CO/989/2003

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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand
London WC2

Friday, 4th July 2003

B E F O R E:

LORD JUSTICE ROSE
(Vice President of the Court of Appeal, Criminal Division)

MR JUSTICE HENRIQUES

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CHRISTINE HURST

(CLAIMANT)

-v-

HER MAJESTY'S CORONER NORTHERN DISTRICT OF LONDON

(DEFENDANT)

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Computer-Aided Transcript of the Stenograph Notes of
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(Official Shorthand Writers to the Court)

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MR K STARMER QC AND MR D FRIEDMAN (instructed by Bhatt Murphy) appeared on behalf of the CLAIMANT
MISS A HEWITT (instructed by the Treasury Solicitor) appeared on behalf of the DEFENDANT
MR J BEER appeared on behalf of the FIRST INTERESTED PARTY
MR R BHOSE appeared on behalf of the SECOND INTERESTED PARTY

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J U D G M E N T
(As Approved by the Court)

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Friday, 4th July 2003

1. LORD JUSTICE ROSE: There is before the court an application, brought with the leave of Hooper J, to quash the decision of Her Majesty's Coronor for the Northern

District of London, whereby he has refused to resume an adjourned inquest. It is important to bear in mind that it is the Coronor's decision in that regard which is being subjected to challenge.

2. The background to the application is that, between about 9.30 and 9.45 pm on 25th May 2000, Troy Hurst, who was the son of the claimant, was killed outside his home on the Stroud Green Council Estate, N10, by a man called Albert Reid. Reid lived on the same estate nearby at 100 Cromwell Road.

3. Hurst was stabbed six times: twice in the neck, once in the chest and three times elsewhere, and he died on the way to hospital. The knife used by Reid was subsequently recovered from Reid's home address.

4. On 30th May 2000, an inquest into Hurst's death was opened, but adjourned, in accordance with section 16(1) of the Coroners Act 1998, because Reid had been charged with murder. He was subsequently convicted of manslaughter in July 2001 and sentenced to ten years' imprisonment.

5. At that stage, the defendant Coroner had to consider whether or not to resume the adjourned inquest under section 16(3), which empowers him to "resume the adjourned inquest if in his opinion there is sufficient cause to do so".

6. Rule 36 of the Coroners Rules 1984 provides:

> "(1) The proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely --
>
> (a) who the deceased was;
>
> (b) how, when and where the deceased came by his death;
>
> (c) the particulars for the time being required by the Registration Acts to be registered concerning the death.
>
> (2) Neither the Coroner nor the jury shall express any opinion on any other matters".

7. Rule 43 provides:

> "A coroner who believes that action should be taken to prevent the recurrence of fatalities similar to that in respect of which the inquest is being held may announce at the inquest that he is reporting the matter in writing to the person or authority who may have power to take such action and he may report the matter accordingly".

8. The claimant requested the Coroner to resume the inquest. By his initial decision letter, dated 19th November 2002, he refused to do so. That refusal he repeated, after the evidence which is before this court had been filed in connection with these proceedings, on 25th June 2003.

9. Evidence pursuant to the directions given by, and at the invitation of, Hooper J has

been served by the first interested party, the Metropolitan Police, and the second interested party, the London Borough of Barnet.

10. At the outset of the proceedings before us yesterday, this court gave leave to amend the claim to challenge the decision of 25th June 2003, as well as the initial refusal.

11. In his first decision letter, the Coroner addressed his obligations by reference both to section 16(3) of the Coronor's Act and to Article 2 of the European Convention on Human Rights.

12. The obligations arising from Article 2 were identified by the European Court of Human Rights in **Osman v United Kingdom** 29 EHRR 245, and it is convenient at this stage to read the relevant passages in paragraphs 115 and 116 of the court's judgment.

> "The Court notes that the first sentence of Article 2(1) enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. It is common ground that the State's obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions ... Article 2 of the Convention may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual ...
>
> 116. For the Court, and bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising ...
>
> It must be established to its satisfaction that 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".

13. In **Amin** and **Middleton** [2002] 3 WLR 505, the judgment of the Court of Appeal was given by Lord Woolf Chief Justice. Those decisions are shortly to be challenged in the House of Lords. All parties before this court agreed that this application should proceed without awaiting the decision of their Lordships' House.

14. In paragraph 32 of the judgment in **Amin**, Lord Woolf made general observations about the nature of the procedural duty under Article 2 to investigate. He identified

three readily distinguishable classes of case:

> "One class is that of allegations of deliberate killing -- murder -- by servants of the state. A second is that of allegations of killing by gross negligence -- manslaughter -- by servants of the state. A third is that of plain negligence by servants of the state, leading to a death or allowing it to happen. In the context of any of these classes, there exists the lamentable possibility that the state has concealed or is concealing its responsibility for the death. That possibility gives rise to the paradigm case of the duty to investigate. The duty is in every instance fashioned to support and make good the substantive article 2 rights".

