Neutral Citation Number: [2023] EWHC 81 (Admin)

Case No: CO/4304/2021

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
DIVISIONAL COURT
SITTING AT LEEDS COMBINED COURT CENTRE

Date: 23 January 2023

Before:

LORD JUSTICE STUART-SMITH
MR JUSTICE FORDHAM

- -

Between:

THE KING (ON THE APPLICATION OF POLICE OFFICER B50)

Claimant

- and -

HIS MAJESTY'S ASSISTANT CORONER FOR THE EAST RIDING OF YORKSHIRE AND KINGSTON UPON HULL

Defendant

-and-

(1) THE NEXT OF KIN OF LEWIS SKELTON
(2) THE CHIEF CONSTABLE OF HUMBERSIDE POLICE

Interested Parties

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- -

Sam Green KC and **James Lake** (instructed by **Gorvins Solicitors**) for the **Claimant**
Richard Wright KC and **Janine Wolstenholme** (instructed by **Hull City Council, Legal Services**) for the **Defendant**
Tim Moloney KC and **Angela Patrick** (instructed by **Hudgell Solicitors**) for **Interested Party (1)**
Jason Beer KC and **Jonathan Dixey** (instructed by **Humberside Police, Legal Services**) for **Interested Party (2)**

Hearing dates: 20/21 October 2022

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Approved Judgment

This judgment was handed down remotely at 10.30am on 23 January 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Stuart-Smith:

1. This is the judgment of the Court to which we have both contributed.

Introduction

2. Lewis Skelton died on 29 November 2016 as a result of being shot twice by the Claimant, an Authorised Firearms Officer ("AFO") serving with Humberside Police. At the inquest into his death conducted by the Defendant with a jury, the Defendant decided that the issue of unlawful killing should be left to the Jury and, on 15 October 2021, the Jury returned a conclusion that Mr Skelton had been unlawfully killed.

3. By these Judicial Review proceedings, the Claimant challenges the decision to leave the issue of unlawful killing to the Jury and the Jury's conclusion that the Claimant had unlawfully killed Mr Skelton.

4. Before us the Claimant (to whom we shall refer by his cipher "B50") is represented by Mr Sam Green KC and Mr James Lake. The Defendant assistant coroner (to whom we shall refer as "the Coroner") has adopted a neutral stance but he has made submissions addressing general principles. His submissions were provided in writing by Mr Richard Wright KC and Ms Janine Wolstenholme and orally at the hearing by Ms Wolstenholme. The next of kin of Mr Skelton were represented before us as they were before the Coroner by Mr Timothy Moloney KC and Ms Angela Patrick. Without meaning any disrespect, we shall refer to them as "the Family". Finally, the Chief Constable of Humberside Police was represented before us as he was before the Coroner by Mr Jason Beer KC and Mr Jonathan Dixey. The Chief Constable and B50 made common cause in opposing the Coroner's ruling and the jury's conclusion, dividing their submissions efficiently and effectively. The Family contend that the Coroner's ruling and the jury's conclusion should be upheld.

5. Before embarking on the substance of our judgment, we wish to acknowledge the dignity and courtesy that has been shown on all sides when addressing the difficult facts and issues that we have to consider and decide. This applies most particularly to the Family who were present during this hearing as they were below. We do not forget for a second the impact that the events of 29 November 2016 have had: first and foremost upon Mr Skelton, who lost his life; second, upon the Family who lost someone they loved; and third, upon B50 who (whatever the rights and wrongs of what happened) has to live with the knowledge that he killed Mr Skelton and, subject to any conclusions we may reach, the stigma of the jury's conclusion. Everyone must wish with every fibre of their being that the clock could be turned back rather than having to go through the processes and procedures, including this hearing, that have arisen from Mr Skelton's death.

The Grounds for Judicial Review

6. The Claimant advances three grounds, as follows:

    i) The Defendant did not apply the "*Galbraith* plus" test correctly in his written decision to leave an unlawful killing conclusion to the jury and thereby erred in law (Ground 1);

ii) The Defendant's decision to leave unlawful killing was an error of law even if he had applied the "*Galbraith* plus" test correctly because there was insufficient evidence to support it (Ground 2);

iii) The Defendant's summing-up of the case to the jury was deficient and inadequate (Ground 3).

7. In brief outline:

i) Ground 1 focuses on the submissions that were made to the coroner about what issues and conclusions should and should not be left to the jury and the Coroner's "Ruling on Conclusions" dated 13 October 2021, to which he added by his "Supplemental Ruling on Conclusions" dated 15 October 2021. It is said that the Coroner failed to consider whether there was evidence sufficient to leave the issue of unlawful killing to the jury in accordance with *R v Galbraith* [1981] 73 Cr App. R. 124 and the supplementary principle, commonly referred to as the "plus" in "*Galbraith* plus", the scope of which we shall consider below. It is said that this failure to address the proper legal test is an error of law that justifies setting aside the Coroner's decision irrespective of our conclusions on Ground 2;

ii) Ground 2 requires us directly to determine whether or not there was sufficient evidence to satisfy both limbs of the "*Galbraith* plus" test;

iii) Ground 3 involves a root and branch attack upon the structure and content of the summing up. By the end of the hearing before us it was common ground (and we agree) that the test to be applied is whether the summing up was so deficient as to render unsafe the jury's conclusion on unlawful killing.

The factual and procedural background

8. Mr Skelton had a long and significant history of mental ill-health, which included recorded periods of psychosis with paranoia and auditory hallucinations. By 2016, he had been taking Olanzapine, an anti-psychotic medication, for over 5 years. At the time of his death there was no Olanzapine in his system. Mr Skelton had also been in drug addiction treatment for almost a decade. There were no illicit substances in his system at the time of his death. On the morning of his death, he had taken methadone at a therapeutic level, as prescribed.

9. At about 9.15 am on 29 November 2016, Mr Skelton was observed walking from Durham Street, near his home, and along Holderness Road towards Hull City Centre carrying a small axe similar in size to what is sometimes called (and was called by some witnesses) a hatchet. Between about 9.19 am and 9.25am four 999 calls were made to Humberside Police by members of the public. In various different terms he was described as walking along the road "carrying" or "brandishing" the axe (or hatchet) and "waving it about" or "flapping it about". In the course of these calls and during CCTV observation, Mr Skelton was identified and Humberside Police were made aware that he had at least some history of mental health problems. It was established that he had not threatened anyone. He had walked in close proximity to members of the public, passing one as he crossed the Mount Pleasant junction. He did not interact with anyone and was described as walking "with a purpose". From

the CCTV compilation that we have seen, it is easy to see why this description was used as Mr Skelton was walking briskly (described by one caller as "marching in a way") and appearing to take little or no notice of those around him even though at times he passed by or close to other members of the public who were either on foot or, in one instance, on a bike following close behind.

10. Those calls were received by the Humberside Police in the central command or control hub. The Force Incident Manager ("FIM") was designated Officer Four. Officer Four first authorised the deployment of Armed Response Vehicles ("ARVs"). She was the Strategic Tactical Firearms Command ("STFC") or Silver Command. There were four ARVs on duty and all were deployed. Three were over 15-20 minutes away from the centre of Hull. A single ARV was available for immediate deployment, designated LZ11. LZ11 was crewed by two AFOs who were known during the inquest and are referred to in these proceedings as "B50" (the Claimant) and "Charlie". B50 was acting as Bronze Commander or Operational Firearms Command ("OFC").

11. B50 had recently completed his training as OFC in November 2016 and was being mentored by Charlie for the purposes of establishing his operational competence and completing his qualification as OFC. This was the first active firearms incident where B50 had acted in that role. From the outset the officers in LZ11 were told that there was a man walking towards the city centre "with some purpose", that he was carrying an axe which he was "waving around", that he had not approached or interacted with anybody, and that there were possible EMDI (emotionally and mentally distressed individual) mental health issues and, maybe, learning disability. They were also told that other ARVs were some distance away and that no dog unit was available: so they were on their own for the time being.

12. At 9.28am, Officer Four authorised the armed deployment. She briefed B50, describing Mr Skelton's appearance and that he was walking "with a bit of a mission" and carrying a small axe about a foot long. She described him as EMDI. In relation to potential threat, the officers were told that Mr Skelton had not actually approached anybody or interacted with anyone and that he was not threatening anybody. He was assessed as a low risk at the moment though he was walking "with a purpose" and his intent was unknown.

13. Officer Four provided a working strategy which included:

    i) minimising risk to unidentified potential victims and members of the public and maximising safety of unarmed officers and armed officers. The strategy also included minimising the risk to Mr Skelton;

    ii) conducting a search and challenging from cover;

    iii) the AFOs were to "bear in mind" EMDI and less lethal options. They were to prioritise Article 2 ECHR and section 3 of the Criminal Law Act 1967.

14. Meanwhile, Mr Skelton made his way to Sykes Street, from where he walked in the direction of Caroline Street. On reaching Caroline Street he walked north before turning left into and continuing along Caroline Place. From the junction of Caroline Place with Caroline Street to its junction at its far end with Charles Place is about 225

metres. There is then a right turn onto Charles Street. After approximately 45 metres, there is a crossroads between Charles Street and Francis Street. Turning to the left into Francis Street brings one to the stretch of road along which ultimately Mr Skelton was fatally shot by B50. Most but not quite all of Mr Skelton's progress from when he turned into Caroline Place to where he was shot was covered by CCTV. He also passed close to a large number of civilian witnesses who gave evidence at the inquest.

15. B50 and Charlie first stopped their car on Caroline Street and intercepted the wrong man. They returned to their vehicle. They then travelled from Caroline Street to Caroline Place where they saw Mr Skelton ahead of them. He was walking away from them. They got out of their vehicle armed with Tasers and their firearms as well as the normal police batons that they carried on their person. They immediately challenged Mr Skelton, shouting at him that they were armed police and telling him to stand still. He kept going. Within seconds, the Tasers had been discharged three times in quick succession, first by B50 (who fired twice) and then by Charlie. The Tasers had no obvious immediate effect on Mr Skelton save that he broke into a jogging run down Caroline Place trailing Taser wires and pursued by the officers. He was repeatedly told by the officers to put down the axe and was heard by witnesses to say, in no uncertain terms, that he would not do so. One witness in Caroline Place, whose evidence was agreed (Mr Watkins), said that, after the officers had shouted at him for the third time that he should put it down, he said "if you come anywhere near me I'll use it." Despite that, the CCTV showed that he had at no stage gone to use it against the officers while they were in close proximity in Caroline Place; and neither officer said that he had threatened them while on Charles Street or Francis Street.

