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Tuesday, 19 March 2013

(1.20 pm)

(Proceedings delayed)

(1.27 pm)

Discussion re directions to the jury

THE CORONER: Yes, good afternoon everybody. Thank you very much for coming in. I'll come in a moment to the submissions which I've had but I thought I picked up that at least one of you wanted to make some oral submissions and it seemed to me, therefore, that it was right to give everybody the opportunity to do that. I hope I made it clear that only those who really wanted to come were welcome to come, but I do accept that once we have a hearing of this sort then probably everybody will want to come, so if I have misread the runes then my apologies. I think I might just have left one of the documents upstairs. Mr Clark, would you mind? Thank you.

I hope that we can deal with all of these matters really pretty shortly, and I'm not expecting today to take a very great deal of time. There are two matters, I think, that we need to address. One concerns the submissions which have been circulated with regard to the section 20 issues, if I can put it that way, and the other concerns the question of guidance to the jury.

1 As far as submissions on section 20 are concerned,
2 I think that I have the following: I have Hendy and
3 Edwards 1A and 1B, 2 and 3, so four in all; I have seen
4 Mr Martin's email from yesterday -- I don't actually
5 have a print out of that but I've seen it; I've seen
6 Mr Hendy's email of yesterday on this; I've seen the
7 submission from Mr Matthews and Miss Sanderson; I've
8 seen Ms Canby's contribution, thank you, and I've seen
9 Mr Compton's submission. Have I seen all of them?

10 MR HENDY: Madam, there's a reply by us to Mr Matthews.

11 THE CORONER: That's your number 3, I think.

12 MR HENDY: I'm so sorry, madam.

13 THE CORONER: I've counted your 1 as 1A and B. I've had
14 four from you in all; is that right?

15 MR HENDY: Yes, thank you.

16 THE CORONER: Yes, thank you very much. Mr Clark's just
17 gone to get my copies of two of those which I've managed
18 to leave on my desk.

19 I hope to take this really pretty shortly. I'm not
20 expecting anyone actually to argue out the merits of the
21 argument fought on both sides on this. The position
22 that we seem to be in here at the moment is that
23 Mr Hendy and Mr Edwards take one view, Mr Martin and all
24 the other advocates take the opposite view. Would that
25 be a fair summary?

1 MS AL TAI: Madam, we didn't take the opposite view; we just
2 haven't provided submissions on Mr Hendy's submissions,
3 but of course we would adopt anything that Mr Hendy
4 would put forward.

5 THE CORONER: I see. Very well. So you have support from
6 Ms Al Tai on that, Mr Hendy. Oh, Mr Dowden, you'd like
7 to support it as well, would you?

8 MR DOWDEN: Yes.

9 THE CORONER: Thank you very much.

10 I'm pretty concerned about the timing of all of
11 this. This has all come very late and it seems to me
12 there's no good reason for that to have happened. It's
13 not as if all of this has cropped up as a result of
14 evidence which has unexpectedly come to light. We've
15 had weeks to deal with this, and instead we're now
16 having to deal with very complex issues when we all want
17 to be focussed -- certainly I ought to be focussed -- on
18 other matters. So I come at this with a degree of
19 irritation, I have to say. Mr Hendy, what do you want
20 me to do with it?

21 MR HENDY: Madam, it seemed to us that the issue, when it
22 came down to it, was a very short one indeed. If I can
23 just put it in one sentence, really: all the advocates
24 now agree that section 20 consents subsist after the
25 regulations in 1985, and the principal issue is --

1 THE CORONER: I don't want it argued out in any detail,
2 hardly even in summary form. I just want to know what
3 you want me to do with it.

4 MR HENDY: I'm sorry, madam, forgive me. We'd invite you to
5 decide the point.

6 THE CORONER: All right. In that case, you had better
7 identify what point you want me to decide.

8 MR HENDY: Whether the conditions in relation to fire
9 resistance which were applied in granting the permission
10 for the building to be built in the first place
11 continued to have application when the alterations were
12 made in 2006.

13 THE CORONER: In terms of the direction to the jury, what do
14 you want me to say?

15 MR HENDY: If, madam, your view is that those conditions
16 don't apply, then nothing needs to be said to the jury
17 about section 20. It's a dead letter. If, on the other
18 hand, you conclude that the section 20 conditions
19 subsisted in 2006, then the consequence is that the fire
20 resistance of the panels below the bedroom would have
21 been 60 minutes -- or should have been 60 minutes -- and
22 that point ought to be made to the jury.

