IN THE WEST SUSSEX CORONERS' COURT

IN THE MATTER OF AN INQUEST TOUCHING THE DEATHS OF

THOSE WHO DIED AT THE SHOREHAM AIR SHOW ON 22ND AUGUST 2015

RULING ON WHETHER A JURY SHOULD BE SUMMONSED

Background

1. The Inquests into the deaths of the 11 men who died at the Shoreham Airshow on 22 August 2015 is now due to be heard later this year.

2. A number of Pre Inquest Review hearings have already been held in this matter At the Pre Inquest Review hearing (PIR) on 8 April 2019 consideration was given to whether or not I was required to sit with a jury at the Inquests. I gave my preliminary view that I did not see that there was "sufficient reason" to sit with a jury. Some oral representations were made by those acting on behalf of the bereaved interested persons at this PIR however it was clear that further instructions needed to be taken from their clients and therefore I decided not to determine this matter at that time but to give further time for written submissions to be made. These were required to be served by 23 April 2019 although some of the bereaved then asked for further time to make fuller submissions, particularly as the inquest disclosure process had not, by that time, been started.

Submissions received

3. Written submissions have since been received from a number of the interested persons.

4. Those representing nine of the families have provided their view as to whether I should sit with a jury. There is neither a general consensus amongst all of those nine families nor within every family. The majority of those that they represent have indicated that they would not want me to sit with a jury, but that is not an overwhelming majority. Some of the bereaved are neutral on the issue.

5. Those representing the family of Matthew Grimstone have submitted that the Inquest should be held with a jury and that there is "sufficient reason for doing so". They submit that "The conduct of the whole investigation process and inquest is of huge public importance, so that the full chain of events that contributed (and the extent that each link contributed) can be determined and for and the public to see that all necessary measures to improve flight safety have been identified and implemented to minimise/eliminate the risk of a similar tragedy in the future. This public confidence and the wider public interest in relation to the safety of future airshows is a compelling reason for jury to be summonsed."

6. Those acting for the families of Mr Schilt and Mr Reeves also request a jury. They remind me that the wishes of the bereaved and the similarity to a mandatory jury case are factors in support of their position as, they say, is the public perception of independence.

7. RAFA Shoreham Airshow Limited have agreed with my preliminary view not to sit with a jury. Those acting for Rodney Dean, Flying Display Director have also submitted that there is no need for the Coroner to sit with a jury. They have expressed concern about the length of the Inquest, its complexity and the costs associate with it. They submit that "… with the assistance of Counsel to the Inquest that the Senior Coroner is best place to cover, comprehend and reach conclusions on the required matters in an expeditious and efficient way, and to provide such a detailed narrative conclusion as may be required".

8. Sussex Police, the AAIB, the CAA, Canfield Hunter Ltd and Andrew Hill have remained neutral on the issue.

<u>Legal Principles</u>

9. There does not appear to be any disagreement in respect of the law around the legal principles relating to when a Coroner should sit with a jury.

10. There is a presumption under s.7(1) Coroners and Justice Act 2009 (CJA 2009) that an Inquest will be held without a jury unless the case falls within the categories defined in s.7(2) or s.7(3) applies.

11. The circumstances where an Inquest must be held with a jury are set out in s.7(2) CJA 2009 (the mandatory provisions). Had there not been an adjournment for the criminal trial these inquests would have required a jury under the s.7(2)(c) CJA, being deaths caused by a notifiable accident.

12. However no Interested Person has dissented from the position that the effect of schedule 1 para 11(3) CJA 2009 is that a jury is no longer mandatory in these cases. That provision states that:

    "(3)The resumed inquest may be held with a jury **if the senior coroner thinks that there is sufficient reason for it to be held with one**"

13. That provision is similar in its wording to s.7(3) CJA 2009 which provides:
."An Inquest into a death may be held with a jury **if the senior Coroner thinks that there is sufficient reason for doing so.**"

14. The mere fact that Parliament have enacted schedule 1 para 11(3) CJA 2009 indicates the starting position for any Coroner. It is appears that parliament intended to remove the mandatory requirement for a jury thereby making a non-jury inquest the default in cases resumed following criminal trials, unless of course there is "sufficient reason" to depart from that presumption.

