of the court quashed the verdict and directed a new inquest.

[33] The third of the three main members of the *corpus* of decided cases and the impetus for the impugned decision of the Coroner is the very recent decision of a different constitution of the English Divisional Court in R (Maughan) v Her Majesty's Senior Coroner for Oxfordshire [2018] EWHC 1955 (Admin), delivered on 26 July 2018. I shall consider *infra* the consistent application of the proof beyond reasonable doubt standard to inquest suicide verdicts in a series of English cases during the intervening period of some 20 years. In Maughan, it is uncontroversial that a divisional court comprising a panel of Leggatt LJ and Nicol J, being a court of equivalent jurisdiction, was constrained by no rule of precedent requiring it to follow Gray. It declined to do so. Detailed consideration of the judgment follows.

[34] I have noted in [18] and [19] above the discrete statutory framework within which the issue arose in Maughan. The question was formulated squarely by Leggatt LJ, giving the judgment of the court, at the outset, at [1]:

> "*1. The question raised by this claim is 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 (i.e. so that the coroner or jury is sure*

> *that the deceased did an act which was intended to and did cause his or her own death).”*

Being a court of coordinate jurisdiction the panel in Maughan was not required to follow Evans. Rather, it had the flexibility of departing from it for good reason. Declining to follow Evans, the court concluded at [61]:

> *“ In summary, we are unable to accept the claimant's contention that a conclusion of suicide at an inquest requires proof to the criminal standard. We are satisfied that the authorities relied on to support that contention either on analysis do not support it or do not correctly state the law. We consider the true position to be that the standard of proof required for a conclusion of suicide, whether recorded in short-form or as a narrative statement, is the balance of probabilities, bearing in mind that such a conclusion should only be reached if there is sufficient evidence to justify it.”*

The reasoning of the court emerges in the paragraphs to which I now turn.

[35] At [26] Leggatt LJ, delivering the judgment of the Court, contrasted the civil and criminal standards of proof. He observed that the standard to which a putative fact (or state of affairs) must be proved depends not on its nature, rather on the nature of the proceedings. He continued:

> *“The underlying reason why a particularly high standard of proof is required in criminal proceedings is that a criminal conviction has serious consequences for the accused, which may include loss of liberty. For that reason the standard of proof is weighted in favour of the accused to reflect the policy that it is better to let the crime of a guilty person go unpunished than to condemn an innocent person. In civil proceedings, which are generally concerned with determining the rights of parties as between each other, there is no equivalent policy reason for weighting the fact-finding exercise in favour of or against one or other party. Instead, in order to cater for those cases in which the evidence is inadequate to enable any positive finding to be made, it is sufficient and expedient simply to have a rule which requires the party who advances a case to prove that the facts relied on to support it are more likely than not to be true.”*

Next, in a passage in which the seminal decision of the House of Lords in H (Minors) (Sexual abuse – standard of proof) [1996] AC 563 and Re B (Children: Care proceedings: standard of proof) [2009] 1 AC 11 features, Leggatt LJ continued:

> *"The common law, however, has rejected an approach of applying a variable standard of proof. Instead, in the interests of simplicity, consistency and uniformity, a single standard of proof is applied in all civil cases, just as a single (though higher) standard of proof is applied in all criminal cases. The only exceptions are proceedings, such as proceedings for committal for contempt of court, which, although classified as civil, are functionally equivalent to criminal proceedings having regard to the possibility that a person may be sent to prison."*

Having considered Re H and Re B Leggatt LJ formulated the following conclusion:

> *"It is therefore now clearly established, first, that there is no flexible or variable standard of proof in civil proceedings, only that of the balance of probabilities; and, second, that the significance of the seriousness of the allegation is contingent on the facts of the particular case."*

[36] The Divisional Court then turned to consider the nature of Coroner's proceedings, beginning with the historical role of Coroners in the criminal justice system which included the possibility of finding that the deceased had died through murder, manslaughter or infantacide, thereby committing the person or persons concerned to trial, ultimately abolished by section 56 of the Criminal Law Act 1977. It is now provided in section 10(2) of the 2009 Act that an inquest determination –