16. After being challenged by the officers, Mr Skelton passed by or near members of the public both on foot and in cars while making his way along Caroline Place and Charles Street and into Francis Street. He did so without offering any actual threat to any of them. This was confirmed by a radio transmission to other units from Officer Four. Mr Skelton was at all times close to and being observed by the officers. There was no evidence of threatening behaviour by Mr Skelton towards the members of the public.

17. Charlie discharged his Taser for a second (overall, a fourth) and final time on Charles Street. Having turned from Charles Street into Francis Street, Mr Skelton was shot by B50.

18. When interviewed by the IPCC and in his statement B50 said two factors were key to his decision to shoot: (a) threatening actions by Lewis Skelton directed at him on or around Caroline Place and (b) the speed at which Lewis was travelling towards three workmen observed on Francis Street, which was described as a "collapsing timeframe". He was supported in this by Charlie. B50 confirmed the accuracy of his interview and statement when he came to give evidence at the inquest.

19. B50's assertion that Mr Skelton had acted in a threatening manner towards B50 on or around Caroline Place was not supported by the available CCTV. Although some witnesses referred to Mr Skelton having lifted or waved the axe, the evidence of at least some of those witnesses was that what they described conformed with what could be seen on the CCTV they were shown when giving evidence (specifically on cameras 33 and 52).

20. Nor was there support from CCTV for a suggestion that Mr Skelton had offered a threat to the officers by raising the axe when on Charles Street or when he got to Francis Street. While there was witness evidence that Mr Skelton had lunged towards the officers shortly before he was shot, that had not been B50's explanation for why he had shot Mr Skelton; and, in the event, Mr Skelton was shot in the back, which would not obviously be consistent with him provoking B50 to shoot him by lunging towards him. At least one witness who gave this evidence of a late lunge (Ms Mallinson) accepted that she may have been mistaken. B50's evidence was that there was no point on Francis Street where Mr Skelton turned and raised the axe at him.

21. It was not in dispute that, when Mr Skelton got to Francis Street, there were three workmen on the pavement further down the road. Estimates varied but tended to be that they were in the order of about 50-60 metres away when first noticed by the officers. At the relevant time, on Francis Street, there was evidence (including evidence from B50) on which the jury could conclude that Mr Skelton was not running in the direction of the three workmen but was by then walking, "dragging himself across like a lousy walk", "staggering" or "stumbling". Witnesses agreed that Mr Skelton was "out on his feet" and that the three workmen were some distance away and crossing the road away from Mr Skelton. The CCTV provides support for this witness evidence and for a submission that, by the time he got to the top of Francis Street, Mr Skelton had slowed down and was, in colloquial terms, struggling to keep going. The fact that he had by then been tasered four times may be thought to provide some support for such a submission. The three workmen did cross the road but not because they perceived Mr Skelton to be a present or imminent threat to them.

22. B50 shot Mr Skelton twice in the back at close range. The first shot did not appear to incapacitate him. Even after he had been shot for the second time, it took considerable efforts by a number of officers in addition to B50 and Charlie to manhandle him to the ground and to subdue him. He was taken by ambulance to Hull Royal Infirmary where efforts to save his life were unsuccessful.

The inquest

23. The inquest was opened in 2016 shortly after Mr Skelton's death. It was delayed and not heard until after the decision of the Supreme Court in *R (on the application of Maughan) v Her Majesty's Senior Coroner for Oxfordshire* [2020] UKSC 46. The inquest began on 7 September 2021 and concluded on 15 October 2021. It took evidence from 60 witnesses of whom 31 gave live evidence while the balance was read. As often happens, the scope of the inquest at first ranged far and wide, covering areas such as (a) Mr Skelton's mental illnesses and drug addiction and the provision of health care to support him over many years; (b) the carrying out of risk assessments by the Chief Constable's force; (c) the reasons why B50 and Charlie did not equip themselves with additional equipment when they got out of their car to challenge Mr Skelton; and (d) whether B50 and Charlie should have used the PAVA spray that they were carrying in order to try to incapacitate Mr Skelton. However, by the end, the issues that might be left to the jury had narrowed very considerably.

24. The taking of evidence concluded on 6 October 2021. On 8 October 2021 the interested persons filed written submissions about what conclusions should be left to the jury. The Chief Constable and B50 submitted that the only short-form conclusions that could properly be left to the jury were those of lawful killing or open.

The Family submitted that unlawful killing should also be left to the jury along with other issues to be left for a narrative conclusion e.g. whether Mr Skelton was experiencing mental ill-health or the effects of psychosis on the morning his death; or whether the Chief Constable failed to make adequate resources available for the deployment of a safe armed response on the morning of Mr Skelton's death. The Coroner heard oral submissions on these issues during the afternoon of 11 October 2021.

25. At the commencement of proceedings on 12 October 2021 the Coroner indicated that he was about to start his summing up to the jury with a summary of the evidence. He said he had created a document which he would circulate to Counsel in due course. Counsel courteously but clearly questioned the wisdom of going straight into the evidence without first giving the jury legal directions that would provide a context for the summary of the evidence. The Coroner responded:

> "Yes. I certainly see the force of the suggestion. The direction will go beyond simply a list of potential conclusions, … and there will be directions as to how to apply weight to evidence, there will be directions about matters of opinion and the like. If I went as far as to introduce a summary of the evidence to the jury in the context that they are in due course going to be invited to consider whether Mr Skelton was lawfully killed or unlawfully killed, … and the determining factor behind that would be whether B50 had a genuine belief that in doing what he did he was acting to prevent harm to others. And that while the reasonableness of that belief is something for the jury to consider, it is to be considered only in the context of whether the reasonableness that the belief makes it more likely than not that the belief he professes to hold was genuine."

26. By this response, without giving a formal ruling or providing reasons, the Coroner indicated that he would invite the jury to consider whether Mr Skelton was lawfully killed or unlawfully killed but had rejected the Family's submissions about issues for a narrative conclusion. Leading Counsel for the Family said that, for his part, such an approach would be "absolutely adequate". Leading Counsel for the Chief Constable was more cautious and repeated the submission that the Coroner should not "just dive straight into the evidence" but that the jury should be given some framework before they were reminded of the evidence so that "they know what issues they were going to be determining … and therefore what to listen out for." The Coroner's response was that this submission was not in accordance with the practice suggested or adopted in a recent inquest over which he had presided, but said that "if you tell me that is … the way things are heading and the way things are done, I am happy to take it from you." Leading Counsel for the Family and for the two AFOs told the Coroner that they agreed with the Chief Constable's submission as a matter of general principle.

27. The Coroner did not express any conclusion or give a ruling in response to these submissions. Instead, the jury were called into court and the Coroner started his summing up. We shall deal with particular aspects of the summing up in greater detail later; but by way of summary we note the following points at this stage. The summing up started at 10.09 am on 12 October, continuing for the rest of the court day. It then continued for two further days, 13 and 14 October, concluding at just

before 1.30 pm on 14 October 2021. Overall it covers approximately 280 pages of transcript. At the outset the Coroner provided an introduction which covers just over one page of transcript. There followed his summary of the evidence which (including relatively short periods of discussion with Counsel in the absence of the Jury during the summary) covers just under 270 pages. The balance of the summing up comprised directions on the law which had, by 14 October, been provided in draft to Counsel before being given to the Jury both orally and in writing.

28. The Coroner started his summing up by explaining how he would and the jury should approach his summing up. In doing so, he attempted to provide some context for his summing up of the evidence by indicating that the critical issue for the jury to decide was whether Mr Skelton had been lawfully or unlawfully killed. Since the passage has been the subject of detailed submissions and criticism, we set out the most important parts in full, as follows:

> "Members of the jury, it is now part of the inquest where I am going to summarise to you the evidence that has been heard so far in the inquest and in due course give you a legal direction as to how you should apply the law to that evidence to produce findings of fact and a conclusion to the inquest which are issues entirely for you. There are two things I want to say by way of a preliminary before I start delivering that summary of the evidence."

The first was that it was only a summary of the evidence and that the jury should decide for themselves what was important. He then continued:

> "The second thing I want to say to you before I begin summarising the evidence to you is to give you some context in which I invite you to listen to the summary of the evidence because that context relates to the matters you are going to have to decide in due course. I will give you a full legal direction in the fullness of time, but for the moment, I want to indicate to you that when you listen to me summarising the evidence to you, you will be bearing in mind that ultimately I am going to be asking you to decide as a matter of law whether Lewis Skelton was lawfully killed or unlawfully killed.
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> The legal position in brief is that in order for Mr Skelton to have been lawfully killed, you would have to be satisfied on what is called a balance of probabilities that B50 had a genuine belief that in doing what he did, he was acting in the defence of self or others in the imminent danger of harm from Mr Skelton. If you are not satisfied on the balance of probabilities that B50 genuinely had that belief, that would make his actions unlawful. You are entitled to take into account in assessing the state of B50's belief the reasonableness of that belief. If you find it is reasonable for B50 to have held a genuine belief that he had to act in the way that he did, that would be evidence in itself that the belief was genuine. If you think that the reasonableness that that belief was not reasonably held, that

> would be evidence on which you could conclude that he did not genuinely hold it. I will have to more to say to that in due course, but it is important at this point to emphasise – to outline to you that the evidence that you have heard and which I am about to summarise to you is ultimately going to be the evidence upon which you will, in accordance with my direction in due course, conclude whether Mr Skelton was unlawfully or lawfully killed."

29. With that, the Coroner embarked on his summary of the evidence, to which we will return when considering Ground 3, before concluding with his oral and written directions on the law. No criticism is made of those written directions.

30. The Coroner provided two written rulings on the conclusions that would be left to the jury. They have been the subject of intense focus, particularly in relation to Ground 1, and will be considered in greater detail later. In brief outline:

    i) At 10.39 am on 13 October 2021 the Coroner provided his "Ruling on Conclusions" which set out his decision that unlawful killing should be left to the jury and his reasons for that decision;

    Further submissions were made that afternoon in the light of the Ruling on Conclusions. As a result of those submissions:

    ii) At 1.44 pm on 15 October 2021 the Coroner provided his "Supplemental Ruling on Conclusions", which set out his decisions to withhold from the jury (a) any issue as to the reasonableness of B50's stated belief that it was necessary to use force because of an imminent risk to the lives of, or serious harm to, the three workmen on Francis Street, and (b) any issue as to the reasonableness of the force deployed by B50, and his reasons for those decisions. His decisions had already been given to the interested parties orally on 14 October 2021 immediately after the adjournment for lunch and the legal directions he then gave to the jury were consistent with those decisions.

31. At about 4.38 pm on 15 October 2021 the jury returned their conclusion that Mr Skelton had been unlawfully killed.

Ground 1: the Coroner did not apply the "*Galbraith* plus" test correctly in his written decision to leave an unlawful killing conclusion to the Jury and therefore erred in law.

