Neutral Citation Number: [2023] EWHC 2502 (Ch)

Case No: BL-2021-MAN-000033

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
PROPERTY, TRUSTS AND PROBATE LIST (Ch)

IN THE ESTATE OF PAULA ELIZABETH LEESON DECEASED (PROPATE)

Manchester Civil Justice Centre
1 Bridge Street West,
Manchester M60 9DJ

Date: 11/10/2023

Before :

HHJ CAWSON KC
SITTING AS A JUDGE OF THE HIGH COURT

- -

Between :

(1) BEN LEESON **(2) WILLIAM ANTHONY LEESON**	**Claimants**
- and -	
DONALD MCPHERSON	**Defendant**

- -
- -

Tom Gosling (instructed by **Glaisyers Solicitors LLP**) for the **Claimants**
The Defendant was not present or represented

Hearing date: 29 September 2023

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Approved Judgment

Remote hand-down: This judgment was handed down remotely at 10.30 am on Wednesday 11 October 2023 by circulation to the parties or their representatives by email and by release to The National Archives.

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HHJ CAWSON KC

HHJ CAWSON KC:

Introduction

1. The issue that arises for consideration is as to whether the Court should accede to a request made by Holborn Adams, Solicitors acting for the Claimants, in respect of the inquest (**"the Inquest"**) of the late Paula Elizabeth Leeson ("**Ms Leeson**") by email dated 6 July 2023 for permission for a document recording facts agreed between the parties to the present proceedings ("**the Agreed Facts**") to be provided to HM Area Coroner, Mrs Alison Mutch ("**the Coroner**") *"to assist her with the inquest process"*. I have taken this as encompassing a request for permission for the Agreed Facts to enter into the *"funnel"* of evidence filtered into the inquisitorial process of the Inquest, and thus available to be referred to, as appropriate, by interested parties to the Inquest in the course thereof.

2. The Claimants are represented by Mr Tom Gosling of Counsel. The Defendant, Donald McPherson ("**Mr McPherson**") is neither present nor represented in circumstances to which I shall return.

Background

3. It is first necessary to set out the background to the circumstances in which the request dated 6 July 2023 came to be made.

4. Ms Leeson married Mr McPherson in 2014. She died on 6 June 2017, aged 47, having drowned in an indoor swimming pool in remote holiday accommodation in Denmark where she had been on holiday with Mr McPherson from 3 June 2017. Medical evidence showed that Ms Leeson had drowned but had sustained injuries which were consistent with being caused either by unlawful force being applied by Mr McPherson to cause her to drown, or alternatively attempts made by Mr McPherson to rescue and resuscitate her after he had found Ms Leeson in the swimming pool.

5. Mr McPherson was prosecuted for the murder of Ms Leeson. It was McPherson's defence that Ms Leeson had drowned accidentally whilst he was asleep, and that the injuries to Ms Leeson were caused by his attempts to resuscitate her. Mr McPherson was acquitted at a trial held in March 2021 after the trial judge had upheld a submission of no case to answer. In accepting Mr McPherson's submission of no case to answer, Goose J said this: *"There are two available possibilities on the evidence:- firstly, that the defendant physically restrained the deceased underwater or otherwise overcame her in a struggle or pushed her to cause her to drown; secondly, the deceased drowned by accident, whether by a trip, fall or a faint, causing her to fall into the water to drown. Whilst the first of those alternatives is clearly more likely, that does not mean that a jury, on the face of the pathological evidence alone, could be sure of it."*

6. The case for the prosecution had been that Mr McPherson was the beneficiary of excessive life and travel insurance policies which he had taken out on the life of Ms Leeson in the sum of about £3.5 million. It was the prosecution's case that although the medical evidence was consistent with either accident or unlawful killing, the fact of the excessive life insurance policies, and other circumstantial evidence, including the deletion of messages from Mr McPherson's and Ms Leeson's mobile phones

following Ms Leeson's death, meant that the jury could be sure that Ms Leeson had been murdered.

7. The Inquest had been opened prior to the murder trial. Following the conclusion of the murder trial, it was resumed, at which stage the Coroner considered the scope of the Inquest. She concluded that the scope of the factual inquiry at the Inquest should be restricted to the temporal period 3 to 6 June 2017, i.e., whilst Mr McPherson and Ms Leeson had been on holiday in Denmark. The effect of this ruling was to exclude from the evidence to be considered in determining Ms Leeson's cause of death much of the circumstantial evidence that had been relied upon by the prosecution at the murder trial, including the evidence about Mr McPherson taking out the excessive insurance policies.

8. The decision of the Coroner was challenged by way of judicial review by the Second Claimant in the present proceedings, Ms Leeson's Father, William Leeson ("**William Leeson**"). It was William Leeson's case that the decision of the Coroner to so restrict the scope of the Inquest was irrational and unlawful on the basis that the exclusion of much of the circumstantial evidence would mean that evidence critical to the determination of how Ms Leeson died (accident or unlawful killing) would be left out of account, thereby frustrating the statutory purpose of the Coroners and Justice Act 2009.

9. The challenge to the Coroner's decision was heard by a Divisional Court (Dingemans LJ, Fordham J and HHJ Teague KC (Chief Coroner)). William Leeson's challenge was upheld, and the decision of the Coroner to limit the scope of the Inquest quashed, with the matter being remitted to the Coroner to revisit the ruling as to the scope of the Inquest in the light of the decision of the Divisional Court, reported as *R (on the application of William Leeson) v His Majesty's Area Coroner for Manchester South v Donald McPherson, Scottish Widows and others* [2023] EWHC 62 (Admin).