15. In paragraph 91 of the judgment, he said this:

> "The article 2 duty is primarily that of the state; any shortcomings in the jurisdiction of a coroner's inquest have to be made good by the state. However, coroners are themselves public authorities for the purposes of section 6(1) of the Human Rights Act 1998 and are therefore now required under domestic law not to act in a way which is incompatible with a Convention right subject to section 6(2). The effect of section 6(2)(b) is that a coroner can only rely on the Coroners Rules to excuse his not acting in accordance with the Convention rights if the relevant rule cannot be read or given effect in a way which is compatible with the Convention rights. In a situation where a coroner knows that it is the inquest which is in practice the way the state is fulfilling the adjectival obligation under article 2, it is for the coroner to construe the rules in a manner required by section 6(2)(b)".

16. Logically, the first question which arises on this application, although it was addressed by counsel at the conclusion of their submissions, is whether Article 2 applies to this Coroner's exercise of discretion, in view of the fact that the death here occurred before the coming into force of the Human Rights Act in October 2000.

17. Miss Hewitt, for the Coroner, relies in particular on a judgment of Silber J in **Khan** [2003] EWCH 1414, Admin, a case which, it is to be noted, did not involve the exercise of such a discretion as arises in the present case.

18. At paragraph 97 of the judgment, following on in paragraph 98, Silber J said this:

> "(d) The state's duty to investigate the circumstances of the deceased's death is adjectival and that means that it flows from it and is dependent on, as well as being subsidiary to, the primary duty in a particular case to protect life.
>
> (e) No claim could be based on the express obligation under Article 2 (namely to protect life) if the death occurred before 2nd October 2000 and.
>
> (f) Indeed the duty to investigate is in essence a remedy to support the right to protect life under Article 2 and there is no reason why the adjectival duty or remedy should come into force before the main right on

which it is based.

> 98. Thus it follows that the duty to investigate in Article 2 is not an independent duty but is dependent on the main duties expressly stated in Article 2 arising. Consequently, like Scott Baker J in the Howard case, I am driven to the conclusion if a death occurred before 2nd October 2000, then Article 2 is not engaged and so its adjectival duty to investigate does not arise by necessary implication or at all".

19. For my part, I have the misfortune to disagree. Although the State's duty to investigate the death is adjectival in the sense that it is ancillary to the main right to life under Article 2, it is nonetheless, as it seems to me, a free-standing right. See, for example, **Jordan v United Kingdom** ECHR, 4th August 2001.

20. What has to be addressed is whether, at the time when the decision was made in relation to the adjectival duty, Article 2 was part of English law. The present decisions were made in November 2002 and June 2003 after the Human Rights Act had come into force.

21. I derive some assistance for this approach from the analysis of Lord Hope in **Montgomery v HM Advocate** [2001] 2 WLR 799 at 796. By analogy, it was not open, as it seems to me, to this Coroner to act in November 2002 incompatibly with the State's obligation to an individual at that time.

22. Furthermore, the duty to investigate is of a continuing nature and remains, as Jackson J put it in **Wright v Bennett** [2002] HRLR 1 at paragraph 66, "a live issue".

23. The Coroner's decisions must, as it seems to me, be viewed in this context. It is also pertinent that the Coroner himself, as I have said, considered the applicability of Article 2 and, in that regard, Lord Hope's observations in **Ex parte Launder** [1997] 1 WLR 839 at 867 are pertinent:

> "If the applicant is to have an effective remedy against a decision which is flawed because the decision-maker has misdirected himself on the Convention which he himself says he took into account, it must surely be right to examine the substance of the argument".

24. Finally, on this point, as Lord Bingham pointed out in **Lyons and others** [2003] 1 AC 976 at 987, paragraph 13, even before the Human Rights Act:

> "The Convention exerted the persuasive and pervasive influence on judicial decision-making in this country guiding the exercise of discretions bearing on the development of the common law".

25. I do not accept Miss Hewitt's submission that there is anything in the last sentence of paragraphs 32 of Lord Woolf's judgment in **Amin**, which I cited earlier, to compel a different view from the one which I have formed. Accordingly, for my part, I find it unsurprising that in neither **Amin** nor **Middleton** -- in both of which the death occurred before, and the challenged decision was after, 2nd October 2000 -- highly experienced counsel did not take this point, either at first instance or before the Court of Appeal.

26. I turn to the substantive heart of this application. I have every sympathy with the Coroner. The law in this area is developing apace. No doubt, when the House of Lords adjudicate on the appeals in **Amin** and **Middleton,** it will develop further. I accept that the Coroner diligently applied his mind to the authorities with which the law bristles and conscientiously addressed the by no means straightforward evidence relating to facts arising over a period of more than three years -- a period which, I suspect, is significantly in excess of the timescale which it is usually necessary to consider at an inquest.

27. But, there are certain respects, as Miss Hewitt rightly concedes, in which the Coroner's decision was plainly flawed. His conclusion that the judge in the criminal trial was performing the functions of a Coroner is unsustainable. In the light of **Edwards v United Kingdom** 35 EHRR 19, it was not right to say that the local housing authority could not have any obligation under Article 2 to the deceased or to the claimant.