The scope of the "Galbraith plus" test

32. The decision in *Galbraith* is important not merely because of the extremely well known statement of principle to be applied when assessing a submission of "no case" in a criminal trial but also because it authoritatively decided which of two schools of thought should be followed in carrying out that assessment. Giving the judgment of the Court, Lord Lane CJ identified the two schools and the overriding approach to be adopted at 1040G-H:

> "There are two schools of thought: (1) that the judge should stop the case if, in his view, it would be unsafe (alternatively

> unsafe or unsatisfactory) for the jury to convict; (2) that he should do so only if there is no evidence upon which a jury properly directed could properly convict. Although in many cases the question is one of semantics, and though in many cases each test would produce the same result, this is not necessarily so. A balance has to be struck between on the one hand a usurpation by the judge of the jury's functions and on the other the danger of an unjust conviction."

33. At 1041B-C Lord Lane identified that adopting the first approach ("unsafe" or "unsatisfactory") would involve the trial judge applying his views to the weight to be given to the prosecution evidence and as to the truthfulness of their witnesses and so on. That had been said by Lord Widgery CJ in *Barker* (1975) 65 Cr App R. 287, 288 to be clearly not permissible:

> " . . . even if the judge has taken the view that the evidence could not support a conviction because of the inconsistencies, he should nevertheless have left the matter to the jury. It cannot be too clearly stated that the judge's obligation to stop the case is an obligation which is concerned primarily with those cases where the necessary minimum evidence to establish the facts of the crime has not been called. It is not the judge's job to weigh the evidence, decide who is telling the truth, and to stop the case merely because he thinks the witness is lying. To do that is to usurp the function of the jury ..."

34. Lord Lane then pointed to the re-emergence of the "unsafe" approach in *Mansfield* [1977] 1 WLR 1102, observing at 1041H that "it is an illustration of the danger inherent in the use of the word "unsafe"; by its very nature it invites the judge to evaluate the weight and reliability of the evidence in the way which [*Barker*] forbids and leads to the sort of confusion which apparently now exists." He pointed out that the word "unsafe" is ambiguous:

> "It may mean unsafe because there is insufficient evidence on which a jury could properly reach a verdict of guilty; it may on the other hand mean unsafe because in the judge's view, for example, the main prosecution witness is not to be believed. If it is used in the latter sense as the test, it is wrong. "

35. Having cleared the decks in this way, Lord Lane stated the correct principle at 1042B-E:

> "How then should the judge approach a submission of "no case"? (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence, (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could

> not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury. It follows that we think the second of the two schools of thought is to be preferred.
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> There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge."

36. The emergence of the "plus" as a gloss on *Galbraith* in the context of inquests can be traced back to the judgment of Lord Woolf MR in *R v HM Coroner for Exeter and East Devon ex p Palmer,* a decision of the Court of Appeal in December 1997 that is fully reported at [2000] Inquest Law Reports 78. The immediate issue in *Palmer*, which was a claim for judicial review of the coroner's refusal to leave a verdict of unlawful killing to the jury, was what approach the courts should adopt when deciding whether to intervene with a coroner's decision. That in turn involved the Court of Appeal in considering the proper approach of the coroner when deciding whether to leave an issue (in that case unlawful killing). In relation to that issue, Lord Woolf at [41] set out the classic *Galbraith* statement of principle which was agreed to be applicable to a coroner's assessment whether to leave an issue. He then went on to consider how the *Wednesbury* unreasonableness test should be applied by the court where a Coroner's decision to leave an issue is challenged:

> "44. In considering the standard Wednesbury approach adopted on applications for judicial review, in relation to the guidance provided by *Galbraith* as to when it is and when it is not the responsibility of a judge to leave a particular issue to a jury, one comes to a different conclusion depending on the precise issue involved. If there is no evidence that would entitle a Coroner's jury to come to the conclusion that the proper verdict was one of unlawful killing, as a matter of law the Coroner is not then entitled to leave that issue to the jury. If he does so, the position is that this court, or the Crown Office judge on the initial application, is not only entitled but required to intervene.
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> 45. As was said in Galbraith, the difficulty arises where there is some evidence. Clearly, if there is substantial evidence there is no difficulty. If there is substantial evidence on which a jury could properly reach the conclusion that there had been an unlawful killing, again the Coroner has no *discretion*, he is required to leave the matter to the jury. That follows from Galbraith. In the difficult situation, that is a borderline case, it is necessary for an evaluation of the evidence to be conducted by the Coroner. In those circumstances, in accordance with Galbraith, the Coroner should not involve himself with matters

> which are properly for the jury to consider. Questions of the credibility of the evidence, for example, are matters for the jury to determine. The Coroner must not usurp their function in coming to his decision.
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> 46. In a difficult case, the Coroner is carrying out an evaluation exercise. He is looking at the evidence which is before him as a whole and saying to himself, without deciding matters which are the province for the jury, "Is this a case where it would be safe for the jury to come to the conclusion that there had been an unlawful killing?" If he reaches the conclusion that, because the evidence is so inherently weak, vague or inconsistent with other evidence, it would not be safe for a jury to come to the verdict, then he has to withdraw the issue from the jury. In most cases there will be only a single proper decision which can be reached on any objective assessment of the evidence. Therefore one can either say there is no scope for Wednesbury reasonableness or there is scope, but the only possible proper decision which a reasonable Coroner would come to is either to leave the question to the jury or not, as the case may be.
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> 47. However, as was pointed out by the Lord Chief Justice in Galbraith, in these cases there will always be borderline situations where it is necessary for the Coroner to exercise a *discretion*. It is only in such a situation that he has any discretion. It follows, therefore, that the test of reasonableness enunciated in Wednesbury has to play in relation to decisions as to whether to leave a particular issue to the jury or not, a role which is extremely limited.
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> …
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> 49. … The coroner's duty is only to leave to a jury those verdicts which it would be safe for a jury to return. He is under a duty not to leave to a jury a verdict which it would be unsafe for them to return. To that extent he acts as a filter to avoid injustice."

37. It may reasonably be doubted whether Lord Woolf intended to add anything of substance to the test in *Galbraith*. [44] is a straightforward application of *Galbraith* category 1, as is the first part of [45]. The balance of [45] addresses *Galbraith* category 2, making clear that it is not for the coroner to usurp the function of the jury. This is consistent with the distinction between *Galbraith*'s categories 2(a) and 2(b): if, taken at its highest, a jury properly directed could not properly convict, the issue must be withdrawn (category 2(a)); but if a jury's permissible and proper assessment of the strengths and weaknesses of the evidence could lead to the conclusion that the defendant was guilty, then the issue must be left to them (category 2(b)). Hence the important reminder at the end of [45] that the coroner must not usurp the function of the jury in coming to his decision.

38. Seen in this context, it is not obvious that Lord Woolf was seeking to add some additional test in [46] or [49]. To say that the evidence is so inherently weak, vague or inconsistent (a clear reference back to the language of *Galbraith* category 2) that it would not be "safe" for a jury to come to that verdict seems to us to be indistinguishable in context from saying that the evidence is so weak, vague or inconsistent that (without usurping the function of the jury) no jury properly directed could properly convict the defendant. His observations were directed to demonstrating how limited is the possible scope for the existence of a "discretion"; and, in consequence, how limited is the scope for the application of a test of *Wednesbury* reasonableness. Furthermore, it does not appear that any gloss on *Galbraith* was necessary for his decision, which (as appears from [57] of Lord Woolf's judgment) was based on a conclusion that the medical evidence taken at its highest did not exclude there being a real possibility that death was caused during a period when the officers were acting perfectly lawfully. In other words, when Lord Woolf used the words "safe" and "unsafe" he was doing so in Lord Lane's first sense: sufficiency or insufficiency of evidence on which a jury could properly reach a guilty verdict.

39. While agreeing with Lord Woolf's judgment, the other two judges in *Palmer* gave short judgments, neither of which provides further explanation of any "plus" gloss on *Galbraith* in this context. Ward LJ summarised his approach at [69]:

> "69. It follows, inevitably, that, given the wide range of possible contributing factors and events, no jury properly directed could be satisfied so that they were sure that any unlawful dangerous conduct, if they were so to find, was certain to have been more than minimally causative of the unfortunate death of [the deceased]."

And at [71]-[72] Mantell LJ said:

> "71. The test of *Wednesbury* reasonableness will seldom have any application to a coroner's decision to leave or withdraw a particular verdict for or from the jury's consideration. There will either be evidence to support the verdict or there will not. Objectively viewed, the decision will either be right or it will be wrong. It is only in the grey area identified in *Galbraith* that any question of discretion and therefore or reasonableness is likely to arise. That is not this case.
>
> 72. In this case the coroner had to ask himself the question. "Is there evidence upon which a reasonable jury properly directed could be sure that [the deceased] died as a result of being subjected to unlawful violence?" He answered that question by holding that there was no such evidence. In my view he was right to so hold."

40. Since it may be said to be uncertain at best whether the members of the Court in *Palmer* intended to add to the classic formulation in *Galbraith* and, if they did, that any such addition was not necessary for their decision in the appeal, it is necessary to look with care at subsequent authorities to see how the "*Galbraith* plus" test has

developed and what its present status may be. In doing so, we must bear in mind that the proper standard of proof to be applied now is not the criminal but the civil standard: see *Maughan*.

41. In *R v Inner South London Coroner, ex p. Douglas-Williams* [1999] 1 All ER 344, Lord Woolf MR, giving the leading judgment, revisited the question of the extent of the discretion of a coroner not to leave to the jury what is, on the evidence, a possible verdict. At 348B-G, Lord Woolf referred to the fact that it had been agreed in *Palmer* (and his judgment had indicated) that it was only in a borderline case that a coroner has any discretion, reflecting the judgment of Lord Lane CJ in *Galbraith*. In the light of the submissions made in *Douglas-Williams* he had now come to the conclusion that a broader approach was appropriate because of the more inquisitorial role of a coroner when compared with a judge in a criminal trial and the need for the coroner to decide the scope of the inquiry which is appropriate in a context where there are no charges and no prosecutor at an inquest. He continued at 348J-349C as follows:

> "[A coroner] therefore must, at least indirectly, have a greater say as to what verdict the jury should consider than a judge at an adversarial trial. However the difficulty is that if the *Galbraith* approach is not appropriate, what approach is correct? It is for the jury and not the coroner to decide the facts on the evidence they have heard and, in a case such as this, he is under a duty to summon a jury (s 8(3)) to decide how, when and where the deceased came to his death (s 13(5)).
>
> The conclusion I have come to is that, so far as the evidence called before the jury is concerned, a coroner should adopt the *Galbraith* approach in deciding whether to leave a verdict. The strength of the evidence is not the only consideration and, in relation to wider issues, the coroner has a broader discretion. *If it appears there are circumstances which, in a particular situation, mean in the judgment of the coroner, acting reasonably and fairly, it is not in the interest of justice that a particular verdict should be left to the jury, he need not leave that verdict. He, for example, need not leave all possible verdicts just because there is technically evidence to support them. It is sufficient if he leaves those verdicts which realistically reflect the thrust of the evidence as a whole. To leave all possible verdicts could in some situations merely confuse and overburden the jury and if that is the coroner's conclusion he cannot be criticised if he does not leave a particular verdict*." (Emphasis added)

42. Hobhouse LJ specifically agreed with what Lord Woolf had said about the discretion which is open to a coroner in deciding what verdicts the jury should be directed to consider. Thorpe LJ agreed. It is to be noted that there is no reference to the potential "safety" of a conviction as a feature of any extension of *Galbraith* when applied in the context of an inquest. Rather, the appeal is to the wider interests of justice, the avoidance of confusion, and the need to leave those verdicts which realistically reflect the thrust of the evidence as a whole.