10. In his judgment, Dingemans LJ, at [35], said this:

> "35. It will be for the Coroner to determine at the remitted hearing how the relevant evidence summarised by Goose J. in his ruling on the submission of no case to answer might be adduced in a proportionate manner. Reference was made in the course of the hearing on 20 December 2022 to rule 23 of the Rules. Rule 23 provides for the admission of written evidence, and might enable evidence about the insurance policies to be given in a proportionate manner. This is because there does not appear to be much dispute about the underlying facts about the insurance policies, and the relevant dispute is the extent to which those underlying facts make a conclusion of unlawful killing more likely than a conclusion of accidental death. Goose J. summarised evidence already given in the Crown Court trial, so transcripts and documentary evidence will be available. Such an approach would mean that there is no obligation on the Coroner to adduce "rooms full of evidence" to which reference was made in the submissions."

11. The Inquest is not now due to be heard until after the trial of the present proceedings next year, the Coroner having concluded, so I am informed by Mr Gosling, that findings in the present proceedings may be relevant to the Inquest. However, a Pre-Inquest Review ("**the PIR**") is listed to be heard on 4 December 2023, at which

consideration will be given to the scope of the evidence likely to be adduced at the Inquest.

12. The present proceedings were commenced on 7 April 2021, shortly after Mr McPherson's acquittal.

13. The Claimants claim that Mr McPherson unlawfully killed Ms Leeson by drowning her in the swimming pool at the remote holiday accommodation in Denmark referred to above. The Claimants allege that the killing was motivated by financial gain, with Mr McPherson standing to benefit from c£3.974m in insurance policies written on Ms Leeson's life, as well as from Ms Leeson's pension and over £500,000 in jointly held assets.

14. In addition, the Claimants allege that Mr McPherson dishonestly forged signatures upon Ms Leeson's Will, as well as documentation relating to trusts described as the LV Trust and the Scottish Widows Trust.

15. The issue as to whether Mr McPherson unlawfully killed Ms Leeson is relevant for the purposes of the present proceedings because a finding of unlawful killing would prevent Mr McPherson from taking, as against Ms Leeson's estate, Ms Leeson's share of the jointly held properties and, as understood, other assets. Of course, in the present civil proceedings the issue as to unlawful killing would fall to be determined on the balance of probabilities, albeit with the burden of proof being upon the Claimants, rather than in accordance with the criminal standard of proof applicable to the criminal proceedings that would have required the Jury to be sure that Ms Leeson had been unlawfully killed by Mr McPherson.

16. It is the Claimants' case that Mr McPherson is a dishonest man and fraudster of long standing who has consistently lied and misrepresented his background and financial position for the purpose of making profit and acquiring assets. The Claimants point to what they say is a long history of dishonest acquisitiveness, the Defendant having been convicted of 32 criminal offences of dishonesty/fraud in three countries (New Zealand, Germany and the UK) between 1993 and 2008 ("**the Convictions**"). The Convictions were pleaded in the Amended Particulars of Claim in the present proceedings and were admitted by Mr McPherson in his Defence.

17. By paragraph 1 of the Order of District Judge Richmond dated 24 August 2023, made on the hearing of an application in the present proceedings by the Claimants dated 18 May 2023, District Judge Richmond ordered that:

> "1. Pursuant to s.7(3) of the Rehabilitation of Offender Act 1974 at the Trial of this claim the Claimants are permitted to admit into evidence the Defendant's criminal convictions set out in the Schedule to the Amended Particulars of Claim and admitted in the Schedule to the Defence, and evidence relating thereto and questions may be asked and answered in respect of those convictions."

18. It is to be noted that the Claimants obtained an order for third party disclosure against Greater Manchester Police ("**GMP**") relating to documents disclosed and relied upon by the prosecution in the criminal proceedings against Mr McPherson, ultimately

pursuant to the Order of HHJ Pearce dated 8 March 2022. It is to be noted that by paragraph 5 of his Order, HHJ Pearce ordered as follows:

> "5. Save with the prior permission of the Court, documents disclosed by GMP in this case may only be used in the proceedings in this claim, whether or not the document has been referred to at a hearing. Any application for permission for use of documents shall be made upon not less than 7 days' written notice to GMP and the Claimants and the Defendant."

19. Substantive directions were given in the present proceedings by District Judge Richmond at a Case Management Conference on 5 January 2023. By then, pleadings had closed, and directions were given through to trial including for disclosure, exchange of witness statements, and for adducing expert evidence in relation to a number of disciplines, namely pathology, forensic document examination, computer forensics and swimming pool safety.

20. By paragraph 3 of his Order dated 5 January 2023, District Judge Richmond ordered that by 16 March 2023: *"the parties shall endeavour to agree a Schedule of Agreed Facts"*.

21. After some delay, a schedule of agreed facts was agreed between the parties as set out in the Agreed Facts document. This document runs to some 820 paragraphs over 212 pages. The preamble thereto states that: *"The following facts are agreed between the parties. No party need prove any of the agreed facts by witness or documentary evidence."*

22. In his Skeleton Argument prepared for the hearing on 29 September 2023, Mr Gosling, on behalf of the Claimants, described the Agreed Facts as follows:

> "They reflect a composite of the Parties' pleaded cases, the Operation Astbury Timeline prepared, admitted and agreed in the Criminal Proceedings (which itself ran to 685 pages **[see 94 para 315 of Schedule to Particulars of Claim]** and the underlying financial, documentary and digital materials, principally derived from GMPs criminal investigation into [Ms Leeson's] death and the Defendant's trial for her murder. The Agreed Facts are a case management tool ordered and agreed to assist the Court and the parties to provide context, understanding of the voluminous underlying evidential materials and focus upon the disputed matters which ultimately fall to be determined at trial. There is no question that the Agreed Facts reflect information derived from the GMP third party disclosure made in 2022."

