High court decision means more inquests will return suicide conclusions

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An unexpected High Court decision of ***Maughan*** was handed down last week, changing the standard of proof for a conclusion of 'suicide' or 'unlawful killing' in an inquest from "beyond reasonable doubt" to "on the balance of probabilities".

CHANGE IN CORONIAL LAW

A change in coronial law on the requisite burden of proof for a conclusion of 'suicide' to be reached has been anticipated for many years, but this judgment was still a surprise for practitioners. Modernisation was expected to involve legislative change. However, the High Court has decided that the legislation required to change coronial use of the word "suicide" has been hidden in plain sight for decades, in the **Suicide Act 1961**.

The *Maughan* decision highlights that the Chief Coroner's Guidance, Bench Book and **statutory Record of Inquest** are not in themselves law. Contrary to these the Court held that "a conclusion of suicide, whether expressed as a narrative statement or in short form, is required to be proved to the civil, and not the criminal, standard of proof."

This decision means that many more inquests will now return suicide conclusions. This may be difficult for family members who do not wish a suicide finding in relation to a loved one, but may be of comfort to those who wish their struggles or final wishes to be acknowledged. For service providers, it may sharpen criticism and lead to an apparent increase in reported suicide.

NARRATIVE CONCLUSIONS

Where the coroner is not satisfied that returning a short-form conclusion is appropriate to the facts of a given case, they or the jury may return a narrative conclusion. This is intended to be a "brief" record of the findings of fact in relation to the cause of death. The components of a narrative conclusion must be found to be true "on the balance of probabilities".

The substance of the *Maughan* case was whether the coroner was right to allow the jury to make findings within their narrative conclusion which

amounting to a finding that the death was probably suicide, without being able to return a short-form conclusion of suicide as they could not be sure. The judgment handed down last week went further than apparently required by the case in question, determining not just that the standard of proof in a narrative conclusion is the "balance of probabilities" regardless of the question at issue, but confirming that the same is true of the two conclusions previously held apart as the most serious and emotive: suicide and unlawful killing.

SHORT-FORM CONCLUSIONS FOR SELF-INFLICTED DEATHS: SUICIDE, ACCIDENT, MISADVENTURE, OPEN

The office of coroner is one of the oldest elements of the English legal system (established by 1194 and predating magistrates by at least a year) and change in coronial law is not swift. While there has been massive change in the role of the coroner over the centuries, the treatment of suicide was – until 27 July 2018 – anachronistic. Historic ties between the coroner's jurisdiction and criminal law, as well as the importance of the church, established a presumption that suicide was a conclusion to be avoided. Suicide was a criminal offence until 1961, its designation as a crime and a sin give rise to the verb "to commit suicide" and it remains a difficult and emotive subject for many.

Coroners and juries in considering self-inflicted deaths, must apply a two-stage test to ascertain whether the death can be described as suicide. The test is:-

a) whether the action which caused the death was done deliberately, and
b) whether the intended consequence of the action was their death.

If the individual did not intend to take the action, their death may have resulted from 'accident', and if the action was deliberate but the consequence was not intended to be fatal the accurate conclusion may be 'misadventure'. Where intention is unclear the more appropriate short-form conclusion would be 'open'.

There has long been a lacuna in this decision-making process. This arises where the coroner or jury finds the death was probably intentional, but they cannot be sure of the intention. In such cases, a finding of accident or misadventure could not be returned as the death was not probably accidental, but the evidence did not go far enough to return a conclusion of suicide either. In such cases, the conclusion must either be 'open' or a narrative. Narratives can be very difficult for juries to write and agree, and an open conclusion can appear unsatisfactory.

The new decision in *Maughan* tells us that the coroner or jury can return a conclusion of suicide if they find that the answer to each of these questions is "probably", even if they are not sure. Previous case law has given us the oft-referenced line, that the coroner's investigation must be "full and fearless". Perhaps this decision will encourage coroners to return similarly fearless conclusions where the evidence points strongly but not definitively to suicide.

UNLAWFUL KILLING

Until the decision in *Maughan*, 'unlawful killing' was deemed too serious to be recorded unless the coroner or jury was sure of their findings, due to the potentially attendant criminal action. The same was true of a conclusion of 'suicide', despite suicide not having been a criminal offence for nearly 60 years. In this light, it may seem that the change in standard of proof for suicide was long overdue. The *Maughan* judgment specifies that a finding of 'unlawful killing' can be returned on the balance of probabilities regardless of the criminal implications as long as there is no breach of section 10 (2) Coroners and Justice Act 2009. This brings the coroner's court in line with other civil courts, for example a finding of sexual abuse by a parent may be found on the balance of probabilities in the family court.

Maughan states that the criminal standard of proof is not applicable at all in an inquest as the proceedings are civil and not criminal in nature. At paragraph 38-40: " 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… That is so even if the facts found disclose the commission of a criminal offence."

WHAT DOES IT MEAN FOR ME?

The Court's determination in this case suggests that for many years the universal understanding that the criminal standard of proof applied to 'unlawful killing' and 'suicide' conclusions has been wrong. This might be especially painful for the families, jurors and witnesses engaged in the Hillsborough inquest and many other difficult inquests encircling questions of unlawful killing and suicide. The jury's deliberations alone may have been shorter, less complex and less burdensome had this decision been made sooner.

The *Maughan* decision represents a sea-change in the judicial approach to suicide, acknowledging the modern function of the coroner and making this more uniform with both the broader legal system and modern attitudes to suicide. There is also a potential improvement in the accuracy of recording deaths as suicide where that is very probably the case, which may mean a statistical increase in reported incidence of suicide and prioritisation of resources towards services aimed at suicide reduction and prevention.

CONCLUSION

In terms of legal precedent, the judges reviewed over a century's case law to find that the application of the criminal standard of proof for suicide has been mentioned or presumed in numerous cases but has seldom been specifically endorsed or rejected. The decisions which the High Court found addressed the question of the standard of proof were distinguished and contested.

However, the decision emphasises that suicide (as with other conclusions) should not be presumed or returned as a conclusion simply in the absence of other more probable explanations. A conclusion must be arrived at on

the basis of sufficient evidence and the ***Galbraith*-plus test** will continue to apply.

Determining the innermost thoughts of someone after their death will remain an enormously difficult task. Judging them to the point of certainty probably seemed an overwhelming task to juries at times. It may often have been discussed in jury rooms that the only clear certainty is that there cannot be certainty. However, the new challenge for Coroners and juries considering self-inflicted deaths after *Maughan* will still be considerable: judging the most profound and personal of thoughts, often in the absence of any recent recorded expression of intention (or lack thereof) and against the intangible standard of probability.

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