

IN THE BIRMINGHAM AND SOLIHULL CORONER'S COURT

HIS HONOUR RICHARD FOSTER

NOMINATED PURSUANT TO SCHEDULE 10 CJA 2009

**INQUESTS TOUCHING UPON THE DEATHS OF PATIENTS OF
MR IAN PATERSON FOR TREATMENT OF BREAST CANCER**

**RULING UPON IAN PATERSON'S APPLICATIONS
FOR FUNDING AND AN ADJOURNMENT**

Background

1. The resumption of the Inquests into the deaths of 62 former patients of Ian Paterson was due to commence this morning, this date having been fixed at a Pre Inquest Review Hearing on 9th June 2023. The first of these Inquests were opened as long ago as 6th July 2020. I have directed that the first week should deal with generic issues before proceeding to the individual Inquests. These Inquests engage Article 2 of the European Convention on Human Rights ("ECHR") and so by virtue of section 5(2) of the Coroners and Justice Act 2009 ("the 2009 Act") the scope of the Inquests will include systemic and other wider issues. Module 1 will deal with the medical cause of death and the relevant facts in each individual case, before moving on to other modules dealing with the wider issues. Module 1 will last until the summer of 2025.
2. On Friday 27th September 2024 the Solicitors to the Inquest ("STI") received submissions on behalf of Ian Paterson that:
 - (1) I have the power to grant him funding for legal costs
 - (2) I should exercise that power to grant him such funding
 - (3) I should adjourn the resumption of the Inquests.
3. I directed that I should receive submissions from Counsel to the Inquests ("CTI") on these applications by 3rd October 2024 (to be circulated to all Interested Persons ("IPs")), with any submissions by IPs by close of play on 4th October 2024. I am grateful to my legal

team and the legal teams for IPs for their response to what was necessarily a tight time-table. Today was then set aside to hear oral argument on Ian Paterson's applications, but on Friday afternoon my legal team were informed by the solicitors who have been assisting Mr Paterson that counsel who drafted the submissions would not be attending today and that I should consider the applications based upon the written submissions.

4. Separate issues have been raised relating to the processes adopted by the medical expert witnesses instructed by me and concerns about their potential bias. I have given discrete directions for the resolution of these matters such that they will be dealt with later in the initial stages of the resumed Inquests if I do not accede to Ian Paterson's application for an adjournment.

The applications and submissions by Ian Paterson

5. In the course of his oral submissions to me this morning Mr Jonathan Jones KC, leading Counsel to the Inquests, helpfully summarised Mr Paterson's submissions and application.
6. In summary it is submitted on behalf of Mr Paterson that I am empowered by virtue of Regulation 7 of the Coroners Allowances, Fees and Expenses Regulations 2013 ("the 2013 Regulations") and / or section 34 and Schedule 7, paragraph 7(1) of the 2009 Act to fund Mr. Paterson's legal representation (including the obtaining of his own expert report) and further and / or separately that the lack of provision of legal representation / adequate time and facilities to prepare for the inquests is a breach of the state's procedural duty to investigate pursuant to Article 2 of ECHR.
7. The detailed written submissions in support of these applications have been seen by all Interested Persons.

Submissions by CTI and other IPs

8. CTI submit that neither the 2013 Regulations nor the 2009 Act empower me to grant legal representation to any IP. Furthermore, the obligations under Article 2 of ECHR ("the right to life") lie on the state not the Coroner, although the coronial process plays an important role in discharging those obligations. Decisions regarding legal

funding rest with the Director of Legal Aid Casework not the Coroner. The application to adjourn the Inquests is misfounded.

9. Submissions on behalf of fourteen bereaved families urge me not to exercise any discretion to adjourn and that even if I have the power to grant funding not to exercise that power. The submissions highlight the concerns about any movement in the time-table for the Inquests.
10. University Hospitals Birmingham NHS Trust (“UHB”) agree with CTI’s submissions regarding the 2013 Regulations and the 2009 Act. Leading Counsel for UHB who had considerable experience in this area of law states that he has never known these provisions to be used by a Coroner to fund the legal representation of an IP. Mr Nicholas Moss KC developed his submissions orally this morning. He pointed out that regulation 7 of the 2013 Regulations should be read in the context of the legislative framework which make it clear that it is concerned with fees, allowances and expenses.
11. The only other submission is on behalf of another Interested Person, Mrs Chien Kat. On her behalf there is agreement with CTI that I have no power to grant Ian Paterson funding for legal representation.

The Law

12. The 2009 Act at Paragraph 7 (1) of Schedule 7 states:
“7 (1) A relevant authority for a coroner area may issue a schedule of the fees, allowances and expenses that may be lawfully paid or incurred by the senior coroner for the area in the performance of the coroner’s functions.”
13. The 2013 Regulations at Paragraph 7 (1) state:
“7 (1) A coroner must report any unusual allowance, fee or expense likely to be incurred in relation to an investigation to his or her relevant authority before it is incurred.”
14. The legislative framework in the Act and the Regulations makes it clear that the funding obligation of the local authority (which funds the Coroner’s Court) relates only to “a coroner in the performance of their functions” and/or “in relation to an investigation”.
15. The designation of IP status confers rights not obligations. The Coroner’s only role is to grant such status when appropriate and to inform the IP accordingly. It is the choice of the IP to exercise the rights conferred or not. I cannot see how the granting of IP status has

anything to do with the Coroner performing his statutory function when it is triggered by s.1 of the 2009 Act or can be said to be “in relation to an investigation”.