23. I am satisfied from a consideration of the same, that this is an accurate description of the content and purpose of the Agreed Facts. Mr Gosling informed me during the course of submissions that the first draft of the relevant document was prepared by the Claimants' legal team, before being subsequently agreed with some revision after consideration by Solicitors then acting for Mr McPherson, JMW Solicitors LLP ("**JMW**").

24. It is reasonably clear from what I have seen of correspondence between the parties that the Claimants subsequent approach to witness evidence and disclosure has been

informed by the matters recorded as having been agreed in the Agreed Facts, as anticipated by the preamble thereto.

The application for permission to provide the Agreed Facts to the Coroner

25. On Holborn Adams' email dated 6 July 2023 being referred to me, I directed the Court to write to the parties seeking their comments thereupon, which the Court did by email dated 7 August 2023.

26. By email dated 8 August 2023, Glaisyers Solicitors LLP ("**Glaisyers**"), the Solicitors instructed by the Claimants in the present proceedings, responded, unsurprisingly, to say that there was no objection to the disclosure to the Coroner that was sought. However, by an undated letter, Mr McPherson wrote to the Court in the following terms:

> "The agreed facts have been mutually agreed only for this case reference number and for this Court only, not for any other court or judicial process. A coroner's inquiry into my wife's death is an independent process. Put another way, whatever information has been agreed by a judge in this case can't be passed onto someone else, just based on an email request.
>
> My wife's accidental death has saddened me a lot, however I feel the correct procedure and process needs to be followed in order for information to be correctly released. The agreed facts are personal only to myself and I have never intended this to be spread to a wider domain.
>
> I have no intention to allow the agreed facts to be distributed to the South Manchester Coroner, or indeed any other third party outside of this case."

27. Mr McPherson originally instructed JMW to act on his behalf, and they remained on the record until May 2023. However, Mr McPherson filed a Notice of Change dated 30 May 2023 to the effect that he was, thereafter, acting in person. So far as service is concerned, he specified a PO Box in New South Wales, Australia, and an email address from which he has subsequently continued to communicate with Glaisyers and with the Court. More recently, Mr McPherson has stated in witness statements made for other purposes, and in correspondence, that he is residing primarily in the South Pacific. Thus, for example, in a witness statement dated 8 September 2023 he stated that: *"Although I have no permanent residence to insert on this document, I have been residing in various countries mostly in the South Pacific."*

28. Several other applications have been dealt with by the Court over the last few months. Thus, on 24 August 2023, District Judge Richmond determined at a hearing the Claimants' application dated 18 May 2023 relating to the admission into evidence of the Convictions. On 5 September 2023, I heard an application by the Claimants to extend the scope of the Freezing Order made against Mr McPherson at an earlier stage of the proceedings, as well as, amongst other things, an application by the Claimants for relief from sanction in relation to the late (by one working day) provision of details of their expert witnesses. Prior to each of these hearings, Mr McPherson indicated by email that he did not intend to appear thereat, and he did not appear or make any request to attend remotely. This was notwithstanding that that two

applications brought by Mr McPherson himself were listed before me on 5 September 2023.

29. My Order dated 5 September 2023, amongst other things, having recorded the receipt of Holborn Adams' email dated 6 July 2023 and the request made thereby, which I defined as the *"Inquest Documents Application"*, by paragraph 8 thereof, directed that the Inquest Document Application be adjourned to be heard at 10:30 AM on 29 September 2023. Service of this Order was duly affected upon Mr McPherson by sending it by email to his designated email address. Further, notice of the hearing was subsequently issued by the Court on 7 September 2023 and served on Mr McPherson in the same way that referred to the listing of the matter directed by paragraph 8 of my Order dated 5 September 2023 at 10.30am on 29 September 2023.

30. On 12 September 2023 the Claimants issued an application seeking third party production/disclosure against GMP in relation to Mr McPherson's and Ms Leeson's mobile phones, and data extracted therefrom for the purposes of the criminal prosecution, that the Claimants wished to provide to their computer forensics expert in order to enable the latter to produce a report dealing with the allegation that Mr McPherson had deliberately deleted data from the mobile phones following Ms Leeson's death. District Judge Richmond directed that this application be heard on 29 September 2023, at the same time as the Inquest Documents Application.

31. A strike by security staff at the Civil Justice Centre in Manchester on 29 September 2023 prevented an intended in-person hearing taking place on that day. Having raised the issue with the parties through an email sent to the parties by the Court, I directed that the hearing on 29 September 2023 proceed as a remote hearing, conducted via MS Teams.

32. In response to my raising the issue as to mode of hearing with the parties, Mr McPherson responded as follows:

> "At present I do not live in an area with a reliable internet connection, and without a sufficient speed, during the hours needed for the court hearing, so I will not be able to join in with this hearing.
>
> Also, please accept my slow response to your request as I have only just received these emails from yourselves. I am unable to check emails every day, along with uploading and downloading of large files.
>
> Also, can you please consider if it's possible for me to receive legal aid going forward as these matters are extremely complex, and I feel that fair justice will never be done here. I have no legal experience and I do not have the ability to reliably answer every enquiry going forward.
>
> Also, I live and work in the South Pacific. Please can you let me know who has provided a statement that I live in the Far East?"

