Browne Jacobson

Supreme Court confirms the standard of proof for suicide AND unlawful killing conclusions is the balance of probabilities. What does this mean for NHS organisations?

The Supreme Court has today delivered its judgment on the case of R (on the application of Maughan) v HM Senior Coroner for Oxfordshire. This decision has serious implications for NHS organisations, which are considered in more detail below.

13 November 2020

The Supreme Court has today delivered its judgment on the case of R (on the application of Maughan) v HM Senior Coroner for Oxfordshire. By a majority, it has confirmed that the standard of proof required for a conclusion of suicide is the civil standard i.e. “on the balance of probabilities”. The Supreme Court has gone on to extend this to unlawful killing, so that from now on coroners will only have to be satisfied to the civil standard to return an unlawful killing conclusion. This decision has serious implications for NHS organisations, which are considered in more detail below.

Background

The original decision in the Maughan case was surprising. After decades of certainty that a suicide conclusion could only be found if it was “beyond reasonable doubt” that the deceased had acted to take their own life with intent, the court held that the standard of proof for a finding of suicide was actually the lower, civil standard – the balance of probabilities.

In Maughan, the appellant’s brother had died by hanging in his prison cell. Two elements must be established before suicide can be found: it must be shown that the deceased took his own life and that he intended to kill himself. The principle issue at the Maughan inquest was whether the deceased had intended to kill himself. The Coroner instructed the jury to apply the civil standard of proof i.e. on the balance of probabilities. Applying this lower standard of proof, the Jury concluded that the deceased had intended to fatally hang himself.

The appellant then issued a judicial review application, stating that the standard of proof applied at the inquest should have been the criminal standard of beyond all reasonable doubt. The application was dismissed in the High Court and again in the Court of Appeal, who held that “in cases of suicide, the standard of proof to be applied throughout at inquests, and including both short-form conclusions and narrative conclusions, is the civil standard of proof.”

The Supreme Court decision: suicide

The case was appealed to the Supreme Court, which has today confirmed that for inquests considering suicide the civil standard of proof applies.

Suicide conclusions will now become more common and it is hoped that this decision will enhance the recording of suicides and assist research for the future. The Supreme Court commented that applying the criminal standard “may lead to suicides being under-recorded and to lessons not being learnt “. The Supreme Court has concluded that lowering the standard of proof is a more satisfactory way of getting accurate figures and explained clearly why this is so important:

"Society needs to understand the causes and to try and prevent suicides occurring. Statistics are the means whereby this can be done. If a criminal burden of proof is required, suicide is likely to be under-recorded. This is especially worrying in the case of state-related deaths. If there is an open verdict because the criminal standard of proof cannot be achieved, the circumstances of the case have to be analysed before it can be included in any statistics to show the true number of suicides. There is a considerable public interest in accurate suicide statistics as they may reveal a need for social and medical care in areas not previously regarded as significant. Each suicide determination can help others by revealing how suicide risks may be managed in future".

The Supreme Court decision: unlawful killing

The Court of Appeal had rejected the view that the civil standard also applied to unlawful killing and followed previous precedent which established that the standard of proof for an unlawful killing conclusion was the criminal standard i.e, "beyond reasonable doubt". Crucially, the Supreme Court disagreed and concluded that the lower civil standard of proof should also be applied to unlawful killing in the Coroner's Court.

This decision has very serious implications for all NHS organisations. Historically, unlawful killing conclusions have occurred very rarely because the Coroner had to be sure beyond all reasonable doubt that the death was due to individual or corporate manslaughter. Going forward, the Coroner will only need to be satisfied of this to the civil standard and therefore it is likely that unlawful killing conclusions will occur more frequently, the consequences of which will be serious for everyone involved.

To read the full judgment of the Supreme Court click here.

This important decision clarifying that the civil standard of proof applies to suicide may have wider implications for the allocation of funding for mental health provision. It is argued that requiring coroners and juries to be sure beyond reasonable doubt has led to underreporting of suicide. It is hoped that this change in the law will give a more accurate picture, which in turn will correspond to greater resource allocation to mental health provision.

In addition, the Supreme Court has overturned established precedent and made it clear that the standard of proof required for an unlawful killing conclusion is reduced to the civil standard i.e. the coroner must only be satisfied on the balance of probabilities that the death was due to manslaughter. It is hoped that unlawful killing will remain a rare conclusion but there can be little doubt that it will be more common than it was when the criminal standard applied. It will be crucial for NHS organisations to secure specialist legal representation at inquests where unlawful killing is one of the conclusions that is being considered by the Coroner and if you find yourself in this position please contact our experienced team of inquest advocates who can provide support and specialist legal advice.

Co-authored by Nicola Evans and Alexandra Myers.

Contact

Nicola Evans

Partner

Nicola.Evans@brownejacobson.com

+44 (0)330 045 2962

Related expertise

Sectors

Health and life sciences