23 THE CORONER: How does that affect the evidence that we've
24 heard as to the failure of frames and glazing?

25 MR HENDY: Madam, the evidence is that of Mr Crowder, which

1 he gave in relation to questions asked by firstly
2 Mr Walsh and then by myself, as to whether it made
3 a difference that the fire resistance of the panels was
4 four and a half minutes or 30 minutes, or words to that
5 effect, and he explained that it did make a difference.
6 I can show you, madam, those passages in the evidence,
7 or at least I can give you the references to them.

8 THE CORONER: Yes, please do.

9 MR HENDY: It is day 34, madam, at page 19, from line 16
10 through to page 20 at line number 8, and then, in the
11 same day, madam, my questions at page 41, line 18,
12 through to page 45 at line 3.

13 THE CORONER: Okay.

14 MR HENDY: The essence of the evidence was that if the fire
15 resistance had been longer, then the fire getting into
16 flat 79 would have taken longer, but Mr Crowder couldn't
17 say how much longer because there were too many factors.

18 THE CORONER: All right. Thank you. Yes, is there anything
19 else you want to add?

20 MR HENDY: Madam, I don't think so. Our submissions are in
21 writing.

22 THE CORONER: All right. Thank you very much. Yes, does
23 anyone want to add to this? Mr Compton.

24 MR COMPTON: Madam, just in respect of that last point,
25 could I also ask you to look at the transcript on

1 5 March. It's in particular the cross-examination by
2 Mr Matthews starting at page 57, then continuing with
3 some questions by myself going on, and if you read on to
4 page 65. Just to remind you, it was once we'd received
5 the three-page letter dated 1 March sent to yourself
6 from Mr Crowder -- I can make sure there's a copy
7 brought through to you if it's not immediately to
8 hand -- in which he set out clearly his position on the
9 salvage of life in relation to the composite window
10 panels.

11 THE CORONER: Thank you very much, yes. I'll look at those.
12 Thank you. Anyone else want to add anything to this
13 particular debate? All right, thank you very much. I
14 shall deal with that in the best way I can, thank you.

15 Now, I've had helpful submissions from all regarding
16 the guidance, and in particular detailed comments on the
17 very helpful draft which Mr Maxwell-Scott and Mr Atkins
18 prepared and circulated. I shall consider the points
19 which each of you have made and build in the amendments
20 which I consider should be made. I'm not proposing to
21 circulate another draft, so I shall simply go ahead from
22 what I've read in your submissions and anything which
23 anyone wishes to add this afternoon.

24 Just a couple of points. I hope you've all seen the
25 short submission from Mr Kay which came in at the end of

1 last week, I think, on behalf of Harvard International.
2 I shall respectfully adopt the submission which he
3 makes, and indeed I have myself been concerned by the
4 inaccurate reporting in the print and broadcast media of
5 the investigations which we have carried out in these
6 inquests. Does anyone have any dissent on that? Good.

7 FENSA. I propose to say to the jury in summing-up
8 that there's no evidence which could lead jurors to
9 conclude that reliance on FENSA had contributed to the
10 deaths and propose to leave it at that. Does anyone
11 have any observations they want to make on that? Good.

12 Generally, it seems to me that it is necessary for
13 the written guidance for jurors to be as concise and
14 clear as possible, and I think that we should be aiming
15 at that. I'm concerned about the inclusion of questions
16 which will tend to look prescriptive. The more
17 questions one puts in, it seems to me, the more one
18 tends to indicate to jurors that we're trying to lead
19 them down a particular path, and I think my general
20 approach would be, in preference, to have broad, open
21 questions, and they can consider behind those questions
22 the evidence which they consider necessary to decide
23 them, if indeed they want to decide them. Does anyone
24 have any comment on that? Good, right.

25 Well, I think you've probably all seen each other's

1 submissions, so if any of you want to make any comment
2 on anybody else's, now is your chance and your last
3 chance. So, Mr Hendy, do you want to make any
4 submissions or comments?

5 MR HENDY: Madam, I don't think we do. I think we've tried
6 to make our position clear. We certainly don't dissent
7 from the general propositions that you've just put
8 forward.

9 THE CORONER: All right. Thank you very much. Ms Al Tai?

10 MS AL TAI: Madam, it's just in respect of Mr Matthews'
11 submissions at paragraph 3, and this is in respect of
12 the case of Lewis. I believe the issue here is in
13 relation to the sentence:

14 "You may only includes acts or omissions in your
15 verdicts that you consider, on the balance of
16 probabilities ..."

17 I believe in Mr Maxwell-Scott's drafts it was
18 outlined as "could have made a more than minimal
19 contribution" and Mr Matthews has suggested that "could
20 have" should be omitted, I understand.