33. When read together with Mr McPherson's assertion in his witness statement dated 8 September 2023 that he had no permanent residence and had been living in various countries *"mainly"* in the South Pacific, it is by no means clear exactly why Mr McPherson could not have secured an appropriate internet connection to enable him

to attend the hearing on 29 September 2023 remotely. Given that he did not attend the hearings on 24 August 2023 and 5 September 2023, having stated that he did not intend to do so, and given that he did not request any form of adjournment in respect of the hearing on 29 September 2023, I am reasonably satisfied that Mr McPherson could have attended this hearing remotely had he chosen to do so. In any event, even if I am wrong as to this, absent a successful application to adjourn the hearing, I considered that, in the circumstances, the only appropriate course was to proceed with the consideration of the Inquest Documents Application on 29 September 2023 notwithstanding that Mr McPherson was neither present nor represented.

34. In the event, on 29 September 2023, I proceeded to determine the application for third-party production/disclosure as against GMP, and I heard submissions from Mr Gosling in respect of the Inquest Documents Application. So far as the part of the hearing at which I heard the submissions in relation to the Inquest Documents Application was concerned, having considered the provisions of CPR 39.2, and having regard to the observation of Andrew Baker J in *The ECU Group Plc v HSBC Bank Plc* [2018] EWHC 3045 (Comm) at [3] that the proper approach in respect of permission application such as the present is generally for the Court to sit in private, I directed that this part of the hearing be in private. To have done otherwise would, I am satisfied, in view of the terms of CPR 31.22(1)(a) referred to below, have been liable to defeat the object of the hearing were I to have refused the Inquest Documents Application.

35. Having heard submissions, there was little time left to give judgment in respect of Inquest Documents Application. Given that Mr Gosling's Skeleton Argument had been served somewhat late, and had referred to a number of authorities that I had not had an opportunity to consider, I decided that, in any event, I should reserve judgment in respect of the Inquest Documents Application. This is my reserved judgment.

The Claimants' case in respect of the Inquest Documents Application

36. Clearly, the first question that requires to be considered is as to whether, and on what basis, the Claimants might require the permission of the Court before providing a copy of the Agreed Facts to the Coroner.

37. The Claimants' analysis, as advanced by Mr Gosling, is that the Agreed Facts make extensive reference to documents disclosed during the course of the present proceedings, and to the contents of those documents, including, in particular, documents disclosed by GMP relating to the criminal proceedings following the making by the Claimants of the application for third-party disclosure referred to above. On this basis, the Claimants consider themselves constrained to accept that the provisions of CPR 31.22 apply so as to restrict the collateral use of these disclosed documents, and the content thereof, otherwise than for the purposes of the present proceedings. I note that *IG Index Plc v Cloete* [2013] EWCA Civ 1128 at [21] provides authority for the proposition that the prohibition against collateral use in CPR 31.22 applies to protect not only the disclosed documents themselves, but also their contents, i.e., including the information derived from them.

38. CPR 31.22 provides that:

> "(1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, except where –
>
> > (a) the document has been read to or by the court, or referred to, at a hearing which has been held in public;
> >
> > (b) the court gives permission; or
> >
> > (c) the party who disclosed the document and the person to whom the document belongs agree.
>
> (2) The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to, at a hearing which has been held in public"

39. Mr Gosling, on behalf of the Claimants submits that CPR 31.22(1)(a) applies in the circumstances of the present case. Alternatively, that the Court ought to give permission for the Agreed Facts to be provided to the Coroner.

40. As to the application of CPR 31.22(1)(a), reliance is placed upon what is said to be the deployment of the Agreed Facts at the hearing before District Judge Richmond on 24 August 2023 concerned with whether the Claimants might be entitled adduce evidence as to the Convictions at trial. As to this, reliance is placed on the fact that the Agreed Facts document was included within the bundle for that hearing, and was referred to in the Skeleton Argument of Leading Counsel then instructed, Ms Lesley Anderson KC. It is not suggested that the Agreed Facts were actually referred to during the course of the hearing, or in any judgment that District Judge Richmond might have given. So far as the reference to the Agreed Facts in the Skeleton Argument is concerned, I note therefrom that the Agreed Facts document was not specifically identified in the reading list on the first page of the Skeleton Argument, but at paragraph 9 of the Skeleton Argument it was said that: *"The Defendant admits the Convictions **[Defence Schedule, 112 para 9(ii); 114 para 29; Agreed Facts paras 93-96]**."* There was no further reference to the Agreed Facts in the Skeleton Argument. However, the fact that the Agreed Facts was referred to in the Skeleton Argument, which District Judge Richmond should be taken to have read, and the fact that Mr McPherson's admission regarding the Convictions was a factor that District Judge Richmond might have been expected to take into account in making the order that he did, is said to be sufficient by way of reference to the Agreed Facts to engage CPR 31.22(1)(a).

41. However, Mr Gosling submits that should he be wrong as to this, then this is a proper case for the Court to give permission pursuant to CPR 31.22(1)(b), and by implication that this would not be a proper case for the Court to make an order pursuant to CPR 31.22(2).