28. Miss Hewitt points out that the Coroner's reference at the end of his first decision letter to the inappropriateness of an inquest as a forum for an Article 2 inquiry, is supported by Pill LJ, and the other members of the Court of Appeal who agreed with him, in **Sacker** [2003] EWCA, Civil 217 at paragraphs 24 and 25. But Miss Hewitt accepts that such reservations could not defeat this application in themselves.

29. This court should, however, I accept, pragmatically take into account, in accordance with paragraph 64 of **Amin**, all the other investigative activities in this case, including the criminal trial and the civil proceedings, which have recently been instituted by the claimant.

30. Miss Hewitt accepted that the main thrust of the Coroner's decision was that there was no evidence to sustain an arguable breach of Article 2 by the interested parties, and she did not seek to support that proposition. But, she submitted, even if this was wrong, this court could uphold the decision if there was insufficient evidence of plain negligence by servants of the State in allowing the death to happen.

31. She accepted, as was held by Crane J in **DF** [2002] EWHC 1738 Admin, that it is the knowledge of the relevant authorities, not of the victim, which is determinative as to the first limb of the Article 2 duty.

32. I, of course, accept Miss Hewitt's submission that there is no duty on the Coroner to hold an Article 2 investigation. His duties are to conduct an inquest in accordance with the Coroners Act and Rules, and, as a public authority, not to act incompatibly with Convention rights.

33. I also accept that Miss Hewitt is entitled to rely on the observations of Lord Woolf in **Amin** at paragraphs 87 and 88 of the judgment: that an inquest verdict of neglect may identify a failure in system, or by an individual, and the former is more important than the latter for the purpose of vindicating rights protected by Article 2.

34. It is also pertinent to note Lord Woolf's observations in paragraph 89, which are in these terms:

> "A finding of neglect can bring home to the relevant authority the need for

> action to be taken to change the system, and thus contribute to the avoidance of suicides in the future. The inability to bring in a verdict of neglect (without identifying any individuals being involved) in our judgment significantly detracts, in some cases, from the capacity of the investigation to meet the obligations arising under Article 2".

35. Those observations are in part consonant with Rule 43, to which I earlier referred.

36. This brings me to the central question in this application. As was, ultimately, effectively common ground, it can be expressed in this way. Was there sufficient evidence before the Coroner to establish an arguable breach of Article 2, that is that one or both of the interested parties knew, or ought to have known, of a real and immediate risk to Troy Hurst's life, and that they did not do what might reasonably have been expected to avoid that risk?

37. I accept that the test in relation to real and immediate risk is a high one. It was identified by Lord Phillips, the Master of the Rolls, in paragraph 28 of his judgment in **R v Lord Saville of Newdigate and others** [2002] 1 WLR 1249 at page 1261:

> "The degree of risk described as 'real and immediate' in Osman ... as used in that case, was a very high degree of risk calling for positive action from the authorities to protect life. It was 'a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party' which was, or ought to have been, known to the authorities".

38. It is on this question that the searchlight of Mr Starmer QC's submissions on behalf of the claimant principally focussed. It is at this point, accordingly, necessary to turn in a little detail, albeit not exhaustively, to the events which are set out in the evidence and summarised, for the most part, in the two chronologies helpfully provided by Mr Starmer. Here and there, some amplification of those chronologies is necessary.

39. The events which the evidence discloses are these. In February 1997, there was a CRIMINT intelligence report entry that police were called to a fight between Mr Reid, who had threatened to kill another man, and that other man. It is recorded that Reid had "lots of previous for assault and assault on the police", and was "very violent and may carry weapons" -- all shown on the police national computer:

> "If there are any calls to his address exercise CAUTION as it looks like he's causing problems with neighbours".

40. In October 1997, the first complaint was received by the Housing Office in relation to an alleged assault and threats by Reid to kill a former tenant. Reid was formally warned by the police for punching another in the eye.

41. In March 1998, Troy Hurst applied to Barnet Council for a transfer. In July 1998, Reid assaulted a former tenant of the estate, who had to be temporarily housed in bed and breakfast accommodation, and that tenant was later approved for a management transfer on the grounds that he was living in fear of Mr Reid.

42. On 23rd July 1998, a tenant reported to the Housing Officer that she had been assaulted by Reid, who had threatened her with a bladed article. Reid denied that

allegation. The police advised the Housing Officer not to visit Reid.

43. In November 1998, the Housing Office received a complaint of Reid threatening others because he believed tenants were talking about him, and there were similar complaints to the Housing Officer in December 1998 and January 1999.

44. In January 1999, Police Sergeant Mortimer "decided to monitor and supervise the progress" of the case in relation to allegations against Reid.

45. On 20th January 1999, there was a CRIMINT intelligence report of assaults on an elderly lady and her son, a postman. The police were concerned in relation to mental health issues which arose in consequence. On 11th February, Reid was arrested under section 136 of the Mental Health Act, by reason of several assaults by him over the past two years on local residents and neighbours.

46. The Crisis Team was caused to assess him, but they did not section him. The view was expressed that he was slightly paranoid and he was "definitely violent and officer safety should be considered when dealing with him". A police officer formed the impression that Reid was mentally unstable. He was, however, released without charge.