43. In *R (Longfield Care Homes Ltd) v HM Coroner for Blackburn* [2004] EWHC 2467 (Admin), Mitting J adopted an analysis faithfully in accordance with the observations of Lord Woolf in *Palmer* and *Douglas-Williams*. He did not seek to introduce a separate criterion independently based upon notions of safety.

44. The distinctions between criminal trials and inquests, and the respective roles of a judge and a coroner, to which Lord Woolf had referred in *Douglas-Williams* were the subject of observations by Collins J in a different context in *R (Anderson and ors) v HM Coroner for Inner North Greater London* [2004] EWHC 2729 (admin) at [21]-[22]:

> "21. An inquest is not concerned to attach and is indeed expressly prohibited from attaching civil or criminal liability to anyone in particular. It is concerned only to determine who the deceased was and how, when and where the deceased came by his death. However, a finding of unlawful killing will almost inevitably be regarded as a condemnation of the actions of one or a number of easily identifiable persons. It is presented in the media and regarded generally as a positive finding that that person or those persons between them have been guilty of a criminal offence, in this case, manslaughter.
>
> 22. …[I]t must be borne in mind that the safeguards applicable to a trial of anyone charged with a criminal offence are not in place. In Gray's case, Watkins LJ cited observations of Lord Lane CJ in an unreported case, *R v South London Coroner ex p Ruddock* (8 July 1982), when he said: −
>
> > "The coroner's task in a case such as this is a formidable one. … 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 the 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 criminal trial where the prosecution accuses and the accused defends, the judge holding the balance or the ring, whichever metaphor one chooses to use".
>
> The only gloss which should be applied to this dictum is that the establishment of the facts will now extend to considering not only by what means the deceased met his death but also in what circumstances. The absence of any opening or closing speeches at inquests means that the need for clarity in a summing−up becomes all the more important. This is not to say that a summing−up should be subjected to a close analysis or that the absence of a particular form of words or indeed of particular directions will necessarily be fatal. But the jury must know clearly what they must find as facts in order to justify any

> verdict, especially one which decides that a criminal offence has caused the death."

45. In our judgment, while this passage endorses the role of the coroner as a filter against injustice, it lends no support to the existence of some additional test over and above the requirements of *Galbraith* as explained in *Douglas-Williams*. Self-evidently, if the procedure adopted (e.g. with regard to a large number of possible verdicts being left) is apt to confuse the jury so that there is a risk of them bringing in a wrong verdict because of confusion or misunderstanding, the wider interests of justice are not being served and steps must be taken to remedy the position. But the starting point is as set out in *Galbraith*; and where, for example, a limited number of clearly defined verdicts may be "live" at the end of the inquest process, it is not obvious that any gloss on *Galbraith* by reference to "safety" will become relevant or applicable.

46. In *R* (*Sharman) v HM Coroner for Inner North Greater London* [2005] EWCA Civ 857 (Admin) the officer who had fired a fatal bullet brought proceedings to quash the inquisition on the grounds that there was either no evidence or manifestly insufficient evidence to justify a verdict of unlawful killing which, accordingly, should not have been left for the jury to consider. Leveson J cited the main passages from *Palmer* and *Douglas-Williams* to which we have referred above. Having asked the rhetorical question: "on the face of it, if a verdict is open to the jury on the evidence how can it be said to be in the interests of justice that it not be left for the jury to consider?", Leveson J accepted the answer provided by counsel that the gist of what Lord Woolf had been saying in *Douglas-Williams* was that the coroner "should, within the spectrum of different verdicts open to the jury, decide which "realistically reflected the thrust of the evidence" rather than be required to indulge in an analysis of each and every conceivable permutation." However, for the reasons given by Collins J in *Anderson* which we have set out above, he accepted the need for the coroner to act "as a filter to avoid injustice".

47. At [14] Leveson J gave his formulation of the test which must be considered by the coroner in deciding whether to leave the verdict of unlawful killing to the jury (bearing in mind that *Sharman* was decided before the decision of the Supreme Court on the standard of proof in *Maughan*):

> "It is whether there is sufficient evidence upon which the jury could safely come to the conclusion beyond reasonable doubt that the firearm was not discharged in the belief that one of the officers was under imminent threat of being shot with a sawn−off shot gun. "

48. Leveson J went on to point out that his test:

> "… is very slightly different to the test propounded by Mr Lawson (was there any/sufficient evidence to disprove to the criminal standard Mr Sharman's assertion as to his belief at the time of firing) only because of the potential for confusion between his assertions as to belief and his account of the facts. Neither is it the same as the approach effectively propounded by Mr Owen that if there was sufficient evidence to justify the conclusion that the officers presented "a carefully fabricated

> justification of the use of deadly force", there was necessarily sufficient evidence of unlawful killing to leave to the jury."

49. In our Judgment, Leveson J's reference to safety in his formulation of the test to be applied was not expanding on the scope of the principles set out in *Galbraith* save possibly by reference to the sort of circumstances suggested in *Douglas-Williams* e.g. where leaving a particular verdict to the jury might serve to confuse them or would not reflect the thrust of the evidence that they had heard and so be contrary to the interests of justice by leading them into error. He was not, in our judgment, otherwise establishing a free-standing criterion of "safety" to be applied as a general rule where sufficient evidence has been adduced to enable a properly directed jury properly (i.e. in accordance with their obligations as fact-finders) to return a particular verdict.

50. It appears to us that the Court of Appeal took the same view on appeal from Leveson J, though the application of *Galbraith* in a case where the issue of self-defence had been raised required careful treatment. Buxton LJ (with whom Scott Baker LJ agreed) made this clear at [2005] EWCA Civ 967 [10]-[12]:

> "10. … It was accepted on all sides that the test for determining whether a particular verdict should go to the jury is that proposed in the context of a trial on indictment in the well−known case of *Galbraith*: if, on one possible view of the facts, there is evidence upon which a jury could properly come to the conclusion that the defence is guilty, then the case should go to the jury.
>
> 11. It will be seen that that rubric is very difficult to apply to a case such as the present where the issue is self defence. Of course the issue is not, as it is at the end of the prosecution case in a criminal trial, whether there is some evidence to support the prosecution's positive case. The issue is rather, whether there is sufficient evidence to suggest that the prosecution will succeed in negativing self defence.
>
> 12. … Authority binding on this court does require *Galbraith* to be applied, but I would venture to think that it is more helpfully stated, as indeed Leveson J effectively stated it …, in the more generalised form that was suggested in an inquest context by Lord Woolf, Master of the Rolls, in *ex parte Palmer* in 1997. He said at [para 46] of his judgment that the test that he would apply is:
>
> "Is this a case where it would be safe for the jury to come to the conclusion that there had been an unlawful killing?"
>
> That, in this case, means that the question is whether it would be safe for the jury to come to the conclusion that the defence of self defence had been disproved beyond reasonable doubt."

51. A further issue, which was live in *Sharman* but treated as non-contentious before us, was what should be the impact of an explanation for behaviour which was rejected by

the Jury. The issue was expressed as follows at [17]:

> "Mr Owen… argued that where there was only one account or justification given by the person asserting self defence, if that account of the perception and motivation of the defendant was rejected by the jury as being mendacious, they were entitled (Mr Owen accepted, not bound) but entitled to go on from that, as the coroner described it in paragraph 44 just quoted, and conclude that the killing was unlawful."

52. That approach was rejected by the Court at [19]:

> "… [I]t is not enough, and simply does not follow, to assume that the availability of a verdict of unlawful killing, meaning in this case a verdict that beyond reasonable doubt the officers had no belief in an imminent threat to them, follows from the rejection as untruthful of the particular account that they gave. It was still necessary for the jury to look at the matter as a whole, and necessary for the coroner, in deciding whether to leave the matter to them, to look at the whole circumstances to see whether there was a realistic chance of it being possible to establish, beyond reasonable doubt, that the officers did not have the belief alleged."

To our minds, this conclusion flows naturally from a proper application of the principles set out in *Galbraith*.

53. The issues in *R (Bennett) v HM Coroner for Inner South London* [2007] EWCA Civ 617 included whether the coroner had correctly applied *Galbraith* in refusing to leave unlawful killing as a possible verdict for the jury. The jury had brought in a verdict of lawful killing. The leading judgment was given by Waller LJ with whom Keene and Dyson LJJ agreed. Waller LJ started by accepting at [27] that "the authorities recognise that there is some (if small) distinction between the position of a coroner deciding what verdict to leave to a jury after hearing all the evidence and that of a judge considering whether to stop a case after the conclusion of the prosecution case." He then set out the passage from [46] of *Palmer* that had been cited by Leveson J in *Sharman* and Leveson J's formulation of the test which we have set out at [47.] above. Having noted that "the very issue in *Galbraith* was to decide between two schools of thought described in the judgment", Waller LJ continued at [30]-[31]:

> "But the language of Lord Woolf and Leveson J, so far as coroners are concerned, would seem to be nearer the rejected school of thought, albeit Lord Woolf was saying that a coroner should not "decide matters which are the province of the jury". I would understand that the essence of what Lord Woolf was saying is that coroners should approach their decision as to what verdicts to leave on the basis that facts are for the jury, but they are entitled to consider the question whether it is safe to leave a particular verdict on the evidence to the jury *i.e. to consider whether a verdict, if reached, would be perverse or unsafe and to refuse to leave such a verdict to the jury.*

> 31. I would thus agree with the judge that *the question is an evidential one* and that considerations as to whether an inquest is a satisfactory form of process in identifying whether criminal conduct has taken place or as to whether some evidence might or might not have been admissible at a criminal trial, are irrelevant." (Emphasis added)

54. In our judgment, the following points emerge from *Bennett*. First, while acknowledging that there is some distinction between the position of a judge in a criminal trial confronted by a submission of no case and a coroner deciding what conclusions to leave to a jury in an inquest, the distinction is small. Second, the Court of Appeal, recognising that the "safety" line of thought had been rejected in *Galbraith* (because it gave rise to the usurpation of the proper function of the jury), accepted that the coroner is entitled to consider whether a verdict, if reached, would be "perverse or unsafe" and, if it would be, to refuse to leave that verdict to the jury. Third, the question whether a verdict would be "perverse or unsafe" is an evidential one. This appears to be a reference back to classic *Galbraith* with its concentration on whether there is any evidence to support a finding and, if there is, the need not to usurp the function of the jury in a case where the decision to be made depends upon the weight that may properly be given to the evidence. Adapting the language of *Galbraith*, if on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the deceased was unlawfully killed, then the coroner should allow that issue to be tried by the jury. Fourth, and following from the third point, considerations based upon the process being adopted and differing rules of admissibility of evidence are irrelevant. Fifth, the coroner should not decide matters which are the province of the jury.