42. Mr Gosling submits that the power of the Court pursuant to CPR 31.22(1)(b) to permit collateral use is a general discretion to be exercised in the interests of justice having regard to all the circumstances of the case. However, Mr Gosling recognises that the authorities are to the effect that the Court should only grant permission if there are special circumstances constituting a cogent reason for permitting collateral use, with the burden being firmly upon the applicant to demonstrate that this is the case – see e.g. *Tchenguiz v Grant Thornton UK LLP* [2017] EWHC 310 (Comm); [2017] 1 W.L.R. 2809, *Lakatamia Shipping Co Ltd v Su* [2020] EWHC 3201

(Comm), [2021] 1 W.L.R. 1097. As to the latter case, Mr Gosling refers to the convenient summary of the principles concerning the operation of CPR 31.22 in the judgment of Cockerill J at [47]-[57].

43. Included within Cockerill J's summary of the principles, was, at [51], a reference to the identification of the relevant principles by Knowles J in *Tchenguiz v Grant Thornton UK LLP* at [66]:

> "(i) The collateral purpose rule now contained in CPR r 31.22 exists for sound and long established policy reasons. The court will only grant permission under rule 31.22(1)(b) if there are special circumstances which constitute a cogent reason for permitting collateral use.
>
> "(ii) The collateral purpose rule contained in section 9(2) of the 2003 Act is an absolute prohibition. Parliament has thereby signified the high degree of importance which it attaches to maintaining the co-operation of foreign states in the investigation of offences with an overseas dimension.
>
> "(iii) There is a strong public interest in facilitating the just resolution of civil litigation. Whether that public interest warrants releasing a party from the collateral purpose rule depends upon the particular circumstances of the case. Those circumstances require careful examination. There are decisions going both ways in the authorities cited above.
>
> "(iv) There is a strong public interest in preserving the integrity of criminal investigations and protecting those who provide information to prosecuting authorities from any wider dissemination of that information, other than in the resultant prosecution.
>
> "(v) It is for the first instance judge to weigh up the conflicting public interests. The Court of Appeal will only intervene if the judge erred in law (as in *Gohil* [*Gohil v Gohil* [2013] Fam 276]) or failed to take proper account of the conflicting interests in play (as in *IG Index*)."

44. Mr Gosling submits that there are, in the present case, special circumstances giving rise to cogent reasons for the intended collateral use of the Agreed Facts which, so it is submitted, will cause no injustice to Mr McPherson. Mr Gosling seeks to rely upon the following:

i) The present claim and the Inquest are said both to be primarily concerned with the cause of death of Ms Leeson.

ii) Mr Gosling submits that the collateral use is for a proper purpose, there being a strong public interest in the just and proportionate disposal of inquests. Mr Gosling identifies that the Inquest is an inquisitorial process designed to get to the truth of how Ms Leeson died, and on that basis the Agreed Facts should be allowed to enter the *"funnel"* of evidence to be filtered into the inquisitorial process.

iii) Mr Gosling relies upon the observations of HHJ Cooke QC in *Gilani v Saddiq* [2018] EWHC 3084 (Ch) at [21] (subsequently applied in *Official Receiver v Skeene* [2020] EWHC 1252 (Ch)):

> "…some good reason has to be shown for permitting any other use, but this does not mean that the grant of permission is rare or exceptional if a proper purpose is shown, and use in other proceedings such as criminal proceedings brought in the public interest may be such a purpose. The court must be satisfied there is no injustice to the party compelled to give disclosure."

iv) Mr Gosling identifies that earlier in his judgment in *Gilani v Saddiq* at [25], HHJ Cooke QC, drawing on a passage from *Bank of Crete SA v Kostakas (No. 2)* [1992] 1 WLR 919 , at 926-7, had said:

> "This passage seems to me to recognise that in the balancing exercise that is to be conducted, the public interest in the proper conduct of criminal proceedings will be a material, and often a decisive factor in favour of allowing disclosed documents to be used by the prosecuting authority. This is so if the prosecution is in England…."

v) Further, Mr Gosling refers to the fact that in In *Official Receiver v Skeene* (supra), Deputy ICC Judge Kyriakides observed that there was no reported case where the Court had refused to permit documents to be used for the purpose of criminal proceedings. He submits that the same, or at least a similar, public interest reason must apply to inquest proceedings.

vi) Mr Gosling refers to observations of Dingemans LJ in his judgment determining the judicial review application in respect of the Inquest at [35], referring to how evidence might be dealt with at the Inquest in a proportionate manner that did not require the Coroner to adduce *"rooms full of evidence"*, having referred to there appearing to be not much dispute in respect of certain underlying facts. It is submitted that the Agreed Facts ought to assist in identifying the issues really in issue in the Inquest in order that it might be effectively case managed, assist the Coroner and the parties at the forthcoming PIR in understanding Mr McPherson's position as to the facts and circumstances leading up to and after Ms Leeson's death, and therefore assist the Coroner to make informed case management decisions as to witnesses and further investigations/documents that may be needed, or more likely will not be needed for the purposes of the Inquest.

vii) Mr Gosling refers to the fact that the Jury Bundle from the criminal trial has been disclosed to the Coroner and interested parties, and that this included the Operation Astbury Timeline, agreed facts in the criminal proceedings, charts of properties, insurance policies, financial transactions and transcripts of telephone calls. Further, transcripts of witness evidence given at criminal trial have also been disclosed to the Coroner and interested parties. Mr Gosling makes the point that it follows that much of the underlying evidential material of which the Agreed Facts are comprised is already before the Inquest, albeit in less readily accessible format and without indication of what Mr McPherson agrees.