47. On 10th March 1999, a man reported that he had been threatened by Reid with a six inch knife. Reid was searched by a police officer. No knives or other offensive weapons were found, but the view was expressed in one of the police reports that it was likely that there might be further disputes between the two parties involved in the future.

48. The Housing Office was informed that Reid had threatened a tenant and that he was being charged with harassment. On 17th March, for that offence, he was arrested and charged, the victims being the lady and her son, the local postman.

49. When police went to Reid's address at 100 Cromwell Road, he had a large carving knife on the chair by his bedroom door, within arm's reach. The view was expressed by the police that Reid was "ready to go over the edge at any minute and is very volatile", and in capital letters appears this:

> "I AM EXTREMELY CONCERNED THAT REID WILL SOONER OR LATER INJURE OR KILL SOMEONE, AND I PERSONALLY BELIEVE HIM TO BE EXTREMELY DANGEROUS".

50. At that stage, the Housing Office initiated proceedings to have Reid evicted. Thereafter, in April 1999, Reid appeared for harassment before the Magistrates, and a notice seeking possession was served on him.

51. The Housing Officers received material from the police describing six incidents, but also disclosing that, until Reid had been arrested in March 1999, no witnesses had been willing to come forward.

52. On 13th April 1999, Reid attended a meeting at the Housing Office. He denied any wrongdoing against the lady and her son, the postman, and said that he was being laughed at and talked about, and he went on to complain about Troy Hurst. During the

meeting, he agreed not to go anywhere near the other residents on the estate, and to contact the Housing Office or the police, rather than to take his own course of action.

53. In about May 1999, in the presence of Troy Hurst's father, there was an attack by Reid on an Asian shopkeeper. In late May 1999, Reid was found guilty by the Magistrates of harassing the lady and her son. There was, at that time, a police note that Reid was "definitely suffering some sort of mental illness 'paranoia'". All calls to the addresses were to be treated as urgent, as Reid was "definitely violent".

54. On 22nd May, he was arrested for affray and actual bodily harm, it being said that he had pulled a knife from his waistband and, in an unprovoked attack, tried to slash Tony Hurst -- that is Troy Hurst's father -- across the face. Troy Hurst heard his father's cries for help, and frightened Reid off with a baseball bat. However, when Reid was arrested, no knife was recovered.

55. The police record indicates:

> "No matter what happens ... REMEMBER OFFICER SAFETY when dealing with this deranged male".

56. The Housing Office were informed by the police.

57. In May 1999, the Hurst family were offered temporary rehousing, which they declined. At the beginning of June, there was a note made in police records that any calls to 100 Cromwell Road were to be treated as urgent.

58. During June, Reid made a number of appearances before the Magistrates and was ultimately convicted of using threatening words and behaviour towards Troy Hurst and Tony Hurst, and he was sentenced to three months' imprisonment, concurrently on each and concurrently to a sentence of one month imposed for his conduct towards the postman. Troy Hurst gave evidence at that trial.

59. In early December 1999, Reid contacted the Council's Housing Officers in response to the summons for possession, and threatened to kill Tony Hurst, if he was evicted.

60. In December 1999, the Housing Officers requested an adjournment of the hearing fixed for the possession proceedings on 9th December because Reid had been punished, as I have described, and they did not want to aggravate matters because there were only two witnesses, both of whom had previously been sympathetic towards Reid.

61. It was also apparent at that time, so far as the Housing Officers were concerned, that Mr Hurst might be a material witness in relation to the eviction proceedings, and to that aspect in a moment I shall return.

62. On 2nd March 2000, there was a disturbance at a shop in Cromwell Road. The police national computer recorded in relation to Reid that there were "warning signs of VIOLENT AND MENTAL".

63. In mid-March, an 11 year old boy was assaulted by a man believed to be Reid, who ran off. On 3rd April, Reid attended the Housing Office and said that he was having trouble with his neighbours. He admitted he had been acting aggressively towards

them, as his way of warning them off.

64. He went on to complain about the trouble he was having with Troy Hurst. He was told that the Housing Office had received complaints from the Hursts and from another neighbour as to Reid's behaviour, which were being investigated. Reid was told that Troy Hurst was to be interviewed about the allegations.

65. The Housing Officer's note says:

> "Reid gave the impression that if we didn't deal with the matter he was complaining about in general, he would deal with the matter himself.
>
> ... I was concerned that there was a risk he would cause injury to other residents and advised Miss Lam to inform the police".

66. It is then recorded that Miss Lam contacted Police Sergeant Mortimer, which resulted in a CRIMINT entry being made on 11th April. The information recorded was to the effect that possession proceedings were being taken against Reid, and the case would be heard on 25th May at Barnet County Court.

67. Reid had said he still believed his neighbours were conducting a whispering campaign against him, and he told the Housing Officer that if this continued, he would take the law into his own hands:

> "This subject has come to the notice of police on numerous occasions for threatening and assaulting his neighbours. He is very violent powerfully built and suffers from paranoia".

