



Neutral Citation Number: [2021] EWHC 778 (Admin)

Case No: CO/4407/2019

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice,  
Strand, London, WC2A 2LL

Date: 30/03/2021

**Before:**

**LORD JUSTICE POPPLEWELL**  
**MR JUSTICE CAVANAGH**  
and  
**HIS HONOUR JUDGE TEAGUE QC,**  
**CHIEF CORONER OF ENGLAND AND WALES**

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**Between:**

**MARY PATRICIA FARRELL**

**Claimant**

- and -

**HER MAJESTY'S CORONER FOR NORTH EAST  
HAMPSHIRE**

**Defendant**

- and -

**AMANDA BURDEN**

**Interested Party**

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**The Claimant represented herself**

**Andrew Sharland QC (instructed by Head of Legal Services, Hampshire County Council)**  
for the **Defendant**

**Peter Skelton QC (instructed by Hickman and Rose Solicitors) for the Interested Party**

Hearing date : 24 March 2021  
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**Approved Judgment**

**Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10.30 a.m. on Tuesday, 30 March 2021.**

## Lord Justice Popplewell:

### Introduction

1. Ray Farrell died on 24 October 2016, aged 53. He was suffering from malignant mesothelioma as a result of exposure to asbestos as a fitter's mate in his early working life. Mr Bradley, then senior coroner for North East Hampshire, held an inquest on 27 October 2016 and recorded the cause of death as mesothelioma. Ray's mother, Mrs Farrell, applies with the *fiat* of the Attorney General for the determination to be quashed and for a fresh inquest to take place, on the grounds that there should be an investigation of whether Ray's wife, Ms Burden, hastened his death by deliberately giving him inappropriate medication, motivated by personal financial gain. No such suggestion was raised with the coroner at the time.

### Narrative

2. The following matters are established by contemporaneous documents or are not in dispute.
3. In 1979 Ray left school aged 16 and spent a short time as a fitter's mate under the Youth Training Scheme with Oxoid Ltd. It was there that he was exposed to asbestos fibres. He went on to have a career as an electrician.
4. In January 2008 he met Ms Burden and shortly thereafter they started a relationship. She worked and lived in London during the week. He lived in Overton, Hampshire. They spent much of their leisure time together.
5. On 15 October 2010 Ray was diagnosed with epithelioid mesothelioma. On 13 January 2011 he had a right pleurectomy/decortication operation. The histology from the removed material confirmed the diagnosis. Ray was given a prognosis of 6 months life expectancy and stopped work. He chose not to tell his children, Kyle and Kelly, or his friends about his disease. Until his death, only his parents and Ms Burden knew of his diagnosis, together with Ms Burden's family and one of their closest friends in order to provide her with support.
6. Ray underwent a course of six cycles of chemotherapy. In 2011 he commenced a civil claim against Oxoid Ltd (by now Unipath Management Ltd), which was settled in January 2013 for about £375,000. Between October 2013 and January 2014 he was given a further six cycles of chemotherapy. Between September 2014 and October 2015 he took part in a placebo controlled trial of a new type of immunotherapy treatment. Not long after its completion he experienced greater pain and the cancer progressed.
7. On 22 January 2016, Ray and Ms Burden saw Dr Bartlett, a GP at Ray's local practice in Overton, to discuss their getting married at home. On 25 January 2016 Dr Bartlett wrote:

“I am writing to confirm the following points with regards to the proposed marriage of the above-named patient.

- a I am the doctor in medical attendance on the above-named patient.