55. In *Bennett* the Court of Appeal then considered the features of the evidence relied upon in support or opposition to the officer's assertion that he honestly believed he was under threat and concluded that "to bring in a verdict of unlawful killing would have been perverse, and the reality is that the jury's actual verdict [of lawful killing] confirms that view." In our judgment, the same result would have been reached had the Court stuck firmly to the language of *Galbraith* requiring that a verdict or conclusion should only be left to an inquest jury if there is evidence upon which (on one possible view of the facts) a properly directed jury could properly come to that verdict or conclusion.

56. In *R (Secretary of State for Justice) v HM Deputy Coroner for the Eastern District of West Yorkshire* [2012] EWHC 1634 (Admin) judicial review proceedings were brought to challenge the coroner's decision to leave verdicts of unlawful killing by murder and unlawful killing by gross negligence manslaughter to the jury. At [20]-[22] Haddon-Cave J reviewed "*Galbraith* plus", concentrating on the judgment of Waller LJ in *Bennett*. At [23] he provided his own formulation as follows:

> "23. It is clear, therefore, that when coroners are deciding whether or not to leave a particular verdict to a jury, they should apply a dual test comprising both limbs or 'schools of thought', i.e. coroners should (a) ask the classic pure Galbraith question "Is there evidence on which a jury properly directed could properly convict etc.?" (see above) plus (b) also ask the question "Would it be safe for the jury to convict on the

> evidence before it?". The second limb, arguably, provides a wider and more subjective filter than the first in certain cases. In my view, this extra layer of protection makes sense in the context of a coronial inquiry where the process is inquisitorial rather than adversarial, the rights of interested parties to engage in the proceedings are necessarily curtailed and coronial verdicts are at large."

We observe that the outcome in that case did not turn on that point, because there was a misdirection on the *Galbraith* test in any event: see [33].

57. The Family submits that Haddon-Cave J took a wrong turn in this passage and that neither *Bennett* nor the other decisions of the Court of Appeal to which we have referred above justifies the institution of a formalised two stage test, both stages of which have to be considered and satisfied in every case.

58. Reservations and observations about the scope of "*Galbraith* plus" have emerged from a number of quarters.

59. In 2013 the then Chief Coroner issued his Law Sheet No. 2, entitled "*Galbraith* plus". Having referred to *Galbraith*, the note refers to [23] of the *West Yorkshire* case (set out above) and continues:

> "5. The coroner must therefore first be satisfied that there is enough evidence, in the familiar *Galbraith* sense that there is sufficient evidence upon which a jury properly directed could properly reach a particular conclusion. In addition (described in the *West Yorkshire* case as the 'the modest gloss or addition') the coroner must also be satisfied that it is safe to leave the conclusion to the jury: ibid, paras.17-25. The two questions for the coroner therefore are: Is there enough evidence to leave this conclusion to the jury? And, if so, would it be safe on the evidence for the jury to reach this conclusion? Failure to ask and answer either question may render the conclusion vulnerable to challenge by way of judicial review (as in the *West Yorkshire* case).
>
> …
>
> 9. The word 'safe' is not defined or explained. It should therefore be given its ordinary English meaning, the coroner exercising his or her own discretion judicially on a case by case basis. 'Safe' may have originated from the Court of Appeal's jurisdiction in criminal cases in its negative form of 'unsafe' (originally 'unsafe or unsatisfactory'), but consideration of 'lurking doubt' or similar post-conviction cases will not help in this context."

60. In a ruling on 2 September 2015 during the Hillsborough Inquest, Sir John Goldring said:

> "13. In short, the *Galbraith* plus test is evidential. It reflects the need to provide an extra layer of protection in the context of the inquisitorial process of an inquest. In the present context, if, having been properly directed on gross negligence manslaughter, the jury's finding of it on the basis of the evidence before them would not be safe, then gross negligence manslaughter should not be left in the first place. What *Galbraith* plus could not be, as it seems to me, is a justification for the coroner to withdraw from the jury an issue upon which there is sufficient evidence for them safely to reach a verdict."

61. The following year, in *R (Tainton) v HM Senior Coroner for Preston and West Lancashire* [2016] 4 WLR 157, [2016] EWHC 1396 (Admin), Sir Brian Leveson P delivering the judgment of the Court endorsed the approach to "*Galbraith* plus" adopted by Haddon-Cave J: see [39]. In *R (Chidlow) v HM Senior Coroner for Blackpool and Fylde* [2019] EWHC 581 (Admin), Pepperall J (with whom Hickinbottom J agreed) referred to Haddon-Cave's formulation and added, at [35]:

> "In many cases, there may be little difference between *Galbraith* Plus and pure *Galbraith*. Where there is evidence upon which a jury properly directed could properly reach a particular conclusion or finding then it is likely to follow that the jury could safely reach such conclusion or finding."

62. In *Chidlow*, the question of safety – as opposed to the sufficiency of evidence – was at the heart of the judicial review proceedings because the coroner, while accepting that there was evidence as to a possible causal link between the delay in dispatching a rapid response vehicle by the ambulance service and death upon which a properly directed jury could make a finding of causation, maintained that he was nevertheless right not to leave the question to the jury because it would have been unsafe for the jury to find causation upon the evidence in this case. The coroner's view was that any evidence as to survivability was necessarily speculative and therefore unsafe, given the absence of clear evidence as to the cause of death. Pepperall J analysed the evidence and concluded that the lack of a clear cause of death did not prevent the jury from being able to consider the possible causal effect of the delay in treatment. The medical expert had been able to say that, on the balance of probabilities, the deceased would have survived with prompt treatment. His evidence was not vitiated by the criticisms advanced by the Claimant. The jury were not bound to accept his evidence but it was not so obviously unreliable that it was not safe to leave the issue of causation to the jury: see [63]. Despite Pepperall J's endorsement of Haddon-Cave J's approach to "Galbraith plus" and reference to the question of safety it seems to us that this analysis could equally have been accommodated within the principles of *Galbraith* itself. This was a case where the Court concluded that the strength or weakness of the evidence depended upon the view to be taken of the witnesses' reliability or other matters that are generally within the province of the jury and on one possible view of the facts there was evidence upon which a jury could properly come to the conclusion that causation was established.

63. Similarly, in *R (Wandsworth BC) v Her Majesty's Senior Coroner for Inner West London* [2021] EWHC 801 (Admin), HH Judge Teague QC, the Chief Coroner for England and Wales (with whom Cavanagh J and Popplewell LJ agreed) said at [31]:

> " In jury inquests, the coroner must determine which conclusions or findings to leave to the jury by reference to what has become known as the '*Galbraith* plus' test:.... That test has two components:
>
> (i) whether there is evidence upon which the jury properly directed can properly reach the particular conclusion or finding; and
>
> (ii) whether it would be safe for the jury to reach the conclusion or finding. In many cases, where there is evidence upon which a jury properly directed could properly reach a particular conclusion or finding, then it is likely to follow that the jury could reach it safely: *R v Chidlow* … . Where, as in the present case, there is no jury, the coroner will naturally consider the safety of any conclusion or finding he or she proposes to make as well as the sufficiency of the evidence available to support it, but need not expressly articulate a self-direction on both limbs of the '*Galbraith* plus' test.

64. As this review of the authorities shows, it is established by authority that is binding upon us that there is some (if small) distinction between the position of a coroner deciding what verdict to leave to a jury after hearing all the evidence and of a judge considering whether to stop a case after the conclusion of the prosecution case. The distinction flows from the differences in process between the two jurisdictions, as explained by Lord Woolf in *Douglas-Williams* at 348-349 and Collins J in *Anderson* at [21]-[22]: see [41.] and [44] above. Although the Court of Appeal has identified considerations of safety as relevant to the coroner's decision, there is limited guidance from the Court of Appeal about what should inform those considerations. Though he used the word "safe" at [46] of *Palmer* Lord Woolf MR provided no guidance in *Palmer*; and such guidance as he gave in *Douglas-Williams* suggested that questions of safety would involve considerations that were not directly related to the sufficiency of the evidence: see the italicised passage set out at [41.] above. We reiterate that in *Galbraith* itself Lord Lane emphasised that "safe" and "unsafe" can mean sufficiency or insufficiency of evidence on which a jury could properly reach a guilty verdict. In contrast, *Bennett* suggests that the concept of safety is an evidential one: see [54.] above. This seems to us to be in accordance with conventional principle and, in almost all cases, to provide the answer to Leveson J's rhetorical question: on the face of it, if a verdict is (properly) open to the (properly directed) jury on the evidence how can it be said to be in the interests of justice that it not be left for the jury to consider? Any other approach, save for one based upon the wider interests of justice as suggested in *Douglas-Williams* runs straight into the risk of usurping the proper function of the jury. This risk is, to our minds, accentuated in the light of *Maughan* now that all short form conclusions, including suicide and unlawful killing, may now be reached on the balance of probabilities: see the Chief Coroner's Leeming Lecture delivered on 22 July 2022, at paragraph 51.

65. We are not strictly bound by other first instance decisions, but should follow them unless convinced that they are wrong. We doubt whether we would have formalised the "*Galbraith* plus" test as was done in the *West Yorkshire* case; but it has been endorsed by subsequent first instance decisions even though the parameters of the

"plus" element have not been made clear. We are not convinced that the formulation is wrong; but the devil is in the detail of what may render it unsafe to leave a conclusion to the jury in a case where, without usurping the function of the jury, it appears that there is evidence sufficient to enable a properly directed jury properly to return that conclusion. What is clear is that it is not open to a coroner, in a case which passes the classic *Galbraith* test of evidential sufficiency, to withdraw a conclusion under the guise of lack of "safety" just because they might not agree with a particular outcome, however strongly. While being fully alert to the need for the coroner (and the court) to act as a filter to avoid injustice, we agree with the observation of Pepperall J that "where there is evidence upon which a jury properly directed could properly reach a particular conclusion or finding then it is likely to follow that the jury could safely reach such conclusion or finding." Likely but not inevitable; and, on present authority, it appears that the categories of consideration that could (at least in theory) render it unsafe to leave a suitably evidenced conclusion to the jury are not closed.