viii) Mr Gosling relies upon the fact that, to date, Mr McPherson's substantive engagement in the Inquest has been limited to a bare witness statement dated 11 October 2021 referred to and relied upon in his Further Information served in the present proceedings. Mr Gosling submits that the Agreed Facts will assist the Inquest's inquisitorial process as to what facts are agreed and what facts are disputed by Mr McPherson.

ix) Mr Gosling submits that it cannot seriously be suggested that the integrity of the criminal investigation would be compromised by disclosure to the Coroner of the Agreed Facts. He points to the fact that disclosure of the documents from the criminal proceedings was considered appropriate and just in these proceedings given the serious allegations, and he submits that the same reasoning applies to the Inquest given that disclosure and use of the Agreed Facts (as opposed to the entirety of the criminal documents including all witness statements) does not disseminate information as to those who assisted the criminal investigation. He further identifies that those who did and remain material witnesses, are likely, shortly, to be giving evidence at the trial of the present proceedings in any event.

x) Mr Gosling further points to the fact that there is no reason to believe that the present proceedings will not proceed to trial next year. Consequently, it is at least highly likely that the Agreed Facts will shortly, if they did not already do so at the hearing on 24 August 2023, enter into the public domain at this trial.

xi) Mr Gosling submits that there is no significant prejudice or injustice to the Mr McPherson in disclosing the Agreed Facts to the Coroner. This is on the basis that:

a) The Agreed Facts are precisely that, agreed.

b) Mr McPherson has not subsequently sought to resile from, amend or dispute any of the Agreed Facts, and his letter to the Court referred to in paragraph 26 above gives no indication that he intends to do so, even if it were now open to him to do so.

c) Apart from what he says in his letter with regard to making admissions solely for the purposes of the present proceedings, and not intending them to have any wider use, Mr McPherson does not advance any principled reason against providing the Agreed Facts to the Coroner.

d) Mr Gosling points to the fact that the Agreed Facts will not be substantively deployed in the actual determination of the issues raised by the Inquest until after judgment has been given in the present proceedings, whereupon the Agreed Facts and the trial Judges findings of facts will be known to the Coroner and all interested parties.

45. On the basis of the above, it is the Claimant's case that, to the extent necessary, the Court ought to grant permission pursuant to CPR 31.22(1)(b) regarding the provision of the Agreed Facts to the Coroner.

Determination of the Inquest Documents Application

Preliminary observations

46. I consider that Mr Gosling is correct to say that CPR 31.22 is engaged so far as the Agreed Facts document is concerned. However, I regard it as important to bear in mind that the Agreed Facts document is not, itself, a document that has been disclosed in the present proceedings, but rather makes reference to the contents of, and thus information contained in documents that have been disclosed. Consequently, when CPR 31.22 refers to *"a party to whom a document has been disclosed"* using the document only for *"the purpose of the proceedings in which it is disclosed"*, I consider that it must be to the document that was disclosed, and the contents thereof, to which the provisions of CPR 31.22 strictly apply, and not a composite document such as the Agreed Facts document referring to the contents of, and information contained in the disclosed document. Consequently, the permission sought is, as I see it, strictly, to use documents that have been disclosed in the present proceedings, the contents of which is encompassed within the Agreed Facts, by disclosing the Agreed Facts document to the Coroner.

47. This does raise the question as to whether some implied protection applies to the Agreed Facts document itself akin to the implied protection in respect of the collateral use of disclosed documents that existed at common law prior to the introduction of CPR 31.22, that might have applied even if the Agreed Facts document had made no reference to the contents of disclosed documents. As to this, I can see some force in Mr McPherson's point, that having agreed a set of facts for the purposes of the present proceedings as directed by the Order dated 5 January 2023, and solely for that purpose, he did not intend, and it was not envisaged, that the document produced as a result (the Agreed Facts) should be capable of being more widely used or deployed, e.g. for the purposes of the Inquest.

48. I consider that there is at least an argument that use of the Agreed Facts document itself for a purpose collateral to the present proceedings falls within a wider general common law principle that if a document is provided or contributed to in litigation for a particular purpose, then the circumstances may require that it should only be used for that purpose and not more widely disseminated for collateral purposes, at least unless referred to in open court or used with the permission of the Court. However, I have not heard full argument on the point, and I do note that CPR 18.2, for example, provides that where further information is provided pursuant to CPR 18.1, the Court may direct that the information provided must not be used for any purpose except for that the proceedings in which it is given, suggesting that that without such an order collateral use might be permissible.

49. In the event, I do not consider it necessary to decide the point because even if such a principle did apply, I do not consider that it would, in practical terms, apply so as to lead to a different result so far as the use of the Agreed Facts document to that so far as the application of CPR 31.22(1)(a) and (b) is concerned in respect of the disclosed documents the contents of which is referred to in the Agreed Facts document.

50. It is further necessary to say something about the Agreed Facts document, and the admissions contained therein. As I see it, the admissions contained therein fall within CPR 14.1, the effect of which is that the Court's permission would be required to

amend or withdraw the admissions in question. If not so withdrawn, then it would not be open to Mr McPherson at trial to dispute the facts contained therein that had been admitted, a matter reinforced by the recital to the Agreed Facts – see *Nageh v David Game College Ltd* [2013] EWCA Civ 1340.