- b The above-named patient is seriously ill and not expected to recover.
  - c The above-named patient cannot be moved to a place registered for marriage.
  - d The above-named patient understands the nature and purpose of marriage.
- ...”
8. The following day Ray was suffering from constant discomfort which he described as like a weight on his chest and he had a tachycardia. The GP had him admitted to Basingstoke Hospital, where he remained until 29 January 2016.
  9. On 2 February 2016 Ray and Ms Burden were married at his home in Overton in the presence of his parents. I will return to the disputed account of events on that day from Mrs Farrell and Ms Burden.
  10. Ray’s medical notes record that on 8 February 2016 he was refusing to be readmitted to hospital as an inpatient and was awaiting a hospice bed, with home oxygen to be arranged in the meantime; and that on 9 February 2016 he was admitted to St Michael’s Hospice, clinically in congestive heart failure with uncontrolled rate. His cardiology stabilised over the following days and he was discharged from the hospice on 18 February 2016.
  11. Although on 12 July 2016 Ray’s treating consultant oncologist at Guy’s Hospital, Dr Spicer, had written to a colleague in Lille asking that he consider Ray for a medical trial if he were suitable, in a letter to Dr Bartlett of 8 September 2016 Professor (formerly Dr) Spicer described a consultation with Ray and Ms Burden on 19 August 2016 at which there had been an explicit understanding reached in the course of a conversation about the various options that “the time for aggressive anti-cancer measures may have passed, and certainly Ray is aware that his primary focus currently is on ensuring symptom control.” This is in line with a letter of 10 August 2016 from Dr Steele, a consultant medical oncologist from Bart’s Hospital who saw Ray as a follow up to the drugs trial and observed that he seemed to have become much thinner and weaker.
  12. Ray’s condition worsened. On 3 October 2016 he had a cordotomy at Portsmouth hospital, and was discharged the following day. The next day, 5 October 2016, Ray and Ms Burden attended a consultation with Dr Emilia Moretto, a local consultant in palliative care. Dr Moretto’s letter of 7 October 2016 to Dr Rial, another GP at the local Overton practice, recorded that Ray was extremely fatigued and had very little balance. The letter went on to say: “We discussed that he was very poorly, and that as there had been such a change in such a few days my feeling is that prognosis is very short, possibly weeks or maybe days..... I will re-refer him to hospice at home service and they will visit him at home on 6/10/16. We will also check his just in case medications. He would like to die at home if at all possible – and I reassured him that we would endeavour to support him and his family to do this.....” The letter also said: “As discussed on the telephone, he has voiced before that he had hoped he would not require a post-mortem. We do not have his histology, but Dr Riley [sic, presumably a typographical error for Dr Rial] was

going to discuss with coroner pre-emptively to see that if he has detailed histology, I presume from London, he might not require a post-mortem. We did not discuss this at the appointment today.”

13. No doubt prompted by this letter, on 10 October 2016 Dr Rial contacted Mr Bradley by phone. The medical notes made by Dr Rial record that he told Mr Bradley that it was Ray’s wish that there be no post-mortem. As Mr Bradley explained in subsequent correspondence, he was told that Ray had been diagnosed with mesothelioma some years before and that biopsies had been performed with the results available to him to confirm. Although he was required to conduct an inquest because mesothelioma was an industrial disease, it was his usual practice to proceed without a post-mortem where there was a confirmed diagnosis and the patient was attended in his final illness. Mr Bradley’s contemporaneous note of the conversation records that he said he would be happy to proceed to an inquest without a post-mortem examination if the histology results were in order.
14. On 10 October 2016 Mrs Farrell arranged for a Catholic priest to administer the Last Sacrament to Ray.
15. On 13 October 2016 Dr Moretto phoned Dr Phillips at the GP surgery to say that she had found the histology results and would forward them. Dr Phillips emailed Dr Pollard (being another GP at the practice) asking her to forward them to Mr Bradley, which Dr Pollard did the following day. Dr Phillips asked Dr Pollard to amend Ray’s out of hours paperwork to reflect the discussions Dr Rial had had with Mr Bradley, so that all that would be necessary when Ray died would be for a doctor to verify death, following which the body could be taken to an undertaker, and for the coroner to be notified the next day if it happened overnight. The medical notes record Dr Phillips saying: “I hope this is clear – I just wanted it documented asap as he’s deteriorating rapidly.”
16. On 18 October 2016 Dr Moretto visited Ray’s home for a consultation with him and Ms Burden. Also present was a woman from the hospice at home service. Dr Moretto’s letter to the GP the following day recorded that she had found Ray to remain extremely weak and that he had not eaten for a week. He had accepted a hospital bed which was awaited, but was reluctant to accept care. The letter described Ray’s clinical symptoms and said: “I still feel time is very short” and “I think his prognosis is probably a short number of days”.
17. Ray died at home in his bed in the early hours of 24 October 2016. Ms Burden’s account is that he went to sleep at 2300 and she next checked on him around 0130 and found that he had died. She rang Ms Farrell to tell her, and Mrs Farrell came over to the house with her husband. Ms Burden telephoned the out of hours GP service at 0140, and again at 0155. Mrs Farrell’s account was that they were at the house when Ms Burden was on the phone to the GP. Dr Tighe attended at 0330 and confirmed the death, which he recorded as “expected”. His summary of the case notes recorded that Ray had had advanced metastatic mesothelioma with multiple lung and abdominal metastases and ascites, and had been given a prognosis of a few days.
18. Mr Bradley conducted the inquest without oral evidence in his office on 27 October 2016 and recorded mesothelioma as the cause of death. He had asked Ms Burden