21 Our reading of Lewis is that in respect of
22 circumstances in relation to the death, all possible
23 scenarios, regardless of whether -- the test is not
24 about clarity. The test is whether or not it's
25 a contributing factor, and therefore we would

1 re-emphasise our point that in fact Mr Maxwell-Scott's
2 initial suggestions in respect of that sentence should
3 remain as it is.

4 THE CORONER: All right, okay. As far as your own
5 submission is concerned, Ms Al Tai, to me, in
6 straightforward language, "cannot" means something which
7 is not possible, "must not" means something which you're
8 not permitted to do.

9 MS AL TAI: Agreed, madam.

10 THE CORONER: Yes. Mr Dowden?

11 MR DOWDEN: No thank you.

12 THE CORONER: Thank you. Mr Walsh.

13 MR WALSH: Madam, in view of what you have indicated -- my
14 microphone isn't working but I hope that you can hear.

15 THE CORONER: I can't.

16 MR WALSH: I see. It's coming on now.

17 THE CORONER: That's better. Thank you.

18 MR WALSH: Madam, in view of what you have indicated in
19 relation to the non-prescriptive nature of the guidance
20 and the need for it to be concise, what I had to say
21 about the submissions made by Mr Hendy I need not make,
22 so I'm very grateful for that indication.

23 There is only one matter, therefore, that I think it
24 right to raise, and that is those parts of the guidance
25 which may touch upon the advice which was given by the

1 operator in Catherine Hickman's call. There was
2 a tendency in some of the suggestions in Mr Hendy's
3 document -- and even, to a limited extent, in
4 Mr Maxwell-Scott's -- that the jury should be asked to
5 consider the question of whether there were missed
6 opportunities, whether there were failings by that
7 operator, for example, to identify escape routes and so
8 on.

9 The caution which I would urge upon the court is
10 this: the operator was not called to give evidence, and
11 the reason why she wasn't called is that all interested
12 parties explicitly indicated that there was to be no
13 criticism of her as a person. While it is accepted, of
14 course, that systemic matters in relation to general
15 practices of the London Fire Brigade control are matters
16 which the jury may wish to look at, if they are to be
17 taken to and asked to consider whether this operator
18 missed opportunities and failed to identify escape
19 routes and so on, the problem with that is that that
20 involves, by necessity, an element of speculation into
21 what was in that operator's mind. So for example, the
22 operator may have said, if she had given evidence, that
23 she had considered the possibility of escape but
24 predominant in her mind was the uncertainty about what
25 lay behind a particular door and what was in the

1 stairwell nine floors up with fires below. I don't want
2 to get into realms of speculation, which I'm already
3 starting to do, but I'll say most no more than this:
4 I would respectfully urge caution in guidance which may
5 ask or tend to point the jury in the direction of
6 speculating about what may have been in that operator's
7 mind when she wasn't called to give evidence. That's
8 really all I have to say.

9 THE CORONER: Yes, I'm sympathetic to your point. It's
10 a question of how we can best deal with that, I think.

11 MR WALSH: Yes, I understand the difficulty.

12 MR HENDY: Madam, in the spirit of cooperation which has
13 marked the entirety of this Inquest, may I support
14 Mr Walsh on that point. We do see the force of what he
15 says. We would like something put to the jury about
16 being alert to explore escape routes, but we do see the
17 force of putting it in some way that points to the
18 possibility of refresher training which should have been
19 highlighted the need to explore escape routes -- some
20 systemic aspect, rather than a personal one.

21 I should just say, in relation to the operator,
22 certainly our reason for not wanting to call her was
23 that they didn't wish her to go through the pain and
24 anguish of accusations being made. I don't think we
25 said anything about the merits of such accusations, but

1 clearly she couldn't have been asked to face the ordeal
2 after what she'd already been through. So it's
3 absolutely right that the matters addressed to her
4 should be done in relation to systemic matters rather
5 than personal ones. I hope that helps.

6 THE CORONER: That's very helpful, thank you. Yes,
7 Ms Al Tai.

8 MS AL TAI: Madam, I apologise to get on my feet again, but
9 in respect of the transcript, we would just like it to
10 be noted that the reason why we had agreed that the
11 operator wouldn't be called was for the reasons that
12 Mr Hendy has already suggested.

13 THE CORONER: So you're saying that's for the purpose of
14 this transcript this afternoon?

15 MS AL TAI: I'm saying, madam, that we would not agree with
16 the suggestions put forward by Mr Walsh as to why the
17 control operator wasn't called. Rather, it was to spare
18 her the anguish of giving evidence as opposed to the
19 other reasons forwarded.