16. If section 34 and schedule 7 of the 2009 Act is read in conjunction with the 2013 Regulations it is abundantly clear that their purpose is the funding of the coronial service. If Parliament had intended to provide Coroners with a power to grant funding for legal representation it would have said so expressly.
17. I am satisfied that neither the 2013 Regulations nor the 2009 Act give me the power to grant funding for legal representation to an IP.

Article 2

18. The obligations under Article 2 ECHR rest with the state. It is for the state to determine whether to grant Ian Paterson funding for legal representation. He has made three unsuccessful applications. The outcome of the most recent review dated 25th September 2024 included this:
“Your submissions are that there are Article 2 systemic issues raised by the Inquests and that because your client is central to the investigations, he needs to be represented.....Section 10 of Legal Aid Sentencing and Punishment of Offenders Act 2012 is very clear in that legal aid for the individual must be necessary to avoid a breach of the individual’s rights. It is obvious that your client has no Article 2 investigative right in relation to the deaths.”
19. The appropriate procedure to challenge the legal aid decision is to pursue any appeal or review within the legislative framework, and thereafter to seek judicial review.
20. An Inquest is part of the process to perform the state’s obligations. These Inquests have engaged Article 2 and so its scope is widened by s.5(2) of the 2009 Act.
21. It is worth repeating here the relevant passage from the leading textbook Jervis on Coroners (15th edition) at paragraph 10-65:
“The article 2 obligation lies on the state, not on the coroner. The coroner is merely one of the means by which the state discharges its art.2 obligation. The Agency is another. It is not the coroner’s function under domestic law to ensure that the family of the deceased have

funding for inquests where this is necessary to avoid a breach of article 2. that is the function of the Agency. It is the coroner's function under domestic law to hold inquests timeously and according to the rules down for that purpose (designed and certified to be ECHR complaint). Accordingly, coroners have no obligation to adjourn inquests to enable applications to be processed.”

Paterson's participation in the Inquests

22. It would obviously be beneficial to my investigations if Mr Paterson participated in full. I hope he will do so. I have granted permission, at his request, for him to participate remotely from the prison where he is serving his sentence. Arrangements have been made with the prison authorities for this.
23. I and my legal team have gone to immense lengths to endeavour to ensure he has facilities to prepare. I refer to the chronology attached to CTI's submissions. Some of those efforts were referred to by Mr Jones KC in his oral submissions this morning. I would particularly refer to the Pre Inquest Review Hearing which I conducted on 14th June 2024 attended (remotely) by Mr Paterson and senior representative of the Prison Governor. I satisfied myself then that if Mr Paterson cooperated with the prison authorities to move prison wings he would have unrestricted access to all the same electronic material as every other IP. I am told that he has refused to move.
24. In view of Mr Paterson's inability to access the electronic material the Solicitors to the Inquest now provide Mr Paterson with 2 lever arch files of relevant material in hard copy which will be updated on a circulating basis. Arrangements have been made for him to have full access to this material in his prison cell.
25. As recently as last Thursday I directed that STI should instruct another solicitor with particular expertise in this area of law to attend upon Mr Paterson in an endeavour to obtain a statement. Mr Paterson was given advance notice of the topics to be covered. STI made special arrangements with the prison to facilitate this. Although Mr Paterson attended the meeting he declined to provide a statement. Mr Jones KC read out the attendance note this morning.

26. He has another opportunity to answer questions and provide evidence on Thursday of this week. He will also have that opportunity separately on the hearings of each of the individual Inquests.

27. It is important to repeat what was included in CTI's submissions about the nature of the Inquest process, as stated by the then Lord Chief Justice Lord Lane in in *R v South London Coroner, ex p. Thompson* (1982) 126 S.J. 625, DC:

“Once again it should not be forgotten that an inquest is a fact finding exercise and not a method of apportioning guilt. The procedure and rules of evidence which are suitable for one are unsuitable for the other. In an inquest it should never be forgotten that there are no parties, there is no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish facts. It is an inquisitorial process, a process of investigation quite unlike a trial where the prosecutor accuses and the accused defends”

28. Whilst my duty remains to fully, fairly and fearlessly investigate all the facts, I wish to reassure Mr Paterson that I and my legal team will treat him in the same way as all other IPs.

Conclusion and Rulings

29. I have no power to grant funding to any IP for legal representation. The obligations under Article 2 ECHR rest with the state not me. Any decisions for funding rest with the Director of Legal Aid Casework. I am satisfied that there is no good reason why Mr Paterson should not engage with the Inquest process.

30. I therefore rule:

(1) I have no power to grant Mr Paterson funding for legal representation

(2) I refuse his application for an adjournment of these Inquests.

HH RICHARD FOSTER
7TH October 2024