whether she wanted a full-blown oral hearing in open court or whether she was content for him to deal with the matter on the papers. She confirmed she was content with the latter. Mr Bradley had the case summary from the GP confirming the advanced metastatic mesothelioma and prognosis of a few days, the histology results confirming the diagnosis, and the statement made by Ray in support of his civil claim. There was no post-mortem, no taking of blood or tissue samples and no toxicology report because he did not regard them as necessary. Ray was buried.

### **Procedural history**

19. It was Ray's daughter Kelly who first raised questions about the death with Mr Bradley. She had returned from a half term break the day after Ray's death. She saw that there were two carrier bags of medicines, which Ms Burden confirmed were her father's medications. This must have come as something of a surprise and shock to her because Ray had kept her unaware of his condition. On 30 January 2017 she emailed Mr Bradley expressing concerns about his "sudden death" and inquiring whether any toxicology reports had been made or blood samples taken before his body was released. On 31 January 2017 Mr Bradley replied by email explaining that they had not because he had sufficient information to reach his conclusion on the papers. His explanation included the following:

"Your mother was most anxious to avoid a post mortem examination..."

and

"your mother was most anxious to conclude the matter with the minimum of formality and as quickly as I could do it."

20. These references to Kelly's mother were obviously intended as references to Ms Burden. It is easy to see how the suggestion that Ms Burden had wanted to prevent a post-mortem might have given rise to suspicion in Kelly's mind about the cause of what she misunderstood to be a sudden death. In truth, however, it is clear from Dr Moretto's letter of 7 October 2016 that the source of the desire to avoid a post-mortem was Ray himself, rather than Ms Burden.

21. Mrs Farrell then made an allegation to the police that Ray may have been poisoned and asked them to investigate. DC Rush emailed Mr Bradley on 18 April 2017 asking for assistance with her inquiry into the allegation. The terms of that request record the reasons given to DC Rush by Mrs Farrell for her suspicions, a number of which have been repeated in her evidence, to which I shall return. Mr Bradley responded by email explaining the circumstances of Ray's illness and death and the course he had taken at the inquest. The police took the matter no further. They did not interview Ms Burden or raise Mrs Farrell's allegations with her.

22. In 2018 Mrs Farrell sought the authority of the Attorney General to bring an application for a fresh inquest. On 30 November 2018 the Attorney General's office wrote to Mr Bradley asking for his views. Mr Bradley responded by letter of 14 December 2018. He said: "On the information now available I would support the request for a fresh inquest although I think Mrs Farrell needs to understand that the cause of death and conclusion are unlikely to alter. However, for my part I believe there may have been insufficiency of enquiry in the light of what the family

now say and there should be a new Inquest.” In answer to a request for further information from the Attorney General’s office, Mr Bradley responded that he was not sure he could add much to his earlier response. He said that the issue of “drug involvement” had not been raised at the time of the inquest, and went on that had it been, he would have inquired into the suggestion, concluding “Whether it would make any difference to the outcome I doubt, bearing in mind the history. Hence my comment in my original letter.”

23. Mr Bradley retired shortly thereafter. Following replacement and area reorganisations, Mr Wilkinson is the current senior coroner for the North East Hampshire region. He has provided a statement recording the history of Mr Bradley’s involvement and correspondence, and concluding that the appropriate stance for him to take on the current application is one of neutrality. That stance was maintained by Mr Sharland QC who represented him at the hearing.

