

IN THE MANCHESTER (NORTH) CORONER'S COURT

IN THE MATTER OF THE INQUEST INTO THE DEATH OF JALAL UDDIN

Ruling: Resumption of Inquest

Introduction:

1. Jalal Uddin died on 18th February 2016. He had been murdered. An inquest into his death was opened shortly thereafter before being suspended as a result of the laying of criminal charges and the commencement of criminal proceedings.
2. The police investigation revealed that Jalal Uddin had been murdered by Mohammed Kadir who had acted together with Mohammed Hussain Syeedy. Following the killing, Kadir, with the assistance of a third man, Mohammed Syadul Hussein, fled the jurisdiction and travelled to Turkey. He has not returned to this jurisdiction.
3. Syeedy was tried for and convicted of the murder on 16th September 2016. On 3rd April 2017, following a trial, Hussein was convicted of assisting an offender.
4. I must now consider whether to resume the investigation into the death pursuant to paragraph 8 of Schedule 1 to the Coroners and Justice Act 2009.
5. I have received submissions on this issue from Jason Beer QC, counsel to the inquest, and Cathryn McGahey QC, counsel for the Secretary of State for the Home Department ('SSHD'). I also heard from Mr Al-Arif, the deceased's son who was able to make brief submissions to me by telephone during the course of the hearing. No submissions have been made by any of the other interested persons.

The Facts:

6. The submissions that I have read and heard were in large part based upon the written openings prepared by Paul Greaney QC for the trials of Syeedy and Hussein, and the "Gist to be Provided to Properly Interested Persons for the Purposes of the Resumption Hearing" dated 23rd September 2020. It was a necessary ingredient of the prosecution cases in both criminal trials that Kadir murdered Jalal Uddin. It follows from the convictions of Syeedy and Hussein, therefore, that the juries in both cases were sure of that fact.
7. It was in August 2015 that the Police were made aware of a number of extremist posts on Facebook by somebody with the profile name 'Mohammed Kadz'. The Police commenced enquiries with a view to (i) identifying Mohammed Kadz, and (ii)

identifying the threat he posed to the community. 'Mohammed Kadz' was later identified as Mohammed Kadir.

8. Also in August 2015, an associate or associates of Kadir, Syeedy and Hussein stole from the Jalalia Mosque in Rochdale, items belonging to Jalal Uddin that were related to his practice of Ruqya. Ruqya is a form of healing in which he used amulets called Taweez. It is a controversial topic in Islam, and it was the basis for Kadir's and Syeedy's antipathy towards Jalal Uddin. By early September 2015 Kadir had become aware of the theft, and on 5th September there was an exchange on Facebook. That exchange included views expressed by Kadir and others demonstrating that antipathy.
9. It was not until after the murder that the police became aware of evidence about the break in at the Jalalia Mosque and the Facebook posts of 5th September. The Facebook posts were (i) captured, but (ii) not reviewed by any person before the murder.
10. The Gist reveals that:
 - a) From 30 October 2015 Kadir was assessed and continued to be assessed as a person who was of high risk and significant concern, and latterly as someone who posed a risk of acting on his Islamist extremist aspirations,
 - b) On 7 December 2015 a request was made for the appointment of a Senior Investigating Officer in respect of Kadir. There is some uncertainty as to who had primary responsibility thereafter for the investigations involving Kadir, and
 - c) In January 2016 intelligence suggested that Kadir had access to openly available extremist literature, including bomb-making manuals and other material providing instructions on how to undertake violent jihad.

The Law:

11. The starting point for me is paragraph 8 of Schedule 1 to the C&JA 2009 which provides that,
 - (1) *An investigation that is suspended under paragraph 2 may not be resumed unless, but must be resumed if, the senior coroner thinks that there is sufficient reason for resuming it.*

It follows from this that it is a matter for me first to decide whether, on the basis of the available material, there is sufficient reason for resuming the investigation. If I conclude that there is sufficient reason, then I must resume the investigation. If I conclude to the contrary, then I may not. I note that,

“The decision to be made...is of a highly discretionary character and in no way circumscribed by a need to find exceptional circumstances, only ‘sufficient cause’. The Coroner states that ‘only rarely’ are inquests resumed after criminal proceedings but, of course, the section itself envisages, rather than discourages such a course.”