> *"… may not be framed in such a way as to appear to determine any question of (a criminal liability) on the part of a named person… "*

At [30] the familiar statement of Lord Lane LCJ in R v South London Coroner, ex parte Thompson [1982] 126 SJ 625 was recalled:

> *"It should not be forgotten that an inquest is a fact-finding exercise and not a method of apportioning guilt. The procedure and rules of evidence which are suitable for one, are unsuitable for the other. In an inquest it should never be forgotten that there are no parties, there is no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish facts. It is an inquisitorial process, a process of investigation quite unlike a criminal trial where the prosecutor accuses and*

> *tha Accused defends, the judge holding the balance or the ring, whichever metaphor one chooses to use …*
>
> *The function of an inquest is to seek out and record as many of the facts concerning the death as the public interest requires.*"

There follows a discrete conclusion, at [31]:

> "*Given the nature and function of a modern inquest, it seems to us that there is today no relationship or analogy between coroner's proceedings and criminal proceedings which can in principle justify applying in coroner's proceedings the criminal standard of proof.*"

[37] Next, at [32], the judgment highlights the main features distinguishing coroners' proceedings and civil proceedings:

> "*There are also significant differences between coroner's proceedings and civil proceedings. In particular, there are no parties to coroner's proceedings, only interested persons. The process is inquisitorial rather than adversarial. An inquest is, as mentioned, a fact-finding inquiry and a conclusion reached at an inquest has no direct effect on legal rights. Section 10(2) of the 2009 Act goes further in precluding any determination of civil liability than it does in relation to criminal liability. Thus, whereas a conclusion at an inquest must not be framed "in such a way as to appear to determine any question of criminal liability* on the part of a named person*" (emphasis added), the prohibition on appearing to determine any question of civil liability is unqualified.*"

The reasoning continues, at [33]:

> "*These differences, in our view, make it, if anything, less rather than more appropriate to apply in coroner's proceedings a standard of proof higher than the civil standard. In circumstances where the function of an inquest is to determine the relevant facts concerning the death as accurately and completely as possible without determining even any question of civil liability, 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. The position is* a fortiori *where the conclusion under consideration is one of suicide as, although it was once a crime, suicide has not been a crime for over 50 years since that rule of law was abrogated by section 1 of the Suicide Act 1961."*

[38] The court then acknowledges, at [34] – [36], the seriousness of an inquest verdict of suicide and expresses its sympathy with those family members who may be distressed by such a finding. The riposte to this concern is provided at [36]:

> "*The judicial duty of a coroner is to establish how the death occurred and to do so without fear or favour. The fact that the deceased's family will be distressed by a particular conclusion cannot be a reason to alter the standard of proof required in order to reach that conclusion …*
>
> *It is not for the law in this area to adopt one conception of human dignity in preference to another. Still less would it be right to allow the attitudes or wishes of family members, however strongly they may be felt, to shape the fact-finding approach to be taken by a coroner or jury.*"

[39] There follows in the judgment a survey of various decided cases bearing in one way or another on the issue. First, the court examined a cohort of Court of Appeal decisions stating emphatically the legal principle that suicide is never to be presumed but must, rather, be affirmatively proved. From these cases the Court derives the following proposition, at [47]:

> *"But a finding that the deceased did a deliberate act which caused his death with the intention that the act would have that consequence will not be justified if the possibility cannot be excluded that the death was caused by some unexplained accident (as in* Ex parte Hopper*) or if the deceased may only have intended to cause himself harm not resulting in death."*

The judgment adds at [50]:

> *"A further notion that no doubt underlies the maxim that suicide must never be presumed is that suicide is an inherently improbable cause of death. People seldom choose to end their own lives, at least if they are in ordinary mental health. In several of the cases mentioned,*

> *therefore, where there was no evidence that suggested any history of depression or risk of suicide, correspondingly cogent evidence was needed before the coroner or jury could properly conclude that this was the cause of death."*

It is convenient at this juncture to interpose an observation. One of the striking features of this body of case law is that none of the cases decided that a finding, or conclusion, of suicide at an inquest is available only if the elements of suicide are proved to the criminal standard.