## **The evidence**

### *Mrs Farrell’s evidence*

24. The evidence advanced by Mrs Farrell in support of the application comes in two statements and the skeleton and oral argument presented at the hearing before us. She represented herself, with evident passion and no little skill. She is an octogenarian registered nurse, with experience in particular in trauma and obstetrics, and at times she purported to rely on such experience in submissions about customary medical practice. Her oral submissions sometimes introduced new factual assertions or sources of belief, but for the most part they reflected the content of her earlier written evidence. I have taken account of everything she has said both orally and in writing. I do not intend to address every last detail of her evidence and submissions. It seems to me that the most salient aspects which are relied on as justifying a suspicion of poisoning by Ms Burden for financial motives can be summarised as follows:

- (1) The circumstances of the wedding and making of a new will on 2 February 2016 are relied on to justify suspicion of both deliberate drugging and financial motive. Mrs Farrell’s account is that she and her husband were only given an hour’s notice of the marriage; when the registrar came to the house, she was surprised that it was not a death bed ceremony which is what she was expecting; Ray appeared disorientated and bewildered; he was lethargic and uncommunicative and appeared to be under the influence of medication. He was behaving out of character and asked why his mother was there. There was no engagement ring and no new wedding rings. Ray had never wanted marriage and would never have agreed to such a ceremony if in his right mind. There was then an immediate signing of a new will, which Mrs Farrell and her husband were asked to witness without being allowed to see its contents. When she saw Ray on 6 June 2016 he had no recollection of the wedding. Mrs Farrell suggests that the correct inference from all this is that Ms Burden wanted to control Ray and his money; that she could only do so by becoming his wife; and that she administered Midazolam, which would account for his lack of memory.
- (2) On 6 June 2016 Ray said to her that he had noticed additional white tablets in his container; Mrs Farrell phoned Ms Burden who said they were on doctor’s

orders; Mrs Farrell checked the repeat prescription list and found that no additional medication had been prescribed.

- (3) Mrs Farrell and her husband had gone on holiday to Ireland after Ray's operation at Portsmouth Hospital on 3 October 2016, following which he had said he was "feeling good". On 6 October 2016 Ray rang asking her and her husband to return urgently. She found that Ray's condition had deteriorated dramatically. Amanda had moved into his house. When Mrs Farrell spoke to Ray, he had explained the urgency of his request for them to return from holiday as being because someone had arrived to fit a Venflon (an intravenous cannula) on 6 October; and that he had refused because "he was afraid that if it was in place someone might inject him with something else."
- (4) On 10 October 2016 Ms Burden requested Mr Bradley, via the GP, not to have a post-mortem carried out. Mrs Farrell says that she discovered this when she got the files in March 2018, and asserts that Mr Bradley said he'd never had such a request before.
- (5) At 1030 on 24 October 2016, the morning after Ray's death, Ms Burden rang the GP and said his parents were present when he died, which was untrue.
- (6) On 25 October 2016, the day after death, Kelly returned from a half term break and noticed two large "carry bags" full of drugs. Ms Burden said that they were all the medication her father was taking. Mrs Farrell says that as a registered nurse, she is aware of the amount of end-of-life medication normally prescribed because of work at the hospice and it does not constitute two carry bags full unless euthanasia is intended. In January 2017 Ray's neighbour, Christine, told Kelly, in Mrs Farrell's presence, that on the day after his death Ms Burden gave her two carry bags full of drugs to return to the local pharmacist. Mrs Farrell says that Ms Burden is not a medical or nurse practitioner and so not authorised to administer controlled drugs "as she clearly did".
- (7) On receiving the death certificate on 27 October 2016 Amanda immediately closed Ray's 14 bank accounts and had the contents transferred to herself.

#### *Ms Burden's evidence*

25. Ms Burden served two witness statements. In addition, she relied on Ray's statement made in support of his civil claim, and a report of a medical expert, Professor Britton, together with medical records and other contemporaneous documents.
26. In her witness statements the most centrally relevant evidence is the following:
  - (1) She unequivocally rejects any suggestion that she improperly or maliciously administered any inappropriate medication to Ray at the end of his life; and categorically states that she only gave him medication in accordance with what was prescribed by his doctors.
  - (2) As to the wedding, it was as a result of the deterioration in Ray's health in early January 2016 that they decided to get married. It was not for financial motives.