(see R (Dallaglio) v Inner West London Coroner [1994] All ER 139 at page 155)

12. In determining whether there is sufficient reason to resume in this case I must consider first, whether Article 2 EHCR is engaged and second, if not, whether upon the application of common law there is anything of substance that remains to be investigated.

13. Article 2 provides that, “Everyone’s right to life shall be protected by the law...” From this there have been held to arise a number of duties upon the State. Of relevance to this case are:

a) The duty to conduct a proper and open investigation into deaths for which the state might be responsible; and

b) The positive duty described in Osman v United Kingdom (1998) 29 EHRR 245:

“where the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.”

The scope of this duty is not limited to risks to the life of identified individuals. It encompasses such risks to groups that may include society at large: Sarjantson v Chief Constable of Humberside [2014] QB 411.

14. In so far as the investigative duty is concerned, I am assisted by the test formulated by Hickinbottom J in R (AP) v HM Coroner for the County of Worcestershire [2011] EWHC 1453 (Admin),

“Where a death has been caused by an arguable breach of the substantive obligations of Article 2, Article 2 imposes upon the state a duty to investigate that death. There was some debate before me as to the arguability threshold, but I do not find that issue difficult: ‘arguable’ is anything more than ‘fanciful’. It is a low threshold.”

Another way of putting it may be that there is a credible suggestion that the state is in breach of its obligations.

15. With regard to the position should I find that Article 2 is not engaged, my attention is drawn to the purpose of an investigation into a death as set out in section 5 (1) C&JA 2009. The ‘who’, ‘when’, and ‘where’ questions have plainly been answered. I must

nevertheless consider whether there are any matters relating to 'how' that should be investigated. I have been referred to a number of authorities that establish that my discretion is broad. It is for me to set the bounds of the inquiry:

"A decision on scope represents a coroner's view about what is necessary, desirable and proportionate by way of investigation to enable the statutory functions to be discharged. These are not hard-edged questions. The decision on scope, just as a decision on which witnesses to call, and the breadth of evidence adduced, is for the coroner." (*R (Hambleton) v Coroner for the Birmingham Inquests* [2019] 1 WLR 3417 at [48])

Discussion and conclusions:

16. Ms McGahey QC submitted that Article 2 is not engaged because (in summary):

- a) The evidence does not demonstrate a present and continuing risk of death. The available material shows that, at its highest, the risk was of future harm caused by Kadir acting on his extremist views. That risk was not necessarily a risk to life.
- b) Serious concern about Kadir did not amount to the existence of a present and immediate risk to life.
- c) There was no risk of which the authorities could have been aware. The police knew of no threat. It follows that there were no measures that the authorities might reasonably have taken.

17. She submitted further that there was no domestic law basis for resuming the investigation either because the section 5 (1) questions were fully answered in the criminal trials, particularly the trial of Syeedy.

18. Finally, she submitted that in the exercise of my discretion on the domestic law issue, I should also take account of the public expense of a resumed investigation, when analysing the public interest and the question of whether it would be proportionate to resume. Counsel to the Inquest argued to the contrary submitting that paragraph 8 of Schedule 1 involves no such balancing exercise. He submitted that my decision concerns whether there is or is not sufficient reason to resume. Once I have decided, paragraph 8 tells me what to do and there is no discretion.

19. My conclusion on this issue is clear: on a proper construction of paragraph 8 of Schedule 1, the questions of cost and public interest have no roles. If there is sufficient reason to resume that reason does not become insufficient or less sufficient because there are limited resources. There is, in such circumstances, no discretion because the investigation must then be resumed.

20. Ms McGahey also submitted in paragraph 47 of her written submissions that a resumed inquest 'would be likely to provide limited benefit to Mr Uddin's family'. Plainly, this is not the case. Mr Al-Arif eloquently described why he would wish the

investigation to resume, and clearly further investigation into ascertaining in what circumstances his father came by his death may well be of comfort to him.

