Browne Jacobson

Changes to the standard of proof for findings of unlawful killing in inquests

The Supreme Court has considered whether the applicable standard of proof in inquest proceedings should be to the criminal standard (beyond reasonable doubt) or the civil standard (on the balance of probabilities).

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The Supreme Court in the case of R (on the application of Maughan) v Her Majesty's Senior Coroner for Oxfordshire has considered whether the applicable standard of proof in inquest proceedings should be to the criminal standard (beyond reasonable doubt) or the civil standard (on the balance of probabilities). The focus in this case was the determination of suicide, but the judgment also applies to the determination of an unlawful killing.

The Supreme Court determined by a majority of 3-2 that the standard of proof for all short form conclusions of suicide and unlawful killing should be the civil standard. Lady Arden supported by two other Lords held that the previous case law was not binding on the Supreme Court and did not identify a good enough reason against applying the civil standard. She was of the view that this decision would effectively lead to consistency between determinations made at an inquest.

This sees a departure from previous case law and the Coroner's Inquests Rules 2013, which explained that the standard of proof in short form conclusions of suicide and unlawful killing was the criminal standard and that for all other conclusions the civil standard applied. Of course, this meant that a narrative conclusion could be reached on the balance of probabilities which could in effect be construed as suicide or unlawful killing, albeit phrased differently.

This judgment however means that a coroner or jury need not be sure on the evidence that a person took their own life having intended to do so or that a person has been killed without lawful excuse and in breach of the law before reaching a conclusion of suicide or unlawful killing and without having to resort to penning a narrative conclusion.

The conclusion of unlawful killing does not extend to the criminal offences of causing death by dangerous driving or causing death by careless driving and it does not extend to Health and Safety Act offences where death results. No reference should be made in an inquest to any of these offences or the elements of the offences.

However, an unlawful killing conclusion could be found if the coroner or a jury are satisfied that it is more likely than not that death was as a result of corporate manslaughter. Namely, that the way in which the organisation's activities are managed or organised causes a person's death and amounts to a gross breach of a relevant duty of care owed to the deceased.

This therefore could potentially have a bigger impact on the regulatory and criminal landscape as more police investigations could be re-opened or triggered by unlawful killing conclusions in the Coroner's Courts. Depending upon the evidence found as a result of police enquiries, this could then see a new or re-opened HSE enquiry.

The impact of this decision highlights that clients who become interested parties and who are faced with this conclusion in an inquest will need to properly consider, at the outset of instructing their solicitors, issues relating to disclosure, witnesses, the application of Article 2, the scope of the inquiry, the terms of reference and whether a jury is required. This will require a substantial amount of work to be undertaken before the case goes to the coroner which supports their stance on those issues.

Clients will also need to consider whether they want to intensify their legal arguments on whether a jury can safely reach those conclusions and be prepared to be involved and assist in what can be a lengthy and difficult process.

Contact

Krishna Pancholi

Associate

kpancholi@brownejacobson.com

+44 (0)115 976 6250

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