68. It is further said:

> "I am extremely concerned re his latest threat as I believe that this man is extremely dangerous and has the potential to seriously injury or kill".

69. In the second week of May, further information was received by the police from the Housing Department, referring to the imminent possession proceedings on 25th May, and saying:

> "Should it go in Barnet's favour, Albert Reid has threatened to get even with the people who give evidence against him.
>
> Those of you who know Albert will know that he is very capable of carrying out this threat".

70. On 12th May, the daily tasking and briefing sheet for the Barnet Borough Division referred to information received from the Council. It was mentioned that Reid had threatened to get even with witnesses who gave evidence against him, and that he was very capable of carrying out that threat.

71. Pausing there, the submission is made by Mr Starmer that, had the proceedings which were imminent been criminal proceedings rather than civil proceedings, Troy Hurst

would have qualified for protection as a vulnerable witness.

72. On 17th May, Troy Hurst made a witness statement in relation to Reid, and in support of the eviction proceedings.

73. On 19th May, Reid punched another neighbour and produced a knife, with which he threatened the neighbour. The police records again say:

> "It is apparent that Reid is a dangerous individual and if approached by officers would not hesitate to use violence".

74. On 23rd May, Troy Hurst signed the witness statement which he had earlier made.

75. On 24th May, Miss Lam of the Housing Office received a telephone call from Reid at about 4.30 pm:

> "He wanted to know who was complaining against him and he also strongly denied harassing any of the residents on the estate. He stated that the council were taking sides against him ... He asked me if the complainants were either the man who lived downstairs from him or a lady who lived across the road. I told him, 'no'".

76. As it seems to me, whatever was intended by Miss Lam in answering that question, the effect of the answer which she gave was inevitably to narrow down in Reid's mind the identity of the possible witnesses against him.

77. I come to the events in relation to 25th May 2000. Miss Lam went to the County Court. She described Reid sitting alone, not looking at her, and she noticed that he was agitated and angry.

78. In court, he requested information about who he was supposed to be harassing, but no information was given to him. He made no reference to Mr Hurst. Before the proceedings finished, Reid got up; he was very angry, and left the room. The judge decided the case would be heard on the first open date at the end of June, and he also recommended that security should be present at the court.

79. The judge adjourned the matter in order to enable Reid to get legal advice.

80. During the hearing, Reid repeatedly shouted at the judge. He was very angry, and Miss Lam recorded that she herself felt very threatened by his behaviour:

> "He was more suspicious, boarding [sic] on being paranoid".

81. The Council had sought injunctive relief, but the judge declined to grant interim relief.

82. Thereafter, Miss Lam telephoned Troy Hurst, according to the claimant, to say that Reid was to be evicted within 28 days, and told him to be on his guard, and it was suggested she also contacted the police. I say "according to the claimant", because Miss Lam does not, apparently, recall this. The police have no record of any such

conversation, and say in their evidence that Miss Lam did not contact them.

83. Pausing on that aspect, if indeed there was no contact between the Housing Officer and the police, that may well raise the question in the circumstances: why not?

84. At 19.12, Tony Hurst telephoned the police. At 19.19, police officers arrived at the Hurst's house. They spoke to Troy, who was having problems with a neighbour, whom he described as "a big black bloke from across the road". Both Troy and his father appeared agitated, but did not appear to be in fear. No knife was seen by Troy Hurst.

85. One of the officers, Constable Wright, who had visited this scene, informed control at 19.26 that no knife was seen, that Reid had left the address and was making his way to 102 Cromwell Road, and the officers would visit there.

86. In fact, of course, the correct address was 100 Cromwell Road, where, at 19.30, four police officers arrived and questioned Reid.

87. He, at that time, appeared calm, but evasive. They had words, but Reid did not have a knife. Constable Wright took a quick look in the front room and behind the front door, which, it will be recalled, was where a knife had been on an earlier occasion. There did not appear to be any knife, or any other kind of weapon.

88. That was the extent of the police investigation in relation to a possible weapon.

89. It was recorded that Reid "became very helpful towards us and at no point was aggressive". He was informed that if he returned to the Hurst's address, he would be arrested. The police then left, Troy Hurst apparently confirming that he would not be going out that night.

90. At 19.42, there was a 999 call from the Hurst's premises received by the police. It was recorded as:

> "Male concerned ... has now returned and threatened to shoot the informant. No weapon seen. Suspect lives at 102 Cromwell Road N10 and it is believed he has now returned there. If ... Trojan Firearms Unit required please [get in touch with] CAD [Computer Aided Despatch] direct".

91. At 19.49, the CAD operator made an entry ("No Units Available") and there was further evidence that:

> "In the normal course of events a suspect with a firearm would generate an immediate police response. However as I had been told by the two officers that the male had not been armed on the initial call and that the suspect had already left the scene, I decided that the response was not immediately required".