[40] The court then considered the decision in Gray, examining in particular the relevant passages in the judgment of Watkins LJ (at 477: see [26] – [29] *supra*). The panel's analysis of Gray is expressed in [52] in the following terms:

> "*Although expressed in terms of a holding, the remarks made about proof of suicide in this passage were, in our view, in truth only* dicta *since no possibility that the deceased might have committed suicide arose for determination in* ex parte Gray. *Mr Bunting submitted that the remarks were a necessary step in the court's reasoning to the conclusion that proof to the criminal standard was required for a verdict of unlawful killing and were therefore part of the* ratio decidendi. *We are not persuaded by this submission, as the essential reason for holding that proof to the criminal standard was required to return a verdict of unlawful killing appears to have been that such a verdict involved a finding that a criminal offence had been committed."*

Pausing, as foreshadowed by my remarks above, I acknowledge the scope for the view that in light of the division which I have identified the "standard of proof" section in the Gray decision is *obiter* for reasons differing from those proferred in the analysis of the Divisional Court in Maughan. This discrete argument was evidently not ventilated in Maughan. The issue is, however, largely academic in view of the next step in the Court's analysis of Gray, which is introduced in the following sentence:

> "*But even if the remarks about proof of suicide were part of the ratio of the case, we are satisfied that they are wrong.*"

[42] Continuing at [52] the court explains its reasons for this conclusion:

> "*In the first place, the remarks seem to us to have been based on a misreading of Lord Widgery CJ's judgment in* ex parte Barber. *As already indicated, that case was not concerned with the standard of proof at all but with*

> *the different point that suicide must not be presumed and must be proved by evidence. When Lord Widgery CJ referred to applying "a stringent test", we think it reasonably clear that he was not referring to the test for proving suicide, as Watkins LJ appears to have thought, but to the standard of review of the coroner's decision. That is to say, the "stringent test" was the test which Lord Widgery CJ then proceeded to apply of asking "whether on the evidence which was given in this case any reasonable coroner could have reached the conclusion that the proper answer was suicide."*

I interpose at this point the following. The arguments of both parties were presented to this court on the basis that the Barber "*stringent test*" was an undeveloped reference to the Wednesbury principle. Thus the Lord Chief Justice was in substance stating that the legal touchstone to be applied to the court's review of the inquest suicide verdict was that of Wednesbury irrationality. I concur with this assessment.

[43] Continuing, the court in Maughan formulates its second reason for concluding that the decision in Gray was erroneous in law:

> *"Secondly and more fundamentally, no reference was made in the judgments in* Ex parte Gray *to the rule of law that, where a question is raised in civil proceedings as to whether a criminal offence has been committed, the standard of proof applicable is the civil, and not the criminal, standard."*

In passing, I observe that the Court of Appeal decision from which this principle derives, Hornal v Neuberger Products [1957] 1 QB 247, is not addressed in Gray. There the Court of Appeal, foreshadowing Re B and Re H, held that the gravity of a given issue belongs to the circumstances to be considered when deciding whether the case has been proved on the balance of probabilities.

[44] The Divisional Court's inclination in Maughan to depart from Gray was reinforced by the disapproval of the Court of Appeal in Braganza v BP Shipping [2013] EWCA Civ 230 (2013) 2 Lloyds Rep 351, at [15] – [16] of the Gray approach to the standard of proof of suicide. Notably, the Supreme Court agreed with the Court of Appeal on this issue (see [2015] UKSC 17 at [33] – [35]. I find it unnecessary to elaborate on this discrete topic.