51. As mentioned, Mr McPherson has not indicated any intention to withdraw any of the admissions contained in the Agreed Facts. Further, given the extent to admissions contained within the Agreed Facts have been relied upon by the Claimants and the Court in taking decisions so far as the conduct of the present proceedings is concerned, I would doubt that it is now open to Mr McPherson to seek to withdraw the admissions that he has made, particularly bearing in mind also that they are largely reflective of admissions made in his Defence, and the contents of largely indisputable documents – see the criteria to be applied by the Court in considering the question of the withdrawal of admissions in CPD PD 14, para 7.2, and, e.g. *Bayerische Landesbank Anstalt Des Offentlichen Rechts v Constantin Medien AG* [2017] EWHC 131 (Comm).

52. Whilst the Agreed Facts clearly do have evidential significance so far as the present proceedings are concerned if not withdrawn before trial, it is unnecessary for me to consider the evidential significance of the Agreed Facts so far as the Inquest is concerned given that:

    i) Before the trial in the present proceedings, the reality is that the Agreed Facts document is likely merely to assist for case management purposes; and

    ii) After the trial, and when the Inquest takes place, the Coroner will have the benefit of a judgment from the present proceedings, and to the extent still relevant, the Agreed Facts, and in particular the disclosed documents the contents of which formed the basis of the Agreed Facts, will almost certainly have come within the public domain during the course of the trial.

53. Further, it is a relevant consideration that the admissions contained within the Agreed Facts have been made for the purposes of the present proceedings. Whilst the fact that they have been made might have some evidential value in itself, the facts themselves ought not to be taken as admitted for the purposes of the Inquest. To this extent at least, Mr McPherson's concerns are overstated.

CPR 32.22(1)(a)

54. CPR 32.22(1)(a) permits collateral use where a disclosed document has been read to or by the court, or referred to, at a hearing which has been held in public. The ability to use such a document for collateral purposes is dictated by basic principles of open justice, the ability to scrutinise legal process, and the right of expression under ECHR, Art 10 – see e.g., *UXA v Merseycare NHS Foundation Trust* [2021] EWHC 3455 (QB), [2022] 4 WLR 30 at [18] et seq, per Fordham J.

55. The cases on CPR 32.22(1)(a) reflect the fact that modern litigation involves extensive pre-reading, and the use of skeleton arguments in order to limit and shorten oral submissions. Consequently, it is not necessary that the relevant documents should be read or referred to in open court. It is sufficient that the judge had read the documents in question, or that reference was made to them at the hearing or in, for

example, witness statements that are relied upon at the hearing – see *SmithKline Beecham Biologicals SA v Connaught Laboratories Inc* [1999] EWCA Civ 1781, [1999] 4 All ER 498, and the consideration of the latter case in *UXA v Merseycare NHS Foundation Trust* at [23].

56. As identified above, the Agreed Facts were referred to in the Claimants' Skeleton Argument for the purposes of the hearing before District Judge Richmond on 24 August 2023, which was a public hearing, but only in the context of referring to the fact that the Agreed Facts had referred to Mr McPherson's admission with regard to the Convictions.

57. As referred to above, I consider that although the Agreed Facts document engages CPR 31.22, it only does so because it makes reference to documents and to the contents of documents that have been disclosed. Consequently, I consider that when it comes to a consideration as to whether *"the document"* has been read to or by the Court, the focus of enquiry should be upon the disclosed documents themselves, rather than a composite document such as the Agreed Facts document which makes reference thereto. Given the limited extent to which the Agreed Facts document was referred to in paragraph 9 of the Skeleton Argument in relation to an admission in respect of the Convictions, I do not consider that it can be properly said that other documents referred to in, or the contents of which are touched upon in the Agreed Facts Document, can properly be said to be documents that have been read to or by the Court, or referred to, at a hearing which has been held in public simply on the basis that the Agreed Facts were referred to in the hearing bundle, and in the way that it was in Leading Counsel's Skeleton Argument for the hearing on 24 August 2023.

58. I consider the point can be tested by considering whether production of the Agreed Facts document, making reference to the large number of disclosed documents in qustion, and the contents thereof, is required to understand the basis of the decision of District Judge Richmond to make an order pursuant to s. 7(3) of the Rehabilitation of Offenders Act 1974 with regard to the Convictions, where all that might have been relevant to the determination was that Mr McPherson had admitted the Convictions, and nothing more.

59. On this basis, I do not consider that CPR 31.22(1)(a) permits the provision of the Agreed Facts to the Coroner given the reference therein to disclosed documents and their contents that had nothing to do with the Convictions.

60. It is therefore necessary to consider whether the Court ought to grant permission pursuant to CPR 31.22(1)(b).

CPR 31.22(1)(b)

61. It is necessary to bear firmly in mind certain of the public interest considerations behind the prohibition on collateral use of disclosed documents as helpfully identified by Cockerill J in *Lakatamia Shipping v Su* (supra) at [47], including that compulsory disclosure is an invasion of a person's private right to keep one's documents to oneself and therefore should be matched by a corresponding limitation on the use of the document disclosed, and that there is a public interest in encouraging those with documents to make full and frank disclosure thereof, whether helpful or not.

62. It is also necessary to bear firmly in mind that the Court should only grant permission pursuant to CPR 31.22(1)(b) where satisfied, the onus being on the applicant, that there are special circumstances for permitting collateral use that, in the particular circumstances of the case, outweigh the public interest considerations referred to in the previous paragraph. Further, I bear in mind that the Court should be particularly slow to permit collateral use of disclosed documents were a relevant party objects thereto, at least where the relevant party objects on a properly principled basis.