The Case Law governing the exercise of discretion to empanel a jury

15. There is no authority directly addressing the exercise of discretion under schedule 1 para 11(3), however given the similarity of wording to s.7(3) the law relating to discretionary juries under s.7 is apposite.

16. In *R (Fullick) v HM Senior Coroner for Inner North London* [2015] EWHC 3522 (Admin) [2015] Inquest LR 321, the Divisional Court provided a non-exhaustive list of factors relevant to the correct exercise of discretion under s.7(3). None of them are necessarily determinative:

    (i) the wishes of the family (following *R (Paul) v Deputy Coroner of the Queen's Household and the Assistant Deputy Coroner for Surrey* [2008] QB 172, [2007] Inquest LR 259)

    (ii) submissions made on behalf of any other Interested Person or Persons.

    (iii) consideration of whether the facts of the instant case bear any resemblance to the types of situation covered by the mandatory provisions.

    (iv) the circumstances of the death.

    (v) any uncertainties in the medical evidence

17. Turning to each of these factors individually

    (i) As the families have differing views as to whether or not I should sit with a jury I consider it necessary (following the case of *Paul* above) to treat their submissions as neutral for the purpose of my ruling. Although most of the families do not want a jury I am not weighing this in the balance against a jury in making my decision.

    (ii) Outside of the family submissions, the positions of the remaining IPs are that I should not exercise my discretion to call a jury or they are neutral.

(iii) These inquests do concern a situation covered by the mandatory provisions in that it was a "notifiable accident". It is submitted by those seeking a jury that I should therefore "be consistent with the spirit of s.7(2)(c). However that factor alone cannot wholly answer the question, otherwise the discretion given in schedule 1 para 11(3) would be redundant. Parliament has given a discretion to sit without a jury in such cases even though a jury would have been mandatory had a criminal trial not been held.

(iv) The circumstances of these deaths have already been the subject of a factual investigation by one jury, alongside a detailed investigation by an independent body, the Air Accident Investigation Branch.

(v) There are no uncertainties in the medical evidence relating to the deceased. It may be, however, that the forthcoming CAA review provides detailed and complex medical evidence that is relevant to the question of whether a cognitive impairment might have impinged upon this pilot's actions.

18. As indicated above I consider the factors taken from *Fullick* are a guide, but not an exhaustive list.

19. I have also considered the points made in the submissions relating to the additional cost of conducting this inquest with a jury and the possible logistical problems that could arise. However in my view, these factors are not relevant to my decision. Administrative cost and inconvenience should never weigh against sitting with a jury where other matters pointed towards one.

20. I also do not accept the argument, put forward on behalf of one of the bereaved families, that for consistency with the jury in the criminal trial, the inquests should also be held with a jury. Juries have very different functions in the two jursidictions and I do not accept that parity of tribunal of fact is required.

21. I do however consider that it is very relevant to this case that a Coroner sitting alone would be able to provide detailed findings of fact and a reasoned conclusion in these Inquests whereas as jury would only be able to provide brief answers to a limited number of questions. In both *Paul* and *R (Collins) v HM Coroner for Inner South London* [2004] ILR 106 Judges have made it clear that this can be a relevant consideration. A careful and balanced analysis of information by a professional tribunal of fact can lead to a greater understanding of what facts were established and why. By publicly explaining his or her findings a Coroner can provide an element of explanation which is then open to public scrutiny in a way that a jury cannot.

22. In respect of having public confidence in the process and public perception. There has already been the benefit of a jury scrutinising some of the facts of this case, albeit in a different jurisdiction. Without doubt a jury generates the perception of independence. However it must be recognised that I am also wholly independent and will undertake my duties in a fearless and impartial manner.

23. I have taken into account all the views of the Interested Persons alongside the factors I set out above, and having weighed these up it is my view that there is not sufficient reason for me to hold these inquests with a jury.

24. Whilst I accept that this case raises questions on matters of great public importance, as a Coroner I will be able to make very detailed and reasoned factual findings which will be announced publicly. It is my position that public interest can be better served by sitting alone.

Penelope Schofield
Senior Coroner
31 January 2020