[45] Finally, the Divisional Court considered two first instance decisions on which the claimant relied. In the first of these, R (Jenkins) v HM Coroner for Bridge End and Glamorgan Valleys [2012] EWHC 3175 (Admin), another formation of the Divisional Court quashed the suicide verdict of a Coroner's jury. There was no debate about the Coroner's direction to the jury that a verdict of suicide would be appropriate only if the jury were sure that the deceased had executed a deliberate act

with the intention of taking his own life. The court in Maughan distinguished this decision, on two bases. First, the jury's verdict was quashed entirely without reference to this discrete issue: the infecting factor was the Coroner's failure to direct the jury about how they should approach circumstantial evidence and the other matters mentioned in [29] of the judgment of Pitchford LJ: see [55]. Whether one views the next following passage, at [56], as a second distinguishing reason or an extension of the first does not matter greatly:

> "*This case, in our view, is properly understood as a further illustration of the principle that suicide is not to be presumed and of the distinction between drawing an inference supported by the evidence, which is permissible, and filling in gaps in the evidence, which is not.* ***It is not an authority which decides that suicide must be proved to the criminal standard of proof.***"

[My emphasis.]

> In argument before this court, there was no challenge to the correctness of the Divisional Court's treatment of the Jenkins decision, correctly in my estimation.

[46] The Divisional Court then considered the first instance decision in R (Lagos) v HM Coroner for the City of London [2013] EWHC 423 (Admin). This is an instance of a first instance court (a single judge Administrative Court) following Gray. Its evaluation of this decision was (correctly in my view) that by virtue of the doctrine of precedent, the scope for the first instance Judge (Lang J) declining to follow Gray was heavily constrained. Other features of the Lagos decision justifying its narrow confinement, essentially mirroring what is addressed above in this judgment, were identified. The court's omnibus conclusion was that Lagos was wrongly decided.

[47] At this juncture I consider it appropriate to reflect a little more fully on the peculiar legal rules and principles pertaining to inquest proceedings. The Court was helpfully reminded by Mr Scoffield QC (representing the Coroner, with Mr Chambers of Counsel) in this context of one of its earlier decisions, Re Siberry's Application (2) [2008] NIQB 147 at [10] – [22] especially. Given the present context I highlight just one passage from the judgment, at [18]:

> "*There is one particular matter which the decision in Re Jordan and McCaughey does not address directly. One of the arguments canvassed on behalf of the Respondents was that a Coroner's jury in Northern Ireland is strictly confined to making purely factual findings and is precluded from expressing evaluative judgments or opinions. However, by implication, the House has affirmed the correctness of this contention, in two ways. Firstly, the judgment confirms the interpretation of the*

*Northern Ireland legislation advocated on behalf of the Respondents: see paragraph [38]. Secondly, in affirming the decision in Jamieson, the House did not dissent from or modify the proposition in that case that the verdict of a Coroner's jury should incorporate "a brief, neutral, factual statement" and, further:*

*"… such verdict must be factual, expressing no judgment or opinion, and it is not the jury's function to prepare detailed factual statements". ([1995] QB 1 at p. 24, conclusion (6), per Sir Thomas Bingham MR)."]*

[48] The basic legal rules and principles seem to me uncontroversial. The coroner (assisted or not by a jury), is an inquisitor. Every inquest, as its name suggests, is primarily an inquisitorial process. The Coroner exercises a broad discretion with regard to the inquiry which is to be conducted. There are no opposing parties as such and no *lis inter-partes*. Those persons or agencies who participate in inquest proceedings do so on the invitation and on the exercise of the discretion of the Coroner. The strict rules of evidence do not apply. The main trappings of conventional civil litigation are absent. Furthermore, the outcome does not represent victory or defeat for any particular person or agency.

[49] The above assessment stems largely from the consideration that inquest proceedings, unlike civil litigation, do not feature opposing parties who do battle with no, or little, common ground on the central issues, in confrontational mode and with each out to secure victory over the other. The main adversarial features of civil litigation, in particular pleadings, elaborate mechanisms regulating disclosure of documents, interrogatories, obligatory disclosure of certain evidence, sundry interlocutory mechanisms, cross examination of parties and witnesses, judgments, remedies, enforcement, appeals and awards of costs, are absent, in whole or in part.