92. At 19.50 Constable Knight informed control that the male was not armed on the previous call.

93. At 20.07, the CAD operator made a telephone call to Mr Hurst senior, who confirmed

"that the police were not required, as the man had left". It was recorded that:

> "Mr Hurst sounded calm and reasonable, not distressed ... I introduced myself and told him that I didn't have an officer to attend at that moment. He said it was not necessary as he had already gone home. I asked him if he had seen any weapons and Mr Hurst said, 'No'. I recall him saying that they had locked themselves in the address and were not going to open the door. I told Mr Hurst that he should dial 999 if the male returned and he agreed to do this. The view I took on the call was that all Mr Hurst wanted was for the call to be logged and for the reporting officers to be made aware of the incident. At no time did Mr Hurst ask for police attendance, nor did he sound frightened or upset regarding the incident".

94. Pausing there, Mr Starmer submits that the police had a good deal more knowledge, and means of knowledge, about Reid than the Hurst family themselves had.

95. There was further material from a witness called Tracey Turlough, a neighbour, who says that there had been, over a substantial period of time, a number of fights between Reid and Troy Hurst. Indeed that on this fateful evening, just after 2100 hours, the deceased called out to Reid "come down here, you black bastard" and, a little later, the two of them were baiting each other.

96. In the light of that, Mr Beer, on behalf of the Metropolitan Police authority, submits that the deceased, contrary to what he had told the police he would do, did not remain in his flat, but went out. When he returned, it was he, rather than Reid, who initiated what became the fatal incident.

97. At 21.30, it was reported that Troy Hurst had returned home. At 21.45, there was an emergency call in respect of the fatal incident and, two minutes later, an emergency call was made for an ambulance, which arrived within three minutes.

98. In the light of that material, Mr Starmer submits that it is quite unsustainable for the Coroner to reach the conclusion that there was no evidence of systematic failure. An inter-departmental inquiry has already indicated that, but for systemic failure of communication between the agencies, the outcome might possibly have been different.

99. Furthermore, the police who dealt with emergency calls on the night of the killing did not appear to have been in possession of crucial information, which ought to have been available to them, or, if they did, they failed properly to act upon it.

100. Similarly, Mr Starmer submits that the defendant's decision on 25th June, that there was no evidence leading the Coroner to believe there may be a breach of Article 2, is unsustainable.

101. Mr Starmer, at a comparatively late stage in his submissions, identified the steps which he submitted could, and should, have been taken by the first and/or second interested parties.

102. He submitted that there should have been some assessment of the risk presented by Reid to Troy Hurst before 25th May, particularly in the light of Troy Hurst being a material witness against Reid in the possession proceedings, and in the light of the

threat a couple of weeks before the adjourned possession hearing, that Reid would get even.

103. A degree of protection should have been provided, Mr Starmer submits, for Troy Hurst, the minimum level of which would have been informing him that he might be at risk, providing him with a telephone number on which he could reach officers knowing about the case, and there should have been some effective steps to bring the risk to the attention of the appropriate officers on the telephone.

104. The second interested party should have given more careful thought in relation to the obtaining of an injunction and, had they done so, they might well have pressed for an interim injunction, which might have had beneficial effect.

105. Furthermore, an effective search of the premises, when the officer merely had a quick look behind the door, might very well have revealed what became the murder weapon.

106. Mr Starmer submitted that the police officers could have arrested Reid for offences under the Public Order Act, breach of the peace, assault, or criminal damage; and, finally, he submitted that there should have been much closer monitoring of the situation as it developed, particularly during 25th May, in the context of all that had gone before.

107. I bear in mind Mr Beer's strictures on behalf of the first interested party that these steps were identified by Mr Starmer at a comparatively late stage in his submissions. I also bear in mind that some of them may be legally impermissible.

108. I bear in mind, too, Mr Bhose's powerful submissions, on behalf of the local authority, that nothing on 25th May should have caused the authority to uprate its concerns, and that, as he submits, neither limb under Article 2 is made out against the local authority.

109. But it is, as it seems to me, crucial to bear in mind that it is not for this court, which has heard no witnesses, to evaluate the strength of the case against either of the interested parties. Indeed, in my judgment, despite the attractive submissions that have been placed before the court by Mr Beer and Mr Bhose, it would be entirely inappropriate, in the light of what is going to happen hereafter, for this court to embark on an analysis of the particular strengths and weaknesses of the case against the interested parties.

110. Our task is to decide whether, when the Coroner refused to resume the inquest, the material then before him, and now before us, gave rise, arguably, to a breach of Article 2 by either of the interested parties.

111. In my view, it did, and however inadequate a remedy the holding of an inquest in such circumstances may be, the Coroner's refusal to resume it was in my judgment fatally flawed for the reasons which I have given, and breached his obligation under the Human Rights Act to act compatibly with the Convention.

112. Accordingly, for my part, I would quash his decision, and, Miss Hewitt not contending otherwise, order that the Coroner resume the inquest.

113. MR JUSTICE HENRIQUES: I agree that the case of **Khan** was wrongly decided, for

the reasons given by Rose LJ. It is, in any event, unconscionable that decisions taken in November 2002 and in June 2003, which are incompatible with the Human Rights Act, should stand undisturbed. The Coroner himself was seeking to respect the provisions of the Act.