The wedding was planned; his parents were told before he was hospitalised on 26 January; and they were kept up to date on the plans. Ray and she visited Dr Bartlett on 22 January 2016 to discuss whether they would be eligible for a wedding at home, and Dr Bartlett arranged for the necessary certificate. It was utterly ridiculous to suggest that Ray was not himself on the day or that he did not later recall that they had got married. After the ceremony they spent some time with the registrar and assistant and his parents and none of them suggested at the time that he was not in a state to get married, or indeed at any time before his death. His medical records made reference to the fact that he had married and none of the doctors attending him expressed any doubt about his capacity. The medical records would show he was not prescribed Midazolam until a date later than the wedding. There was nothing suspicious about his executing a will on his marriage (which was before the court) leaving substantial specific bequests to his children and grandchildren with the residue to his wife, Ms Burden.

- (3) The “additional” white tablet referred to on 6 June 2016 was a change in colour of his diuretic pill; Ray only ever took medication prescribed by his doctors.
- (4) On 6 October 2016 it was she, not Ray, who called Mrs Farrell to suggest they return from Ireland, as she had agreed with Ray and Dr Moretto she would do in the light of his deterioration and prognosis. Mrs Farrell was as aware as she was that Ray was entering the last stage of his life. Mrs Farrell arranged for “last rites” on 10 October 2016.
- (5) The request to the coroner on 10 October 2016 that there should be no post-mortem, relayed by Dr Rial, came from Ray, not her.
- (6) She did not tell the GP that Ray’s parents were present when Ray died.
- (7) The two bags of medicines left after his death were the product of prescriptions which he had not used. The medical records show at the time of death he had been prescribed 10 identified medications. The bags also included a large quantity of antihistamines from a drug trial 18 months earlier and large packs of laxatives, which had previously been prescribed and not disposed of. There was nothing suspicious in returning them to the pharmacy and their being destroyed.
- (8) There was nothing suspicious about closing his bank accounts. That and all other aspects of probate were conducted by her as one of two co-executors of Ray’s will, and there had been no suggestion by the co-executor of an impropriety in administering the estate. Nor had the validity of the will been challenged.

*Professor Britton’s report*

27. Professor Britton is a retired consultant physician with a particular interest in respiratory medicine and expertise in mesothelioma, who practised as such between 1983 and 2014 at St George’s Hospital and King Edward VII Hospital in London. He wrote his MD and MSC theses on asbestos-related disease and wrote a report for the Department of Health and Social Security on asbestos pleural disease. He was a consultant medical advisor to the Treasury Solicitor on asbestos-related diseases for

10 years. He was Chairman of the British Lung Foundation from 1996 to 2006 and thereafter a Vice President and Honorary Medical Advisor until 2020. He was the main author of its Booklet on mesothelioma. He was a Respiratory Specialist on the Industrial Injuries Advisory Council between 2003 and 2013 being particularly involved with compensation for asbestos related lung disease including mesothelioma.

28. He reviewed Ray's extensive medical records and expressed the following conclusions:

- (1) In 2010, following the diagnosis of malignant mesothelioma, Ray's life expectancy would have been estimated in the region of one year (in fact Ray was given a prognosis of 6 months at the time). However, following his relatively new treatment of a pleurectomy/decortication followed by chemotherapy, the progression of the disease had been much delayed.
- (2) When his disease progressed in late 2015, it caused significant symptoms which were difficult to control. Treatment was escalated appropriately.
- (3) The detailed advice given by Dr Moretto resulted in the appropriate medication being provided, together with additional medication to alleviate the side effects of the treatment medication.
- (4) It is abundantly clear that in the last few weeks of his life his end of life was imminent and preparation for it was made with appropriate medication.
- (5) The timing and nature of his death did not seem to be unusual. There was nothing in the history or the record to concern Professor Britton that anything unusual or inappropriate occurred which might have hastened his demise.
- (6) In his experience there was nothing unusual about the quantity of medication that had to be disposed of after Ray's death, and the method of disposal through the local pharmacy was entirely appropriate.
- (7) Respecting Ray's wish not to have a post-mortem was entirely appropriate from a medical perspective, as was the inquest conclusion as to the cause of death. At the time of his death there was no reason to believe that a toxicological examination was necessary given the nature of his condition and the expected nature of his death.
- (8) It was extremely unlikely that any body tissue had been retained which would allow toxicological tests now to be carried out.