[50] In inquest proceedings, in sharp contrast, the public interest dominates from beginning to end. It does not do so <u>at the expense of</u> other interests, in particular those of bereaved families and possible perpetrators of the death concerned, including their employers, as this is to apply the wrong tool of analysis. Rather, the fundamentally inquisitorial process of the inquest accommodates, and balances, all of these interests in a fair and proportionate manner. This is one of the most important criteria by reference to which contentious issues relating to matters of procedure, the reception of evidence, directions to the jury, findings / verdicts and kindred issues fall to be resolved.

[51] As regards criminal proceedings, with the exceptions of disclosure of documents and cross–examination of witnesses, any suggested analogy with inquest proceedings is in my view at most faint.

[52] I have considered the whole of the statutory matrix identified above. Having done so I refer in particular to rules 7, 8, 15, 16, 19, 20, 22 23, 37, 38, 41 of the 1963

Rules and their Third Schedule. This exercise throws into sharp relief the unique character of inquest proceedings, confirming that any purported analogy with either civil or criminal proceedings is, depending on the discrete issue under scrutiny, either entirely inapt or at most slender.

[53] The recent decision of the English Court of Appeal in R (Hambleton and Others) v Coroner for the Birmingham Inquests (1974) [2018] EWCA Civ 2081 contains a useful review of the basic dogma relating to inquest proceedings. The Lord Chief Justice stated at [46]:

> *"A coroner's investigation, whether it culminates in an inquest or not, is an inquisitorial process for which the coroner is entirely responsible. There are no parties to an inquest. The rules allow various people to participate as interested persons. There are no pleadings in cases whose facts might engage civil liability; and no indictment in cases where criminal responsibility is suspected or clear. The inquest is not an adversarial proceeding. A coroner is a judicial officer working within a statutory framework. His responsibility is to discharge the statutory duty imposed upon him, with a jury in appropriate cases, by conducting an investigation and inquest in accordance with the 2009 Act. The purpose of the inquest is set out in section 5. The purpose of the inquest is to answer the four statutory questions: (i) who the deceased was; and (ii) how, (iii) when and (iv) where he or she came by his or her death. In inquests governed by article 2, the purpose is to include ascertaining the circumstances in which the death occurred where that is necessary to satisfy article 2 ECHR. In many cases an extended conclusion will not be necessary, as was acknowledged in* Middleton. *But, as we have noted, in these inquests, if state failings to act on prior knowledge are established by the evidence, a short conclusion to that effect would be called for."*

The immediately succeeding passages, at [47] – [48], indirectly draw attention to three of the further distinctive features of inquest proceedings. First, legal challenges are via judicial review, invoking the supervisory jurisdiction of the High Court, reflecting the public interest imprimatur on inquest proceedings. Second, inquest proceedings are governed by statute. Third, challenges to a coroner's ruling on scope will be determined through the prism of a relatively broad coronial discretion.

**Consideration And Conclusions**

[54] The Applicant's central contention is that Maughan is wrongly decided. This is based on three arguments. The first of these is that the Divisional Court erred in equating inquest proceedings with civil proceedings. In this context the relevant

passages in Maughan begin at [26] and continue to [37]. I have examined the Maughan decision *in extenso* in [30] – [41] above. I consider that within these passages the first exercise which the Divisional Court conducted was to examine the rationale and contours of the standard of proof in civil cases. The second exercise undertaken was an examination of the nature of inquest proceedings. This yielded the conclusion, at [31], that any suggested relationship or analogy between inquest proceedings and criminal proceedings is misconceived. Third, the court highlighted "*significant differences*" between inquest proceedings and civil proceedings, describing the former as "*inquisitorial rather than adversarial*": see [32].