The submissions on Ground 1

66. The Claimant, with the support of the Chief Constable, submits that, in his Ruling on Conclusions the Coroner correctly identified the test for leaving a particular conclusion to a jury; but he failed to address the first part of the test – evidential sufficiency – adequately and he failed to address the second part – safety – at all. He wrongly focussed on the "centrality" of the Claimant's honesty of belief of an imminent threat to the workmen on Francis Street when he shot Mr Skelton rather than whether there was sufficient evidence upon which a properly directed jury could properly reach the conclusion that the Claimant lacked such a belief, failing to make an express finding that there was sufficient evidence, and failing to grapple with the substantial quantity of evidence as required if he was to make a suitable assessment of sufficiency. Furthermore, he concentrated on the reasonableness of B50's belief as if it were the only matter for the Jury to evaluate when considering whether his belief was genuine, whereas it was only one aspect of what they had to take into account. He failed altogether to deal with the "plus" part of the *Galbraith* plus test.

67. The Claimant's central proposition is that the genuineness of B50's asserted belief that it was necessary to use force because of an imminent risk to the lives of or serious harm to the three workmen was the only issue to be determined in relation to unlawful killing. It was therefore necessary to apply the "*Galbraith* plus" test to that issue. On a close textual analysis of the Coroner's Ruling on Conclusions the Claimant submits that he failed to apply the test adequately or at all. Supporting this approach, the Chief Constable emphasises that the question whether the force used by B50 was lawful was to be determined by reference to the circumstances as he believed them to be, in accordance with the principles set out in *R (Duggan) v North London Assistant Deputy Coroner* [2017] 1 WLR 2199, *R v Beckford* [1988] 1 AC 130 and s.76 of the Criminal Justice and Immigration Act 2008, all of which establish a subjective test.

68. The Family submits that B50's concentration on "centrality" is a red herring which distracts from the question whether the Coroner applied the "*Galbraith* plus" test and did so adequately in his rulings. Providing their own textual analysis they submit that it is clear that the Coroner had the "*Galbraith* plus" test in mind at all times and that he applied it correctly.

The Ruling on Conclusions

69. In order to understand the parties' submissions and to do justice to the Coroner's reasoning, it is necessary to set out extensive sections of the Ruling on Conclusions.

70. At [4] the Coroner referred to the impact of *Maughan* and, at [5], said that it had "sparked some discussion about its effect on the familiar *Galbraith* and *Galbraith* Plus tests of sufficiency and safety for leaving conclusions (specifically, a conclusion of unlawful killing) to juries." He then recorded that B50 and the Chief Constable contended that lawful killing was the only positive conclusion that could be left to the jury, with a fallback position of an open conclusion. Conversely, the Family contended that the only short form conclusion available to the Jury was unlawful killing, while recognising the possibility of an open conclusion. At [9] to [14] the Coroner recorded the submissions made by B50 and the Chief Constable in reliance on *Sharman*, to the effect that even a finding by the Jury that the officers had dishonestly fabricated their account after the event would not deprive them of the common law defence of self-defence based on an honest belief at the time in an imminent threat.

71. The kernel of the Coroner's reasoning comes after [16] as follows:

> "16. The effect of *Maughan* on the instant case is to lower, from beyond reasonable doubt to the balance of probabilities, the standard of proof to which the jury would have to be satisfied that B50 lacked the genuine belief it was necessary to use force to defend the three workmen on Francis Street from imminent attack by Lewis Skelton before they could, if so directed, return a conclusion of unlawful killing. The emphasis (as I perceive it) in Sharman on that lack of a belief having to be proved to the higher standard of proof no longer applies. As the law stands, the existence or lack of that genuine belief fall to be established to the same standard of proof.
>
> 17. Mr Moloney QC may be right, as a proposition of logic and common sense, that the change in the law arising from Maughan may produce more conclusions of unlawful killing than hitherto has been the case. The possibility that the change in the standard of proof will lead to that conclusion being left to juries more frequently is clear, and potentially recognised as such by the Supreme Court itself.
>
> 18. Those potential consequences on inquest law and practice have no bearing on the individual case. *Maughan* does not change the requirement that the only conclusions that can be left to a jury are those for which there is a sufficient evidential basis and which it would be safe for them to reach.
>
> 19. As observed, it is an uncontroversial proposition of law that were the jury to find on the evidence that B50 acted on a genuine belief in an imminent threat to the workmen on Francis

Street when he shot Lewis Skelton, they could safely (Galbraith Plus) return a conclusion of lawful killing.

20. I do not understand it either to be controversial that the reasonableness of that belief, if genuinely held, does not have to be established in any objective sense. In that respect, I am grateful to Mr Green QC for bringing to my attention a maladroit choice of words by me when I attempted, at counsel's recommendation, to introduce the summary of the evidence to the jury in an unscripted context of the conclusions they were going to be asked to consider. In that respect, I have had the opportunity to consider paras 79 ff. of the decision of the Court of Appeal in *Duggan* [2017] EWCA Civ 142 and s.76(4)(a) of the Criminal Justice and Immigration Act 2008.

21. It is finally uncontroversial, as observed, that absent that genuine belief, the actions of B50 could only amount to murder, or, in inquest terms, a conclusion of unlawful killing.

22. It seems to me that, in inviting me to withhold from the jury a conclusion of unlawful killing, the representatives of the Chief Constable and B50 and Charlie are effectively inviting me to withhold from the jury an issue of fact that is central to the inquest: did B50 have an honest belief of an imminent threat to the workmen on Francis Street when he shot Lewis Skelton?

23. While that belief, if held, does not have to be shown to be reasonable in order for B50 to rely upon it, the reasonableness of it is relevant to (but not, as I understand, determinative of) the factual issue of whether it was held at all (S.76(4)(a) CJIA 2008). I do not believe I have been shown any authority on how unreasonable that belief would have to be in order to support a finding that it was not genuinely held. But the reasonableness of that belief is a factual issue that can properly go to the jury for them to assess in the light of the large volume of evidence they have heard as to, among other matters, Lewis' demeanour on the day, his not engaging with the officers or complying with their instructions, his not appearing to approach any member of the public on Caroline Place or Charles Street, the manner in which he made his way down Francis Street, the position of the workmen when the first shot was fired and the workmen's own perception of any threat to them.

24. The change in the law following Maughan no longer the requires the jury to be sure B50 did not have a genuine belief in an imminent threat to the workmen before returning a conclusion of unlawful killing. If they think it unlikely on the balance of probabilities that he had that belief, that would suffice. Whether B50 held that belief is an issue of fact that should be left to them, and the reasonableness of that belief

> should be highlighted to them as an issue to take into account in deciding whether as a matter of fact it is likely or unlikely that he did so."

The Supplemental Ruling on Conclusions

72. The Coroner, having been referred to relevant authority including *Duggan* decided that "whatever conclusion the jury reaches (other than an open conclusion) will inevitably involve a finding one way or the other as to the genuineness of B50's belief, it will just as inevitably and implicitly involve an evaluation of the evidence indicating whether B50 could reasonably have held that belief in the light of what he knew and saw." He therefore decided that an additional direction on the reasonableness of B50's asserted belief was unnecessary and potentially confusing.

73. Turning to the submissions about leaving to the jury the reasonableness of the force used by B50, the Coroner decided that the reasonableness of the force used stood or fell with the genuineness or otherwise of B50's belief as to the threat posed by Mr Skelton to the workmen. He then concluded his ruling:

> "Both for that reason, and because there is no evidence of anything different B50 could have done at the point of firing his gun that could be left to a jury on the *Galbraith* and/or *Galbraith* plus tests of sufficiency and safety, I have decided not to leave to the jury the discrete issue of whether the force deployed by him was reasonable."

Discussion and conclusion on Ground 1

74. The structure of the Ruling on Conclusions is, in our judgment, clear. At [16] the Coroner correctly reminded himself of the relevant standard of proof, now the balance of probabilities; and at [17] he, again correctly, identified that the change in the standard of proof may lead to unlawful killing being left to juries more frequently than before. He then turned to the consequences and the test to be applied in [18] and [19], paragraphs which Mr Green KC on behalf of B50 accepts set out the correct test, comprising both the *Galbraith* requirement of evidential sufficiency and the "plus" requirement that it must be safe for the jury to reach the conclusion. He referred to the correct test for a second time in [19] albeit in shorthand by referring to "safely (*Galbraith* Plus)". Thus far it is plain that the Coroner had in mind the correct test and, in accordance with the approach suggested by Haddon-Cave J in the *West Yorkshire* case, is treating the two limbs as separate.

75. No criticism may be made of [20] and [21]. In [20] the Coroner reminded himself that the central question is the genuineness of B50's belief, and that the belief does not have to be objectively reasonable; and he flagged up the need for a more focused direction on reasonableness, which he later gave in his written and oral directions. [21] is uncontroversial.

76. In and from [22] the Coroner explained his conclusion and his reasons. We do not accept the criticism of the Coroner's reference to the issue of B50s belief as "central". If anything, it was understated. As the funnelling effect of the inquest had progressed, the scope of the conclusions to be left to the Jury had narrowed to the point where the

question of the genuineness of B50's asserted belief became the central most important factual issue if, of course, it was to be left. If, as B50 and the Chief Constable contended, there was no proper evidential basis upon which the Jury, properly directed, could properly reject his asserted belief, applying the civil standard, then no question of unlawful killing could arise. When read in context, including the context of having set out the correct test for himself to apply and the further material in [23] and [24] to which we turn next, it is in our judgment clearly implicit in [22] that the Coroner has concluded that there is sufficient evidence of an issue to go to the jury on whether or not B50 genuinely had the belief that he asserted.

77. This is made doubly clear in [23] where, having correctly identified the relevance of reasonableness of a belief and that it is not of itself determinative of the question whether the asserted belief is held at all, he correctly identifies that the reasonableness of the asserted belief is a factual question (or "issue") that can go to the Jury "in the light of the large volume of evidence they have heard." On any fair reading of this section of the ruling, what the Coroner says and means is that the large volume of evidence is available to the Jury and is sufficient to justify the issue of reasonableness *and* genuineness of the asserted belief. While we would accept that the Coroner could have expressed himself differently and more comprehensively, we consider that his meaning is clear.