### **The law**

29. The court's power to order a fresh inquest derives from section 13 of the Coroners Act 1988, which provides in relevant part:

“(1) This section applies where, on an application by or under the authority of the Attorney-General, the High Court is satisfied as respects a coroner (“the coroner concerned”) ...

(b) where an inquest or an investigation has been held by him, that (whether by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, the discovery of new facts or evidence or otherwise) it is necessary or desirable in the interests of justice that an investigation (or as the case may be, another investigation) should be held.

(2) The High Court may—

(a) order an investigation under Part 1 of the Coroners and Justice Act 2009 to be held into the death either—

(i) by the coroner concerned; or

(ii) by a senior coroner, area coroner or assistant coroner in the same coroner area;

(b) order the coroner concerned to pay such costs of and incidental to the application as to the court may appear just; and

(c) where an inquest has been held, quash any inquisition on, or determination or finding made at that inquest.”

30. In *Frost v Her Majesty's Coroner for West Yorkshire (Eastern District)* [2019] EWHC 1100 (Admin), [2019] Inquest L.R. 109, Irwin LJ and Jay J summarised the applicable approach to s. 13 derived from the case law in the following terms:

“29. It is the function of an Inquest to seek out and record as many of the facts concerning the death as the public interest requires: see *R v South London Coroner, ex parte Thompson* [1982] 126 SJ 625 and *R v HM Coroner for North Humberside and Scunthorpe, ex parte Jamieson* [1995] QB 1.

30. The general principles governing applications under s.13 of the Coroners Act 1988 have been expounded by Lord Judge CJ in *HM Attorney General v HM Coroner for South Yorkshire (West)* [2012] EWHC 3783 (Admin) at para 10:

"We shall focus on the statutory language, as interpreted in the authorities, to identify the principle appropriate to this application. The single question is whether the interests of justice make a further Inquest either necessary or desirable. The interests of justice, as they arise in the coronial process, are undefined, but, dealing with it broadly, it seems to us elementary that the emergence of fresh evidence which may reasonably lead to the conclusion that the substantial truth about how an individual met his death was not revealed at the first Inquest, will normally make it both desirable and necessary in the interests of justice for a fresh Inquest to be ordered. The decision is not based on problems with process, unless the process adopted at the original Inquest has caused justice to be diverted or for the inquiry to be insufficient. What is more, it is not a pre-condition to an order for a further Inquest that this court should anticipate that a different verdict to the one already reached will be returned. If a different verdict is likely, then the interests of

justice will make it necessary for a fresh Inquest to be ordered, but even when significant fresh evidence may serve to confirm the correctness of the earlier verdict, it may sometimes nevertheless be desirable for the full extent of the evidence which tends to confirm the correctness of the verdict to be publicly revealed. Without minimising the importance of a proper Inquest into every death, where a national disaster of the magnitude of the catastrophe which occurred at Hillsborough on 15 April 1989 has occurred, quite apart from the pressing entitlement of the families of the victims of the disaster to the public revelation of the facts, there is a distinct and separate imperative that the community as a whole should be satisfied that, even if belatedly, the truth should emerge."

In that case, there was a gap of 23 years between the relevant event - the death of 96 people at Hillsborough - and the date of the hearing in the Divisional Court.

31. In *HM Senior Coroner for the Eastern Area of Greater London v Whitworth and Kovari* [2017] EWHC 3201 (Admin), this Court held, at para 23, that where the new facts or evidence made it clear that the evidence heard by a Coroner was insufficient to provide the full picture which is now available of the circumstances of the death, this can render the investigation insufficient through no fault of the Coroner; and that both the public interest and the interest of the bereaved families required that the evidence be heard. It was also pointed out in that case by Holroyde LJ that it was not incumbent on a s.13 applicant to show that the conclusions reached at a fresh Inquest were likely to be different."