[55] The kernel of the argument advanced was, in substance, that [32] of the decision in Maughan is not faithful to the following passage in R (Middleton) v West Somerset Coroner [2004] 2 AC 182, at [26]:

> "*The 1984 Rules prescribe a hybrid procedure, not purely inquisitorial or purely adversarial. On the one hand, notice of the inquest must be given to the next-of-kin of the deceased and a widely defined group of other interested parties (rule 19), who are entitled to examine witnesses either in person or by an authorised advocate (rule 20); witnesses are privileged against self-incrimination; notice must be given to, and attendance facilitated of, persons whose conduct is likely to be called into question: rules 24 and 25. On the other hand, the coroner calls and first examines all witnesses, the representative of a witness questioning him last (rule 21); no person is allowed to address the coroner or the jury as to the facts (rule 40); and there is no particularised charge or complaint as in criminal or civil proceedings. In addition to examining the witnesses the coroner (rule 41) sums up the evidence to the jury and directs them as to the law, drawing their attention to rules 36(2) and 42. Rule 43 provides:*
>
> "*A coroner who believes that action should be taken to prevent the recurrence of fatalities similar to that in respect of which the inquest is being held may announce at the inquest that he is reporting the matter in writing to the person or authority who may have power to take such action and he may report the matter accordingly.*"

Attention should be drawn to two important rules. The first of these, rule 36, provides:

> "*(1) The proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely – (a) who the deceased was; (b) how, when and where the deceased came by his death; (c) the*[2004] 2 AC

> *182 Page 200particulars for the time being required by the Registration Acts to be registered concerning the death.*
>
> *"(2) Neither the coroner nor the jury shall express any opinion on any other matters."*

The second, rule 42, provides:

> *"No verdict shall be framed in such a way as to appear to determine any question of – (a) criminal liability on the part of a named person, or (b) civil liability.".*

[56] It is trite that [26] of Middleton must be read as a whole. Contrary to the submission advanced, I am not persuaded that what follows "*On the one hand ….*" represents what Lord Bingham was intending to highlight as the inquisitorial features of inquest proceedings. I am equally unpersuaded that what follows the sentence beginning "*On the other hand ….*" denotes their adversarial character. Within the first division of this passage, Lord Bingham noted *inter alia*, the entitlement of interested parties to examine witnesses, conferred by Rule 20 of the English rules and mirrored in their Northern Ireland equivalent, Rule 7 (1). This, plainly in my view, cannot be characterised an adversarial trapping of the process. Within the second division of this passage, Lord Bingham instanced *inter alia* the rule pursuant to which the Coroner calls and first examines all witnesses. This is the very antithesis of the conventional adversarial process. *Ditto* each of the next two features highlighted, namely no interested party has a right to address the Coroner or the jury on the facts and, in contrast with criminal and civil proceedings, there is no particularised charge or complaint.

[57] The correct analysis of [26] of Middleton in my view, is that the entirety of the paragraph contains the outworkings in a broad, and not necessarily exhaustive, way of the prelude, namely Lord Bingham's characterisation of inquest proceedings as "*a hybrid procedure*". Thus I reject the central plank in the Applicant's first argument.

[58] I would add that the Divisional Court's description in Maughan of inquest proceedings as "*inquisitorial rather than adversarial*" is not necessarily incompatible with [26] of Maughan as I have explained this above. In my judgment [26] of Middleton describes a procedure in which the inquisitorial element is dominant. In argument the only aspect of [26] identified as reflecting the adversarial was that relating to the questioning of witnesses on behalf of interested persons after the Coroner has first called and examined them. This, to my knowledge and in my experience, is not a reflection of what occurs in any form of civil proceedings. Furthermore, the mere fact of entitlement to ask questions of witnesses is by no means exclusive to civil proceedings, being replicated in, for example, the inquisitorial forum of public inquiries.

[59] Furthermore, the Divisional Court in Maughan did not purport to say that inquest proceedings have no adversarial trappings. I consider that the correct

analysis of the judgment yields the assessment that the primary, dominant conclusion which the court made was that there is no sustainable analogy between inquest proceedings and criminal proceedings. This assessment and conclusion were not challenged before this court. I consider them correct in law in any event. I can identify no material error of law in [32] of the judgment. While the court could in theory have expressed itself in fuller terms this, if a criticism at all, is one of style rather than substance.