78. The reference in [23] to particular aspects of the evidence is not, and does not purport to be, exhaustive. Once again, though it is plain that he produced his rulings under substantial pressure of time and that they should be read in that light, we would accept that the Coroner could (at least in theory) have engaged in a more detailed analysis and presentation of all the evidence that he considered relevant to his conclusion that it was sufficient to justify leaving the central issue to the Jury. But we consider that he has done enough to sustain his ruling by his general reference to "the large volume of evidence" and by the particular examples which he cites. B50 and the Chief Constable criticise his selection of evidence: for example, they submit that the workmen's perception of any threat to them is irrelevant to the genuineness of B50's belief that they were or were not in imminent danger of being threatened. We do not agree with this criticism. In our judgment, the areas of evidence mentioned by the Coroner were at least potentially relevant and, cumulatively, indicated the existence of a real factual issue to be determined by the Jury. Taking just the example of the workmen's perception, while we agree that what mattered was B50's perception, the fact that the workmen themselves did not perceive any threat is capable of supporting an argument that, as a matter of fact, any threat to them was not imminent and that the "collapsing timeframe" did not bear the weight that B50 sought to place on it. Their position when the first shot was fired was, on any view, relevant to the asserted imminence of any threat to them, as was the manner in which Mr Skelton made his way along Francis Street, as to which see [20.] and [21.] above.

79. [24] of the Ruling makes clear that the Coroner correctly had in mind that the relevant question was whether B50 had or did not have a genuine belief in an imminent threat to the workmen. His reference to the changed standard of proof after *Maughan* is a reflection of his earlier discussion of its effect and is apposite, the implication being that the decision to leave unlawful killing might have been different before *Maughan*.

80. While it is true that the Coroner did not expressly state that there was a sufficiency of evidence, we consider it to be verging on the unreal to suggest that his ruling did not

in fact apply the test that he had correctly set himself (twice) in [18] and [19] of the ruling. That he had the tests in mind at all material times is also supported by his reference to it, again in shorthand, in his Supplemental Ruling: see [73.] above. That being so, the fact that he did not separately address the "plus" question of "safety" is not fatal to his ruling. Once he had found, as he was in our judgment entitled to find, that there was a sufficiency of evidence to leave the question of unlawful killing to the Jury, this was one of the normal run of such cases where that sufficiency of evidence meant that it was safe to leave it. Although [31] of *Wandsworth BC*, which we have set out above, is not directly on point, we cannot persuade ourselves that the lack of a single sentence recording the Coroner's view that the second limb of "*Galbraith* plus" was satisfied should lead to his ruling being set aside for want of reasons or other legal error. Although there has been a tendency to treat the "plus" safety aspect as a separate requirement, it is to be remembered that in *Palmer*, which is generally regarded as the origin of the "*Galbraith* plus" test, Lord Woolf expressed the test compendiously: "is this a case where it would be safe for the jury to come to the conclusion that there had been an unlawful killing?" Viewed in this light, the Coroner's Ruling on Conclusions can be seen as providing an answer to the compendious question.

81. Although B50 points to the role of the "plus" part of the test as providing a "more subjective filter" than the first limb, comprehending situations where the interests of justice require a particular conclusion not to be left to the jury, we are not able to identify any feature of the case that required unlawful killing not to be left to the Jury despite there being a sufficiency of evidence. Nor, in our judgment, were B50 or the Chief Constable able do so. Reverting to the limited guidance provided by the Court of Appeal in *Douglas-Williams*, it cannot be said that leaving unlawful killing to the Jury was liable to overburden or confuse them; or that it would not reflect the thrust of the evidence (albeit that the evidence was contentious and contested).

82. For these reasons, Ground 1 fails.

Ground 2: there was insufficient evidence to support a conclusion of unlawful killing

The submissions on Ground 2

83. B50, supported by the Chief Constable, submits that, once he had raised the issue, a conclusion of unlawful killing could not be reached unless his assertion that he acted in defence of another and for the prevention of crime (namely Mr Skelton causing death or serious bodily harm to members of the public) was disproved to the civil standard of proof. We accept that submission.

84. B50 submits that the evidence "overwhelmingly" supported his evidence to the Jury that he discharged his pistol because he genuinely believed that Mr Skelton posed a threat to the lives of the three workmen on Francis Street. Both in writing and orally, he listed the evidence which he said supported his submission. Without attempting to set out the evidence on which he relies exhaustively, that evidence included the following:

    i) Mr Skelton had been carrying the axe for a significant period before B50 and Charlie located him. They were told (and had the opportunity to observe for themselves when they found him) that he was walking with an apparent

purpose and was waving the axe around (rather than holding it by his side), apparently not concerned that members of the public or police officers saw him with a lethal weapon. They were also told that he had EMDI issues, which may make his behaviour unpredictable and challenging without lessening the harm that he might cause if he began to act aggressively;

ii) Mr Skelton did not respond to the officers' commands to stop and put down the axe. He kept going. He was heard by at least three independent witnesses refusing to put down the axe and threatening to use it if anyone came near him;

iii) He did not stop even when he had been tasered, initially three and then four times, but continued (in B50's submission) "walking with purpose and an intent to get away from the officers to someone or something." The officers did not know his intended destination or intent;

iv) On Francis Street, Mr Skelton was on a street where there were people (the three workmen) walking in the opposite direction who did not react when B50 shouted and waved his arm at them;

v) Charlie's evidence was that if B50 had not shot Mr Skelton, he would have done so: in other words, his assessment of the threat posed by Mr Skelton was the same as B50's;

vi) Mr Skelton was still holding the axe when he was shot;

vii) There was evidence that, during the period after the officers had engaged with Mr Skelton on Caroline Street, Mr Skelton had waved the axe above his head and/or moved towards the officers in the course of the officers' attempts to stop him.

85. In support of his submission that this evidence was overwhelming support for the genuineness of B50's asserted belief, Mr Green asked the rhetorical question: why else would B50 have shot Mr Skelton when he did?

86. We accept that the evidence identified by B50 was capable of supporting B50's assertion of his belief at the moment he shot Mr Skelton. However, the evidence was not all one way. The Family responded with their own selection of evidence which, in their submission, was capable of leading a properly directed jury to the opposite conclusion. Once again, we do not attempt to set out that evidence exhaustively; but it included the following:

i) There was no evidence that Mr Skelton had in fact threatened any member of the public, despite being in close proximity to a significant number of people during his walk. There was evidence that, by the time he got to Francis Street, Mr Skelton was not waving or swinging the axe or acting with apparent threatening intent either towards the officers or anyone else;

ii) The officers had been told that Mr Skelton had not threatened anyone before they engaged with him, that being repeated after they had done so. The officers themselves had the opportunity to observe Mr Skelton's conduct after they located him and that he had not threatened any member of the public,

though it would have been easy for him to have done so given his proximity to numerous people;

iii) By the time they got to Francis Street, Mr Skelton had slowed right down: see [21.] above. Thus, on any view, the timeframe was "collapsing" more slowly than is suggested by the references to him walking briskly or "on a mission" earlier on. He had by then been hit by four Tasers. In evidence Charlie accepted that, at least hypothetically, if Mr Skelton had continued down Francis Street at the same slow pace, the chances were that the workmen could easily have got away from him;

iv) As a matter of fact, and for whatever reason, the workmen crossed the road so as to be out of the way of Mr Skelton and the officers at or about the time that B50 shot Mr Skelton. The available CCTV and the evidence of the workmen was capable of supporting a submission that there had been no imminent danger at the moment that B50 shot Mr Skelton;

v) As set out at [18.]-[21.] above, B50 (supported by Charlie) had sought to justify his actions both by his asserted perception of the imminent threat to the workmen and because he said that Mr Skelton had acted in a threatening manner towards him while on or around Caroline Place. Put at its lowest, the CCTV evidence did not support his account of what happened on or around Caroline Place. The Family's case was that it flatly contradicted it. During the inquest B50 disavowed any suggestion that Mr Skelton had threatened him at any later point. It was suggested on the basis of the CCTV evidence that his account of being threatened on or around Caroline Place had been made up to bolster his case. Although it would not follow, if the Jury rejected as untruthful B50's account of being threatened, that they either should or would necessarily conclude that B50's asserted belief that there was an imminent threat to the workmen was also untrue, the demolition of his account of being threatened was capable of supporting such a conclusion;

Discussion and conclusion on Ground 2

87. The strength or weakness of the evidence relied on both by B50 and by the Family depends on the Jury's view of the reliability of the witnesses and, in particular, of their view of the reliability of B50 and Charlie, both of whom they were able to observe in detail as they gave their evidence. The questions to be answered, therefore, are: (a) whether on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that Mr Skelton was unlawfully killed; and, if so, (b) whether it would be safe for the Jury to reach such a conclusion. Or, put compendiously as in *Palmer*: is this a case where it would be safe for the Jury to come to the conclusion that there had been an unlawful killing?

88. In answering these questions we recognise the force of B50's rhetorical question: why else would he have shot Mr Skelton when he did? On the evidence it appears that B50 was properly trained and had been involved in many armed responses before this one, all without adverse incident. We give full weight to the fact that, although Mr Skelton had not threatened any other member of the public despite their close proximity, the information that he was EMDI gave rise to a risk of unpredictability so that it would not have been safe to assume that, just because he had not threatened

anyone up until that moment, he would not do so if confronted or obstructed by the workmen. However, the contrary evidence is, in our judgment, significant and substantial. On one view of the evidence that was open to the Jury, Mr Skelton's progress had slowed down considerably, he was struggling and was still not showing aggressive intent despite (or perhaps because of) being tasered four times, the workmen (who were sufficiently distant that they had not yet perceived a threat) would have had ample opportunity to get out of the way had the threat become a real and present danger, and B50's justification based upon his being threatened on or around Caroline Place was contradicted in circumstances which could (depending on the view taken by the Jury) support a conclusion that it was a deliberate falsehood designed to bolster an untrue case. In our judgment, this evidence was such that the Jury could properly come to the conclusion that B50's asserted belief in the imminence of the danger to the workmen was not genuinely held. That being so, we are unable to identify anything, either evidential or arising from the process of the inquest or otherwise, that suggests (far less shows) that it would not be safe for the Jury to reach such a conclusion. Adopting the compendious approach, this was a case where it would be safe for the Jury to come to conclusion that there had been an unlawful killing. Whether we would agree with such a conclusion or whether we think such a conclusion would or should have been more likely than not is not merely irrelevant but an impermissible trespass into the proper province of the Jury.

89. For these reasons, Ground 2 fails.

Ground 3: the summing up was so deficient as to render unsafe the Jury's conclusion on unlawful killing.