114. I agree that there is a sufficiency of evidence to satisfy both limbs of the **Osman** test. Both Mr Beer and Mr Bhose advanced powerful arguments in rebuttal of the criticisms made against their respective clients.

115. The cogency of their arguments served to underline the proposition that there remain arguable issues for determination by the Coroner, and not by this court.

116. I, too, would quash the Coroner's decision.

117. MR STARMER: My Lord, may I deal with one or two matters?

118. LORD JUSTICE ROSE: Yes.

119. MR STARMER: The first, if I may, I think there were three very minor errors in my Lord's judgment, if I may --

120. LORD JUSTICE ROSE: Most certainly. Only three?

121. MR STARMER: You may want to have them now?

122. LORD JUSTICE ROSE: If you identify them, then I will correct the transcript.

123. MR STARMER: Yes.

124. Firstly, you said that section 16(3) was to be construed in accordance with section 6(1)(b) of the Human Rights Act, and I think you meant section 6(1) -- section 6(2)(b) and you meant section 6(1).

125. LORD JUSTICE ROSE: Absolutely correct.

126. MR STARMER: The second was at 19.12, the call to the police was by Tony Hurst and not Troy Hurst.

127. LORD JUSTICE ROSE: Thank you.

128. MR STARMER: The third was that it was Troy Hurst who was asked whether he had seen the knife when the officers arrived, and not Mr Hurst senior.

129. LORD JUSTICE ROSE: Thank you.

130. MR STARMER: That is common ground. That is all I detected.

131. My Lords, I do seek an order for the claimant's costs.

132. LORD JUSTICE ROSE: Do you have a representation order?

133. MR STARMER: In court, I do not know. May I just take instructions?

134. (Pause).

135. LORD JUSTICE ROSE: If you have, I do not think you need anything else.

136. MR STARMER: It should be filed with the court.

137. LORD JUSTICE ROSE: I agree. It should be filed with the court. Is it?

138. (Pause).

139. Is there one in existence, Mr Starmer, a representation order?

140. MR STARMER: Yes, there is.

141. LORD JUSTICE ROSE: In that case, I accept your undertaking to file it as soon as practicable.

142. MR STARMER: Yes, and I apologise if it is not filed already.

143. LORD JUSTICE ROSE: That being so, I do not think you need any further order.

144. MR STARMER: I think we do, apparently, because of the circumstances of the (inaudible) rates.

145. LORD JUSTICE ROSE: What further order are you seeking?

146. MR STARMER: We seek an order that the defendant pay the claimant's costs.

147. LORD JUSTICE ROSE: That one public fund should pay another? Is that what you are after?

148. MR STARMER: My Lord, the difficulty is this, that the Commission had to be persuaded to grant legal aid in this case, and they did so only after advice, and they do seek to recover back into their funds the costs, because it affects the way they allocate their funds to cases.

149. LORD JUSTICE ROSE: Are you seeking an order against the defendant, against the interested parties, or against everybody in sight?

150. MR STARMER: Primarily, against the defendant, on the basis that both the original decision and the subsequent decision were wrong, and in particular that the decision last week, after reviewing the evidence, was that there was no evidence of a breach of Article 2, and it is because of that decision that these proceedings over two days have taken place.

151. Whatever may have been the position of the defendant in oral submissions, there was nothing in the skeleton argument to suggest that the position was not being defended on the basis that the 25th June decision was a proper decision, i.e., there was no evidence of a breach of Article 2.

152. That is why the case was prepared in the way it was prepared, and that has taken the time it has taken.

153. LORD JUSTICE ROSE: Miss Hewitt, what about costs?

154. MISS HEWITT: I would seek to persuade you to make no order.

155. LORD JUSTICE ROSE: I know that is what you would seek to do, but on what basis?

156. MISS HEWITT: Because you have a discretion about it, and your Lordship has already in the judgment made the comment that you found that in this case, the Coroner was struggling to do his best with a difficult area, and it is not a case, therefore, I would take from that that the court has felt particularly a reason to criticise this Coroner for the stance that was taken or the decision he came to, other than the fact that the court obviously has come to a different conclusion on hearing that evidence.

157. I say there is a discretion, but relevant to that discretion is the fact that the claimant is publicly funded in pursuance of this claim, and that, certainly in case law, that has been seen in the past a relevant consideration.

158. It is an area where, although it could be said that a Coroner need not attend, and therefore it is taken that that means they will not expose themselves to an order for costs, it is clearly helpful to the court, I suggest, for a Coroner in this case to attend and to assist in explaining and putting the law.

159. If not, and I do not suggest that this Coroner has attended as an amicus, because clearly I made it clear that he made his decision and confirmed it only last week, and believed it to be correct. But, akin to an amicus, in the sense of the invitation to attend was to seek to help explain that decision, and to look to the court for guidance, if it was right -- it is, and I emphasise this is an area of law which, as your Lordship will know, a number of coroners are finding extremely difficult to make --

160. LORD JUSTICE ROSE: Yes. I have expressed my sympathy.

161. MISS HEWITT: But against that background, it may be thought that those paying, or potentially paying, the costs arising, and of course those who fund the authority, obviously, therefore find themselves in a position of needing to back (inaudible) in a situation where everyone is doing their best in a difficult area, and in relation to costs, this is a case -- there can in discretion, I suggest, be some element of reflecting the behaviour of the parties, and certainly to that extent, I would say this is very much a case in which your Lordship might think that no order would be appropriate, and I repeat, particularly against that background that it is publicly funded.