[60] I would add that in [52] of Maughan the Divisional Court sets itself the limited task of elaborating upon the uncontroversial statement that there exist "*significant differences between coroner's proceedings and civil proceedings*". The immediately succeeding words "*In particular*" make clear two important matters. First, what follows was not designed to be exhaustive. Second, the court did not set itself the task of composing a comprehensive essay on this discrete subject. Finally, it is to be borne in mind that the criminal standard of proof and the civil standard of proof were the only two competing standards in play. It was not suggested either in Maughan or in the present case that there is any other competing standard.

[61] For all of the above reasons I conclude that the first ground of challenge to the decision in Maughan is not sustained.

[62] The second ground upon which the Divisional Court in Maughan is said to have erred in law was by failing to consider certain decided cases. These cases, together with my brief analysis/commentary, are the following:

(i) R v HM Coroner for North Northumberland, ex parte Armstrong [1987] 151 JP 773 was a challenge by judicial review giving rise to an order quashing a verdict of death by suicide and ordering a new inquest before a different coroner. It was, clearly, an *ex tempore* judgment. The basis for quashing the verdict appears to have been a diagnosis of Wednesbury irrationality: see especially page 9 of the transcript. In both this passage and an earlier one Woolf LJ refers to the criminal standard of proof. He does so without reference to Gray or, indeed, any supporting authority.

(ii) In R v HM Coroner for Northamptonshire, ex parte Walker [1989] 153 JP 289, another *ex tempore* judgment, the framework of the litigation was as in Armstrong (above). One of the specific arguments, recorded in the judgment, was that "*… the correct standard of proof is the criminal standard ….*" (transcript, page 6). This argument was founded on Armstrong and, therefore, invites the analysis above. Furthermore the court did not engage with the argument, but simply stated in conclusionary terms that the Armstrong decision was applicable (transcript, page 7).

(iii) R v HM Coroner for Ceredigion, ex parte Wigley (transcript: [1993] Lexis Citation 3721). In this case the Coroner, having given the self-direction "*the standard of proof for suicide is beyond all reasonable doubt*", made a verdict of death by suicide (page 4). The challenge before the Divisional Court was essentially a Wednesbury irrationality one. Rejecting the challenge, the Divisional Court made reference to the cases of Barber (*supra*) and Re Davis [1968] 1 QB 72 (considered in Maughan).

(iv) In Re Tabarn (Unreported, [1998] Lexis Citation 2129) the Divisional Court dismissed an application for an order directing a fresh inquest following a verdict of death by natural causes. Simon Brown LJ (at page 5) observed that "*all inquest verdicts, save those of unlawful killing and suicide, are to be reached on the balance of probabilities*). This statement was made without citation of authority and its reference to suicide was, in my estimation, *obiter*.

(v) In R (Lewis) v Mid and North Division of Shropshire Coroner [2009] EWHC 661 (Admin), which concerned inquest verdicts in three unrelated cases of deaths in custody, the jury verdicts/findings in the inquisition were, respectively, that the deceased had hanged himself, intending to take his own life (in the first case); death by misadventure (in the second); and that the deceased had hanged himself (in the third). In each case the judicial review challenge was founded upon asserted breaches of the procedural requirements of Article 2 ECHR. At [36] of his judgment, the single Judge of the Administrative Court observed that for verdicts of unlawful killing or suicide "*… the necessary causal connection must be proved to the criminal standard*". The death by misadventure verdict was quashed and a new inquest ordered on the ground of deficient directions to the jury, while the claims in the first and third cases were dismissed.

(vi) In R (Sreedharan) v HM Coroner for the County of Greater Manchester [2013] EWCA Civ 181, one of the grounds of challenge to a jury verdict of unlawful killing was that the Coroner had failed to direct them on the option of a verdict of death by suicide. The Divisional Court dismissed the claim and the Court of Appeal, refusing permission to appeal on most grounds and dismissing the appeal on the remaining ground, noted the agreement of the parties that a verdict of unlawful killing requires proof to the criminal standard, per Hallett LJ at [25], without consideration of authority.

