

White, John

To: pauline gregory
Subject: Sheila Gregory dec - submissions
Attachments: gregory submissions 130409.doc



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In the matter of the inquest into the death of

SHEILA GREGORY

SUBMISSIONS AS TO VERDICT

- 1) These submissions are prepared on the instructions of Pauline Gregory, Grand Daughter Daughter of Sheila Gregory ("the Deceased").
- 2) It is respectfully submitted that the Jury should be invited to return a Narrative Verdict which addresses the questions set out below.

Deciding Whether to Leave a Verdict

- 3) In determining whether or not to leave a verdict to the jury, it is submitted that the starting point are the principles set out in R v. Galbraith [1981] 2 All ER 1060 as adopted for the purpose of an inquest in in R v HM Coroner (ex parte Douglas-Williams) [1999] 1 WLR 344.

Narrative Verdict

- 4) It is for the Coroner to consider the form of verdict which will elicit the jury's factual conclusion on the central issues in the inquest.
- 5) This applies in relation to cases where Article 2 is not engaged as well as cases where Article 2 is engaged:
 - a) R (Longfield Care Homes Ltd) v HM Coroner for Blackburn [2004] EWHC 2467, paragraph 29
 - b) R (on the application of Sutovic) v Northern District of Greater London [2006] All ER(D) 248 (May)
- 6) In eliciting the jury's factual conclusion on the central issues in the inquest, the prohibition on attributing criminal or civil liability in The Coroners Rules 1988 ("CR") rule 42 and CR 1988 rule 36(2) must not be infringed.
- 7) Eliciting the jury's factual conclusion on the appropriateness or otherwise of acts or omissions which may have contributed to a death does not offend CR 1988 rule 42 or rule 36(2). Recent examples include:
 - a) R (Middleton) v H.M. Coroner for the Western District of Somerset [2004] UKHL 10, [2004] 2 AC 182, the verdict was overturned because the jury had not been able to

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express their view as to whether appropriate precautions had been taken to prevent the deceased's death. The verdict suggested by the House of Lords was "*The deceased took his own life, in part because the risk of his doing so was not recognised and appropriate precautions were not taken to prevent him from doing so*" was deemed to embody a judgmental conclusion of a factual nature, which did not infringe CR 1988 rule 36(2) and rule 42 ;

- b) R (on the application of Helen Cash)(Claimant) v H.M. Coroner for Northamptonshire (Defendant) & Chief Constable of Northamptonshire (Interested Party)[2007] EWHC 1354 (Admin). In that case, the Coroner accepted a submission that the narrative verdict should be "entirely descriptive, neutral and non-judgmental", and directed the jury accordingly. The inquest was quashed, in part because the coroner's direction to the jury had the effect of preventing them from embodying in it "a judgmental conclusion" of a factual nature on the disputed factual issues at the heart of the case.
- c) R. (on the application of Smith) v Oxfordshire Assistant Deputy Coroner (2008) EWHC 694 (Admin) (QBD (Admin)). The Narrative verdict was in these terms:- "On the 13th August 2003 Jason George Smith was on active service when found suffering with heatstroke at the Al Amarah stadium where he was stationed. He was taken to a medical centre at Abu Naji Camp where he died. Jason George Smith's death was caused by a serious failure to recognise and take appropriate steps to address the difficulty that he had in adjusting to the climate." Paragraph 45 of the Judgment reads "*Ms Moore submits that a verdict which speaks of a failure is in danger of transgressing Rule 42(b) and the addition of the adjective serious crosses the line. It is, she says, not neutral but pejorative. ... The prohibition is against framing a verdict in such a way as to appear to determine any question of civil liability. The word determine is important; a finding that there was a failure to act in a particular way does not appear to determine a question of civil liability. It no doubt will assist a potential claimant, but it is the evidence which is elicited which will in the end be material, not the verdict of the coroner or the jury. No doubt, assertions that there has been a breach of a duty of care or that there was negligence should be avoided, but I do not think that findings of fact, however robustly stated, can be forbidden.*"

Narrative verdict: Suggested Questions

- 8) It is respectfully submitted that the Jury should be invited to return a Narrative Verdict which addresses the following questions:
- a) Was the administration and dosage of diamorphine to the Deceased between 20/11/99 and 21/11/99 appropriate or inappropriate?

- b) If the answer to question a is “inappropriate”, do you consider that the inappropriate act/ acts caused or contributed more than minimally, negligibly or trivially to her death on 21/11/99?

Evidence

- 9) Professor Black stated that 20 mgs of Diamorphine could be at the upper end of normal, but could require justification [Black day 6]

Outer Temple Chambers
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April 14th, 2009

T.R.G.LEEPER