20 THE CORONER: Well, the decision as to which evidence was
21 called was entirely mine, subject to submissions and
22 guidance offered by all of you, and it seemed to me
23 entirely right that we should not be asking the operator
24 to be coming to give evidence for a whole host of
25 reasons.

1 MS AL TAI: We would agree with that, madam.

2 THE CORONER: Yes, thank you. Yes, Mr Matthews?

3 MR MATTHEWS: Nothing, thank you.

4 THE CORONER: Mr Compton?

5 MR COMPTON: Nothing to add, madam.

6 THE CORONER: Thank you. Yes, Mr Dickason?

7 MR DICKASON: Nothing, thank you.

8 THE CORONER: Ms Canby?

9 MS CANBY: No, thank you.

10 THE CORONER: Ms Petherbridge?

11 Right, was there anything else that anybody would

12 like to cover before tomorrow morning?

13 MR HENDY: Madam, can I just rise to apologise for the

14 irritation that we've caused you by the late submission

15 of the section 20 submissions. I did explain the other

16 week how this came to our attention late, we not having

17 thought that it was an issue in the case, but can I just

18 apologise. I'm sorry to cause inconvenience, and

19 particularly when your hands are so heavily full with

20 matters of addressing the jury and so on.

21 THE CORONER: Well, I'm grateful for that, Mr Hendy, and

22 thank you very much. I think possibly an apology might

23 be directed towards the other advocates, who've also had

24 to put in a great deal of time very much at short

25 notice. Thank you.

1 Sorry, Mr Maxwell-Scott, I haven't given you
2 a chance to say anything. Did you want to say anything?

3 MR MAXWELL-SCOTT: It may assist just to make four very
4 short points. Mr Hendy makes some points and track
5 changes in relation to how to guide to jury on not
6 straying into matters of policy or resource allocation.
7 This is at page 2 and 3 of his document. He uses
8 a slightly more detailed extract from the case of Smith.
9 I think that the extract he cites gives a more rounded
10 analysis of this difficult question of guiding the jury
11 not to stray into policy or resource allocation, but you
12 may take the view that now that we're giving the jury
13 four examples of the operations principle specific to
14 the facts of this case, they won't be aided by any
15 example from a different set of facts.

16 THE CORONER: Okay.

17 MR MAXWELL-SCOTT: It's a matter for you, but I do agree
18 with his slightly longer explanation of the flak jacket
19 example.

20 The second point I was going to make arises out of
21 Mr Walsh's tracked changes. At the top of his page 2,
22 he wishes that the jury expressly be told that they can
23 use words such as "reasonable", "unforeseeable" and
24 "understanding". I would agree that some sort of
25 guidance to that effect would be appropriate and would

1 produce a more balanced guidance as a whole as to the
2 language that may be used in a narrative verdict.

3 Thirdly, a very small point also in Mr Walsh's
4 document at page 4, where we say that the verdict should
5 express the jury's factual conclusions on the central
6 issues. I think it probably would be helpful to add "as
7 they appear to you".

8 Then fourthly, I agree with what has been said by
9 others about the desirability of guiding the jury in
10 relation to the Catherine Hickman 999 call so that they
11 focus on the possibility of systemic failure rather than
12 individual failure. That was certainly what I was
13 trying to achieve in my draft, but it is a fine
14 distinction and there may be a better way of phrasing it
15 to achieve that desired outcome.

16 THE CORONER: Okay.

17 MR MAXWELL-SCOTT: Just finally, as I'm sure you're aware,
18 the question of what threshold is required before
19 a matter can be said to be sufficiently causative to be
20 included in the narrative verdict is entirely a matter
21 for you, following the case of Lewis. You could choose
22 to adopt the proposal in my draft or you could choose to
23 adopt the proposal put forward by Mr Matthews, Ms Canby
24 and others. The law offers no guidance other than to
25 say that it's your choice.

1 THE CORONER: Okay, thank you.

2 MR MAXWELL-SCOTT: That's all I wish to say.

3 THE CORONER: All right, thank you very much. Thank you.

4 Good, well, thank you all very much. Thank you for
5 coming. We'll deal with the summing-up tomorrow. Thank
6 you very much.

7 I think since I have to -- yes, I have to deal with
8 the section 20 point, I'm going to need more time on
9 that, so I suggest we start at 10.30 tomorrow.

10 (1.53 pm)

11 (The court adjourned until 10.30 am the following day)

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Day 43 OF Transcription of the
Lakana1 House Fire
Inquest - 19/03/13
Corrected