(vii) In Jenkins v HM Coroner by Bridgend and Glamorgan Valleys [2012] EWHC 3175 (Admin) a Divisional Court quashed a majority jury verdict of suicide on the ground of specified deficiencies in the Coroner's directions to the jury which, notably, did not encompass his

directions on the standard of proof – see [26] – and, in doing so, noted at [17] that for a suicide verdict the standard is proof beyond reasonable doubt and, at [18], cited Barber evidently in support of this proposition.

(viii) In R v Essex Coroner, ex parte Hopper (Unreported [1988] Lexus Citation 2385) a Divisional Court, which considered the decision in Barber, quashed a verdict of death by suicide on the combined grounds of "*insufficient evidence*" and a failure to consider Barber which, in the Court's estimation, led to a failure to consider "*whether other possible explanations were totally ruled out*" (page 3). The issue of standard of proof does not feature in the judgment.

(ix) Finally, while this aspect of the Applicant's challenge included reference to Re Davis [1968] QB 72, I make the four fold observation that (a) this decision is authority for the proposition that suicide is not to be presumed but must be affirmatively proved (per Sellers LJ at 82d), (b) it does not speak to the issue of standard of proof, (c) it was considered in Maughan at [44] and (d) there is no detectible error in how it was thus considered.

[63] The brief analysis of the first nine cases noted in the immediately preceding paragraph demonstrates, in my view, that the court's failure to consider them in Maughan in no way undermines its reasoning or conclusions. Crucially, within this collection of cases there is no binding authority which the court in Maughan would have been obliged to follow. Thus its decision cannot be condemned as *per incuriam*. Furthermore, the Court in my view would have learnt little or nothing of substance by being alerted to a cluster of first instance decisions containing cursory and undeveloped references to the standard of proof governing inquest verdicts of death by suicide. The Court's reaction to these cases would more probably have been confined to the kind of lament expressed in [23] above. I conclude that this ground of challenge has no merit.

[64] Finally, it was articulated in oral argument that the court in Maughan failed to engage with the criminal standard of proof applicable in cases where a verdict of unlawful killing arises. While this was mentioned at the outset of counsel's submissions it was not developed in any way and does not feature anywhere in either the original skeleton argument or its revised successor. This submission might, possibly, feature subliminally in the abundant references to long settled "practice". But "practice" was not the issue in Maughan any more than it is the issue before this court. Correctly analysed it is a legal misnomer and a doctrinally fallacious approach. The central issue before the Court in Maughan was, and before this court is, one of law.

[65] The Applicant, finally, sought to introduce issues of policy in both argument and evidence. These are simply not to the point, for the same reason. Stated

succinctly, the issue is not one of policy. Furthermore, and in any event, as Mr Scoffield pointed out, there is no single, uniform policy pertaining to this subject. The clear division between law, on the one hand and policy, on the other, was recognised unerringly by the court in Maughan at [34] – [36] and [58] – [59].

[66] The brisk riposte to this faint ground of challenge is that the standard of proof governing an inquest verdict of unlawful killing did not fall to be considered in Maughan, was at best an issue of tangential interest and, hence, did not qualify as an indispensable element in the debate and reasoning of the Court.

**Omnibus Conclusion**

[67] I am unable to diagnose any flaw in the reasoning or conclusion of the Divisional Court in the Maughan case. Though not binding on this court, the decision is so carefully and persuasively reasoned that, in common with the Coroner, I propose to follow it. None of the grounds of challenge has been substantiated. The application for judicial review is dismissed accordingly.

**Postscript [ 27/11/18]**

[68] The parties are agreed that the final order should be:

(i) A dismiss of the judicial review application.
(ii) Costs in favour of the Respondent against the Applicant, not to be enforced without further order of the court.
(iii) Taxation of the Applicant's costs as an assisted person.