Quashing a Coroner's Unlawful Comments

written by Bridget Dolan QC | 13 August 2015

***Dr S v HM Coroner North Yorkshire East* [2015] EWHC Queen's Bench Admin Division, CO/2277/2015,**

Coroners sitting without a jury are now encouraged by the Chief Coroner's Guidance (no. 17) to deliver a 'summing up' in which they state orally, in open court, their key findings of fact before recording their formal inquest conclusions. But what is to be done when the Coroner oversteps the mark and makes unlawful factual findings or comments during this summing up?

The case of Dr S is one recent example of a successful Judicial Review challenge to a Coroner's unlawful comments about a witness' probity. However another recent case *MRH Solicitor v Manchester County Court* EWHC [2015] 1795 raises the question of whether there might be an alternative and simpler mechanism for quashing and striking from the record such findings where the inquest conclusion itself is not challenged.

Background

AB, the deceased, had sustained a fracture to her humerus in hospital. At the inquest into her death, prior to delivering his conclusion, the Coroner summed up his findings of fact. He made a finding that that the deceased's fracture had, more likely than not, occurred during the taking of a blood sample by Dr S and commented that Dr S had been "at the very least economical with the truth".

When Dr S challenged these findings by way of Judicial Review the Coroner conceded that the challenged findings regarding Dr S's conduct and probity were unlawful and that he was not entitled to express the views that he did. He agreed that his views should be quashed and struck from the record.

Despite the agreement between the main parties to the judicial review, two of the interested parties, the family of the deceased, wanted to contest the claim, as they did not agree with the settlement arrived at between Dr S and the Coroner. The judge however noted the Coroner's concession and stated that he could not see any justification for a contrary view; there was hence no material to warrant an oral hearing. Permission was therefore given to bring Judicial Review proceedings and the agreed order was made on the papers.

Comment

Wrongful conclusions or directions to juries by coroners are often challenged in the administrative court, but it is far rarer for any pre-conclusion comments to be the focus of challenge. However, criticism of a doctor's honesty and integrity is of a particularly serious nature and brings immediate consequences. Any criticism of a doctor in findings of a public inquiry (which includes a Coroner's inquest) triggers that doctor's professional obligation to self-refer to the General Medical Council who will then further investigate the matter and may impose professional sanctions.

Unsurprisingly then it is when suggestions of dishonesty or professional impropriety are improperly made that such challenges arise (see also *R (Farah) v HM Coroner for Southampton* [2009] Inquest Law Reports 220).

This being an agreed order the judgment does not reveal the detail of the arguments in favour of Dr

S, however suggestions that a doctor, or indeed anyone, has lied under oath, should only be made on the most solid of bases and the apparent ready concession of the Coroner in this case perhaps underlines the care that should be taken by Coroners before publically suggesting anyone's dishonesty.

Despite the misgivings of the family to this settlement, it is unsurprising that once the public official who's decision had been challenged has conceded the point argued against him the court will see no need for any further proceedings.

It appears to have been accepted by parties that the correct means to alter or amend a Coroner's summing up was by application for Judicial Review. However the recent case of *MRH Solicitor v Manchester County Court* EWHC [2015] 1795 might well offer another approach avoiding the need for court proceedings. In that case the Administrative Court overturned findings of fraud against solicitors that had been made in an extempore County Court judgment where the solicitors had not been notified of the allegations against them nor given any opportunity to respond. In allowing the challenge the court questioned whether Judicial Review was actually required and stated obiter:

> *"It is common practice for a Judge who gives an oral ex tempore judgment to refine it when asked to approve a transcript. Ordinarily, this is limited to tidying up the language,* ***but in principle we see no reason why it may not include more significant changes…*** *If, as in this case, the order of the Court consequent on the judgment has been sealed, the changes cannot usually alter that order. Otherwise, though,* ***it is a matter for the Judge's discretion as to what changes are appropriate…*** *This is not to say that the Judge can behave arbitrarily. Like any discretion, it must be exercised judicially."*

It may be that the same approach would permit a Coroner to, where equitable, amend a transcript of his or her ex tempore summing up (although not the inquest conclusions) after the end of the inquest and so avoid a need to apply for Judicial Review.