63. In the circumstances of the present case, I am satisfied that it is appropriate to permit the Claimants' Solicitors to provide a copy of the Agreed Facts to the Coroner ahead of the PIR in December 2023.

64. The key considerations are, in my judgment, the following:

    i) The same issue arises in both the present proceedings and the Inquest, namely the cause of Ms Leeson's death, and in particular whether she was unlawfully killed, with the same standard of proof applying (balance of probabilities) in relation to both proceedings – see *R (Maughan) v Oxfordshire Senior Coroner* [2021] AC 454.

    ii) The Agreed Facts will be provided to the Coroner for a proper purpose, there being a clear public interest in the Inquest being carried out as efficiently and effectively as possible in order to determine the cause of Ms Leeson's death. So far as this public interest is concerned, I accept the contention that there is something of an analogy between the use of documents disclosed in civil proceedings for the purposes of criminal proceedings, and the use of the purposes of an inquest and thus as to the application of the authorities referred to in paragraph 44(iii) above. In the light of the observations of Dingemans LJ at [35] of his judgment in the Divisional Court, I am satisfied that the production of the Agreed Facts to the Coroner is likely to be of significant use in the effective case management of the Inquest, including at the forthcoming PIR. Further, at the Inquest itself, whatever the result of the trial of the present proceedings, the Agreed Facts are likely to be of assistance in any consideration of the effect of the judgment handed down following the trial of the present proceedings, whatever the result, and dealing with the issue as to the cause of Ms Leeson's death.

    iii) I consider that it is a relevant factor that much of the documentation upon which the Agreed Facts are based has already been disclosed to the Coroner in the Inquest.

    iv) I consider that it is a consideration in itself in determining whether permission ought now to be granted to provide the Agreed Facts to the Coroner, that it is at least highly likely that, given its likely deployment at trial, following trial, CPR 31.22(1)(a) will apply thereto so as to permit collateral use. Further, following trial, it is difficult to see that that there could be any proper basis for applying CPR 31.22(2) in the circumstances of the present case. I would add that there is no suggestion that the present proceedings will not go to trial, or that the Claimant's might discontinue the claim. Further, for the reasons that I have indicated above, I consider that Mr McPherson would have some considerable difficulty in obtaining leave to withdraw admissions contained in

the Agreed Facts. In any event, Mr McPherson has given no indication that he would, at least in the present proceedings, seek to resile from anything that he has admitted.

v) On proper analysis, it is difficult to see that the production of the Agreed Facts to the Coroner would be liable to cause any significant prejudice Mr McPherson. The key considerations are, as I see it, the following:

a) Ahead of the trial of the present proceedings, the Agreed Facts are likely only to serve for case management purposes.

b) The Agreed Facts are only likely to be deployed in any more substantive way after the trial of the present proceedings when the trial judge will have determined the unlawful killing issue, and the Agreed Facts are highly likely to have become available for use for collateral purposes pursuant to CPR 31.22 (1)(b) in any event.

c) The Agreed Facts contains admissions on the part of Mr McPherson for the purposes of the present proceedings. They would not, in themselves, prevent Mr McPherson from contending to the contrary in respect of a particular admission therein at the Inquest, and the Coroner would be alive to the fact that the admissions had been made as part of the case management process for the purposes of the present proceedings.

d) Bearing in mind that the Agreed Facts are significantly based upon documents which say what they say, and matters that have already been admitted in, or agreed for the purposes of the criminal proceedings, there is nothing that I have been able to identify in the Agreed Facts that is liable to be particularly contentious. In any event, many of the matters therein referred to have already been the subject matter of disclosure in the Inquest.

Conclusion

65. In the circumstances, I am satisfied that I ought to grant permission to the Claimant's to provide a copy of the Agreed Facts to the Coroner, and thereby to make the same available for use by the Coroner and interested parties including the Claimants for the purposes of the Inquest. I consider that, on the facts of the present case the public policy considerations behind furthering an effective inquest as to Ms Leeson's death and the other circumstances of the case significantly outweigh and public interest against the collateral use of discloses documents or indeed a document containing admission is capable of discrete protection.

66. However, I consider the order giving such permission should be expressed to be without prejudice to the evidential status of the Agreed Facts within the Inquest, and any submissions that Mr McPherson or any interested party might make in respect thereof at the Inquest, and to any determination that the Coroner might make in relation thereto.

67. As I have mentioned above, by his Order dated 8 March 2022 making an order for third-party disclosure against GMP, HHJ Pearce directed that any application for permission for the use of documents should be made upon not less than seven days' written notice to GMP, the Claimants and Mr McPherson. I am satisfied that Mr McPherson has had proper notice of the making of the Inquest Documents Application by the matters referred to in paragraph 29 above. However, no notice has been given to GMP. As evident from GMP's response to the application for third-party production/disclosure that was before me on 29 September 2023, GMP has taken an essentially neutral stand so far as the use of materials from the criminal trial for the purposes of the present proceedings, and more generally, is concerned. However, in case GMP should have any particular issue so far as the provision of the Agreed Facts to the Coroner is concerned, and so far any more general deployment thereof for the purposes of the Inquest, I consider that I should provide for a copy of this Order to be served on GMP, and for GMP to be allowed seven days to apply to discharge or vary the Order that I propose to make. The Order should further provide that the permission provided for thereby should not take effect until GMP has had the opportunity to make such an application to vary or discharge, and in the event that any such application is made, until that application has been determined.