90. The principles that underpin a good summing up are common to criminal and coronial proceedings. A summing up should not rehearse all the evidence; rather it should provide a summary of the salient parts of the evidence: *R v Reynolds* [2020] 4 WLR 16, [2019] EWCA Crim 2145 at [50]. A sequential presentation of evidence witness by witness ("a notebook summing up") is generally to be deprecated and "should have been consigned to history": *R v Singh-Mann* [2014] EWCA Crim 717 at [118]-[119], Crown Court Compendium August 2021 Foreword per Lord Burnett CJ at 22-3. This does not mean that it is either necessarily or probably wrong to deal with the evidence of a given witness before turning to the next, which may be the best way of presenting the necessary information: what is deprecated is the unthinking regurgitation of the Judge or Coroner's notebook. Clarity of presentation is all the more important in an inquest where there is no adversarial system and no prosecution opening or speeches from counsel to help (if they do) refine and present the issues that the Jury have to decide: see *Anderson* at [22], set out at [44.] above.

91. These principles do not require much elaboration. The Coroner's Bench Book provides a concise summary of an acceptable structure or approach to summarising the evidence:

> "30. I shall now review the evidence in the inquest.
>
> 31. [Summarise the evidence in a logical order, sometimes chronological, but not necessarily in the same as the order of witnesses. Have a clear plan. Outline the approach you intend to take. Group together evidence relating to particular issues

> e.g. chronology (day, date, time and place), medical cause of death, evidence as to state of mind, systems. Indicate where there has been no dispute and where the evidence has been a subject of challenge. Indicate where evidence supports other evidence and where there are inconsistencies. Cross reference to pages in the jury's bundle of documents. Try not to be too lengthy.]"

92. Though not entirely clear, the Coroner's Bench Book also appears to endorse the practice, now universally adopted in a criminal case of any complexity, of providing written directions on the law and doing so at an early stage so as to provide context for the Jury's consideration of the evidence.

93. The practice of giving legal directions at the outset and then marshalling evidence by reference to particular issues is designed to enable the jury to understand the issues they have to decide and how the evidence relates to those issues. Providing that understanding is achieved, it does not matter precisely how it is done. Ultimately, as we have already said, the question must be whether deficiencies in a summing up render the conclusions reached by the jury unsafe.

94. In her helpful and focussed submissions, Ms Wolstenholme drew attention to the more wide-ranging role of a Coroner's jury when compared with the role of a jury in criminal proceedings. The jury in crime are not investigators; rather, as she put it, they are there to try the case, the burden of proof being on the prosecution. In contrast, the Coroner's inquest is an inquisitorial and investigative process in which the jury play a much fuller part and the burden of proof does not fall on any particular participant. This was neatly summarised by the Chief Coroner in his 2022 Leeming lecture, echoing what had been said by Collins J in *Anderson* (supra), in a passage that we respectfully endorse:

> "19. What, then, is the essential difference between the coroner's inquest and other court proceedings in this country? The proceedings in other cases are driven by the participants. They do not belong to the court in the way that an inquest belongs to the coroner. In a criminal case, the prosecution decides whether to institute proceedings, what charges to bring and what evidence to adduce in support. The defendant decides whether to give evidence or call witnesses, and is perfectly entitled to do neither. The judge is a bit like the referee at a boxing match, whose job is to ensure that the rules are followed and – through a jury – to decide the eventual 'winner'. Similarly, in civil proceedings, it is the claimant, not the judge, who decides whether to make a claim and, if so, against whom and on what grounds. This is a point that is often not well understood by non-specialists (and even by some lawyers). It is easier to grasp in civil litigation, but it is sometimes obscured in modern criminal proceedings. Certainly in the minds of the public, the prosecution, the police, the prisons and other forms of 'officialdom', including the judicial system, are often incorrectly blurred into one.

> 20. By contrast, Jervis on Coroners reminds us that the aim of the inquest is to find out the objective truth, the "true facts", in the public interest, and not the limited "truth" as between and for the purposes of two or more parties. The coroner's inquest is the culmination of an investigative process, not a dispute. The coroner has a wide discretion as to the form of the inquiry, which is never a trial between combatants. This is why the Coroners (Inquests) Rules specifically prohibit an 'address to the facts' by an interested person. The role of the interested person is to participate by asking questions to elucidate the truth."

95. Hence the right of the jury in an inquest to ask questions and their obligation to make relevant findings of fact, whether or not, they form part of the answer to the question "how" the deceased lost their life or part of a narrative conclusion. A review of the transcripts in the present case shows that the Jury were fully engaged and exercised their right to ask questions appropriately and relevantly; and at one point the Coroner referred to them having "demonstrated considerable autonomy now in how they wish to use their time." Thus, although the coronial process of refining issues differs from the criminal process, it is geared to ensuring that a coroner's jury is fully appraised of the relevant facts and issues by the time they come to reach their conclusions.

The submissions on Ground 3

96. B50 submits that the summing up was deficient in five main respects. First, the initial direction on the law (which we have set out at [28.] above), which differed from the written directions that he ultimately provided in writing and gave orally at the end of his summing up. Second, though he later described his choice of words as "maladroit", he did not at any stage direct the Jury to disregard his original direction, which B50 submits came close to suggesting that an evaluation of the reasonableness of a belief was likely to be determinative of whether the belief was genuinely held. Third, he did not provide a draft of his written directions until after he had finished his summary of the evidence. Fourth, he did not decide on the written directions he was going to give until after he had finished his review of the evidence. Fifth, he gave a "notebook" summing up without tying it in to the issues the Jury were to decide. In particular, he did not attempt to tie it in with the genuineness of B50's belief in the threat to the workmen in Francis Street. B50 submits that a more focused and structured summing up may have resulted in a different jury conclusion on the critical issue of unlawful killing.

97. The Family submit that, though the summing up may be described as sub-optimal, it is not deficient to an extent that should cause the Court to set aside the Jury's verdict. In particular, the Family submit that the Coroner did attempt to present his summary of the evidence in a thematic way by reference to the chronology of events. Although it is apparent that the Coroner spent much of the summing up reading verbatim from transcripts, he pruned the transcripts at least to some extent and presented the evidence of witnesses in a coherent order, typically dealing with groups of witnesses who had been at a common or similar location together. Although he provided his draft legal directions late, all interested parties had the opportunity to make submissions on those directions, which they took. Any deficiency in his original

direction about B50's belief and reasonableness was superseded by his written and oral direction at the conclusion of the summing up, which is not criticised.

Discussion and conclusion on Ground 3

98. We have, of course, read the summing up from cover to cover. A full reading is essential in order to form a view of the strength and implications of the various criticisms and counter-points that are made when viewed in the context of the summing up as a whole.

99. We agree that the Coroner's original explanation of the issue of B50's belief was "maladroit". However, what the passage did was to focus the Jury's minds on what was to be the critical issue, namely unlawful killing: see the passage from "The legal position in brief…" to "make his actions unlawful". Had the matter rested there, B50's submission that the Jury were not properly directed on the critical issue would have had significant force. However, it did not rest there, for two particular reasons. First, when giving the introductory direction, the Coroner said both that he would give the Jury a full legal direction in the fullness of time and that he would have more to say on the issue of reasonableness and belief in due course. Second, he duly provided a full and proper legal direction both in writing and orally at the end of the summing up. Although we would accept that the Coroner's introductory direction, which was evidently created spontaneously and immediately before it was delivered, was sub-optimal in its failure accurately to reflect and explain the proper significance of the reasonableness (or otherwise) of B50's asserted belief, we are not persuaded that there is any real risk that the Jury might have been confused by the original direction or led into error. One of the consequences of the very long summing up was that the fine detail of the Coroner's initial direction would inevitably have faded by the end of the summing up and the correct written and oral direction would have been one of the last things that the Jury received from the Coroner. It would have been obvious to the Jury, and they were told, that they should apply the final direction. It was, in our judgment, unnecessary for the Coroner in addition to tell them to discard what he had said earlier, since that was implicit in the giving of his promised full written direction. Thus, although we consider it to have been regrettable that the Coroner did not discuss his initial direction with Counsel before launching into the summing up, we do not consider that the initial direction gave rise to any risk of an unsafe or perverse conclusion by the jury.

100. The Coroner did not simply regurgitate all of his "notebook" or the transcripts of evidence, because he covered approximately 20 days' worth of evidence in something over two days. Despite that, we would also accept that the summing up was too long and would have been significantly improved by further pruning. By the end of the inquest, the central issue for the Jury was whether Mr Skelton had been lawfully or unlawfully killed, with the technical possibility of an open conclusion also being left to them. Yet the early stages of the summing up on 12 October 2021 rehearsed in great detail the evidence relating to other matters which, by then, were to be regarded as background not going to the central issue: e.g. the evidence of witnesses dealing with the provision of mental health services to Mr Skelton from 2013, other evidence about the provision of drug and alcohol services, expert evidence about whether or not Mr Skelton was exhibiting psychotic symptoms on 29 November 2016, and the evidence of officers in the Humberside Control Hub (other than evidence about what B50 was told about Mr Skelton). Later, on 14 October 2021, the Coroner rehearsed at

length evidence that had been given about the workings of Tasers, which we accept could have been covered much more concisely if, indeed, it needed to be covered in any detail at all.

101. Conversely, as submitted by the Family, it is clear that the Coroner had made efforts to present the evidence coherently, albeit that he did so witness by witness. For example, he summarised the evidence of the lay witnesses who Mr Skelton had passed in Caroline Place together, then moved to the evidence of those who had been at or near the junction of Caroline Place with Charles Street, then going to the witnesses who had been at or near the junction of Charles Street and Francis Street, thence to the evidence of those in Francis Street, culminating with the evidence of the three workmen themselves. His order of summarising the evidence of police witnesses was similarly coherent. We take into account the Jury's prior participation in the inquest and the fact that they had heard the evidence themselves and were therefore able to discriminate and identify what they thought helpful in the Coroner's summary. While it may fairly be said that further pruning would have been beneficial, we are not satisfied that the approach adopted by the Coroner, or the detail to which he descended in summarising the evidence, gave rise to a risk of an unsafe verdict. For the same reasons, while we accept that the Coroner did not, either as a separate exercise or as an ongoing part of his summary, highlight particular aspects of the evidence as being of particular relevance to the issues the Jury had to decide, we are not persuaded that this omission renders their conclusion unsafe. The Jury were bound (and directed) to consider the genuineness of B50's belief and to assess the large body of evidence with a view to deciding what evidence they considered to be reliable and the weight to be given to it. They were not prevented from carrying out their task by the summing up.

102. For these reasons we are not persuaded that the conclusion of the Jury was rendered unsafe by the deficiencies in the summing up. Ground 3 therefore fails.

Conclusion

103. Having reviewed the three Grounds individually, we have stood back and considered whether, either singly or cumulatively, there is any proper basis for us to interfere with the conclusion of the Jury. We are unable to identify any such basis.

104. For these reasons, the Claimant's challenge is dismissed.