162. There is no suggestion, as I take it from what Mr Starmer has said, that the claimant himself was in any way exposed to a liability, and the only point he seeks to make is that the fund would like to recover it.

163. But it is, obviously, as your Lordship has already noted, public money going from one source to another and, taking it in the round, I would suggest that the appropriate order

is no order.

164. LORD JUSTICE ROSE: Thank you.

165. Mr Starmer, I am against you in relation to costs against the interested parties. Is there anything else you want to say in relation to the defendant?

166. MR STARMER: My Lord, there is. There are just one or two minor points.

167. The first is that this is not a case where the Coroner came just, as it were, to explain to the court. The permission was contested over half a day by the Coroner on the basis that permission would be given, but at that stage, the Coroner actively wanted the opportunity to review in the light of further evidence quite properly in.

168. That review took place. It took longer than the Coroner thought. I do not criticise him for that, but that was the reason why the skeletons --

169. LORD JUSTICE ROSE: Everything in this case takes longer than anybody thinks.

170. MR STARMER: Yes, but that decision should have been made before last Wednesday, but was not. That had the knock-on effect that the preparation was put back and the case was prepared on the basis of the flawed decision taken last Wednesday, on the basis that the information was an unsustainable position.

171. My Lord, this case has been actively resisted by the defendant, both substantially and on the **Khan** point.

172. LORD JUSTICE ROSE: What is the advantage, bearing in mind that you are publicly funded anyway, in getting an order against another public pot?

173. MR STARMER: My Lord, it is not just that the Legal Services Commission would like an order in their favour. They are under a duty to recover the funds, and that is the duty they have underlined to us in correspondence, indeed this week and on Friday of last week, because they have their own budgets to consider.

174. Yes, of course, there is one big public pot on one view, but within that these days, each public authority has carefully to account for money it is spending, and why it is spending it, and that it was right to do so.

175. Legal aid was granted in this case on the basis of advice that said that there was a sufficiently good prospect of success that you will not be, as it were, wasting money.

176. Having now succeeded, to be told that the advice was right, the decision followed the advice, but in fact you will not recover the money that you thought you might because it would come out of another public authority's fund, is not something which is treated in the way it was several years ago.

177. It is important to the public authorities to account for their budgets.

178. LORD JUSTICE ROSE: Thank you.

179. MISS HEWITT: My Lord --

180. LORD JUSTICE ROSE: Do you have a right of reply?

181. MR STARMER: It was simply to correct one point.

182. The suggestion was made that there was a delay by the Coroner. The timetable was put back because the interested parties sought further time to put in their evidence.

183. LORD JUSTICE ROSE: Thank you.

184. (Pause).

185. The claimant will have her costs against the Coroner.

186. MR STARMER: My Lord, just finally and briefly, may I ask for legal aid assessment?

187. LORD JUSTICE ROSE: If you need it, yes.

188. MR STARMER: I do.

189. My Lord, the second is this: the claimant is anxious that the substantive inquest should be resumed before a different Coroner. I have raised that with my learned friend. She has taken instructions and she does not oppose that in any way, and I wonder whether, therefore, as part of the judgment, an order could be made that this is to be resumed by a different Coroner?

190. LORD JUSTICE ROSE: Miss Hewitt.

191. MR STARMER: I do not oppose it, but I would like to make clear that my instructions are the defendant is willing to hold it, but he fully understands if it is felt by the claimant and the family that --

192. LORD JUSTICE ROSE: Yes. That is a very proper attitude.

193. Mr Starmer, does it really need an order of the court?

194. MR STARMER: My Lord, in the light of what my learned friend has just said on the record, it probably does not.

195. LORD JUSTICE ROSE: In that case, we shall not make one.

196. MR STARMER: My Lord, just one final thing. I wonder whether the transcript of this judgment could be expedited, because I know that there are other cases on the **Khan** point that are stacking up, and people would be anxious to look at this judgment when they come up in the next few weeks?

197. LORD JUSTICE ROSE: It will be produced as soon as the shorthand writer is able to produce it, within the scope of expedition.

198. MR STARMER: Thank you very much.

199. MISS HEWITT: My Lord, may I raise finally the question of permission to appeal? I do it on the basis that I have no instructions of there being any intention to take an appeal on any of the potential bases. I say any. Obviously, the question of evidence and the **Khan** point.

200. But I do raise it in any event simply because of the background facts that the **Amin** and **Middleton** decisions are coming up, which may throw a very different light on matters, and, on that broad basis, I ask for permission to appeal.

201. LORD JUSTICE ROSE: Thank you.

202. No, we refuse permission to appeal.

203. Anything else? No. Thank you.