21. The question for me regarding Article 2 is not whether the state breached its substantive obligations. It is too early to reach such a conclusion. Rather, I must decide whether, on the basis of the material available to me it is arguable that it did. If so, a duty to investigate further arises.
22. It is undoubtedly the case that Kadir killed Jalal Uddin and that he did so as a consequence of his Islamist extremist views. Over three months before the killing he was assessed as being 'of high risk and significant concern' and posing 'a high risk of acting on his Islamist extremist aspirations'. Over two months before the killing there was a request to appoint a Senior Investigating Officer although there is uncertainty over who was responsible for investigating Kadir thereafter. Ms McGahey submitted that this material is so nebulous that I am not in a position to conclude from it that Article 2 is engaged. She contended that the existence of serious concern is not enough because there are many activities related to extremism in which Kadir might have been involved that would not have given rise to a risk to life.
23. I disagree. The threshold test is a low hurdle and I am satisfied that the matters set out in paragraphs 11 and 12 of the Gist give rise to a credible suggestion (a) that Kadir represented a present and continuing risk to the lives of members of society at large; (b) that the authorities knew or ought to have known of that risk; and (c) that they failed to take measures to avoid it. Indeed, to suggest otherwise given the knowledge that we have of the deadly actions of Islamist extremists on numerous other occasions, seems illogical. It follows, that there is a requirement to resume the investigation into Jalal Uddin's death.
24. Counsel to the Inquest sets out at paragraph 32 of his written submissions a list of issues that might be explored. Whilst not exhaustive, in my view they appear to encapsulate the scope of the investigation that is now necessary to discharge the investigative duty. They are as follows:
 - a) The extent to which SMS's, videos and WhatsApp messages disclosing active support for ISIS and the advocacy of violent jihad (against "magicians") by Kadir, Syeedy and Syadul could have been discovered through seizure and examination of mobile telephones, devices or computers;
 - b) The extent to which SMS's, videos and WhatsApp messages disclosing antipathy by Kadir, Syeedy and Syadul towards those who practised Ruqya could have been discovered through seizure and examination of mobile telephones;
 - c) The extent to which images of Jalal Uddin circulated amongst the group could have been discovered through seizure and examination of mobile telephones;

- d) The extent to which the fact that Jalal Uddin had been targeted by August 2015, because it had been identified that he practised Ruqya, could have been discovered through seizure and examination of mobile telephones;
- e) The extent to which the break-in to the Jalalia Mosque in Rochdale, and the theft of Jalal Uddin's religious materials from it, on 20th August 2015 was attributable to Syeedy and / or his associates and could have been discovered through the seizure and examination of mobile telephones;
- f) The extent to which the surveillance (including by photography) of Jalal Uddin by Syeedy or an associate of his in August and September 2015 could have been discovered through the seizure and examination of mobile telephones;
- g) Why Mohammed Kadir was assessed to be a person who was of high risk and significant concern for the period from 30th October 2015 until 18th February 2016;
- h) Why Mohammed Kadir was assessed latterly within that period to be someone who posed a risk of acting on his Islamist extremist aspirations;
- i) What was done in the period after 30th October 2015 by way of positive preventative steps to protect members of the public from the risk that had been identified;
- j) What led to the request for the appointment of an SIO on 7th December 2015;
- k) What was done in the period after 7th December 2015 to appoint a SIO;
- l) Whether an SIO was in fact appointed in the period between 7th December 2015 and 18th February 2016;
- m) If an SIO was not appointed, why one was not appointed in that period;
- n) If an SIO was not appointed, what positive preventative steps were nonetheless taken to protect members of the public in that period;
- o) What investigative or preventative steps were taken by any person after 7th December 2015.

25. It must follow from the foregoing that I also conclude that there are matters of substance relating to the section 5 (1) issues that remain to be investigated. These issues relate to the assessments of Kadir as being 'of high risk and significant concern' and posing 'a high risk of acting on his Islamist extremist aspirations'. In my judgment it will be necessary to investigate (a) the basis for each of these assessments; (b) the nature and extent of the risks; and (c) what was done (or not done) by the authorities in response to these risks and concerns.

26. I conclude, therefore, that there is sufficient reason for resuming the investigation into the death of Jalal Uddin. Pursuant to paragraph 8, the investigation must be resumed and I so order.

HHJ Patrick Field QC

27th November 2020