31. I would add that in cases of insufficiency of investigation or fresh evidence, the possibility of a different conclusion, or of additional or different findings of fact which it is desirable should be made, will often be a factor of central importance, as Moses LJ observed in *R (Sutovic) v HM Coroner for North London* [2006] Inquest LR 104 at para 55. If such a possibility exists, it will militate in favour of a fresh inquest, even where no criticism can be made of the coroner: see for example *Bloom v HM Coroner for the Northern District of London* [2004] 1 Inquest LR 244. Conversely the absence of such a possibility is a powerful, though not conclusive factor against it. Sometimes there will be an additional factor which means that it is in the interests of justice to have a fresh inquest even where there is no realistic prospect of a different conclusion. Paragraph 10 of the judgment of Lord Judge CJ in the Hillsborough case quoted above confirmed that the nature and magnitude of that national disaster was one. So too may be cases of death in police custody or where article 2 of the European Convention on Human Rights is engaged by reason of acts or omissions of state agencies: see for example per Simon Brown LJ in *R v West Sussex Coroner ex pte Homberg* (1994) 158 JP 357, and Moses LJ in *Sutovic* at para 56. There may also be cases in which there has been an insufficiency of investigation in which a fresh inquest is desirable to allay the concerns of affected parties, so that justice is not only done but seen to be done, despite the predictability

of the same outcome. But these are likely to be the exception. In the absence of particular factors such as these, it will not normally be either necessary or desirable in the interests of justice to have a fresh inquest if the court is satisfied that there is no real possibility of the new investigation reaching a different conclusion, or of making additional or different fact findings which it is desirable should be made. To order a fresh inquest in such circumstances would merely cause additional cost, delay, and distress for no possible benefit. Such was the reasoning in *R v West Sussex Coroner ex pte Edwards* (1992) 156 JP 186.

### **Analysis and conclusions**

32. I have concluded, without any real hesitation, that there is no realistic possibility of a fresh inquest reaching a different conclusion or finding that there is anything in Mrs Farrell's suspicions. It may well be that her suspicions were first raised as a result of Kelly's understandable initial concerns, which arose from Kelly's ignorance of the true position about her father's expected death and the understanding she was given (erroneously) by Mr Bradley that it was Ms Burden rather than Ray whose desire it was to avoid a post-mortem. However that may be, all the evidence now available shows Mrs Farrell's suspicions to be without any real foundation.
33. As to the wedding, there is clear contemporaneous documentation that it was planned: Dr Bartlett's letter of 25 January 2016, following a consultation with Ray and Ms Burden on 22 January, shows that he was asked to sanction it, and did so. There is no reason to doubt Ray's capacity to make that decision. In that letter Dr Bartlett specifically confirms Ray's capacity to make the decision to marry. His capacity is also confirmed in a letter from Dr Rial of 14 February 2017, who affirmed that he saw Ray on 25 January and 1, 2 and 8 February 2016, and that he was fully aware of the decisions he was making at all times. Professor Spicer expressed the view in a letter of 8 March 2017 that in all his dealings with Ray he had been extremely determined and clear thinking. The registrar and her assistant who conducted the wedding obviously had no concerns about Ray's condition or capacity because they raised none. Neither did Mrs Farrell or her husband raise any such concerns at the time, or indeed at any time in the following 8 months before his death. There are a number of documents showing that Ray was well aware that he had got married. In an email from Ray to Ms Burden of 11 February 2016 he commenced "Dear Wifey" and signed off "Thanks, Hubby". Dr Steele's letter of 15 August 2016 referred to him having said that he had now married Ms Burden. An email from Mrs Farrell to Ms Burden of 5 September 2016 referred to Ray having asked for their wedding photos. Mrs Farrell's theory that Ms Burden administered Midazolam is undermined by these documents and by the fact that Midazolam had not been prescribed at the time, and was not prescribed until the following October, 10 days before Ray's death.
34. As to the "additional" white pill mentioned on 6 June, there is no reason to doubt Ms Burden's explanation that it was a change of colour, not a new medication. There is no evidence in the medical records of any change in condition at that time which might be attributable to new unprescribed medication.
35. As to the call to Mrs Farrell on 6 October 2016 resulting in the return from their holiday in Ireland, it is much more likely that Ms Burden's recollection is correct

that it was she who called, not Ray, because that was what the letter of 7 October 2016 shows was agreed between her and Ray the previous day when they were discussing it with Dr Moretto. But whoever made the call, it is obvious from that letter that what motivated it was the marked deterioration in Ray's condition and Dr Moretto's prognosis that death was to be expected very shortly, possibly in days.

36. As to the suggestion that on 10 October 2016 Ms Burden requested Mr Bradley via the GP not to have a post-mortem carried out, that is indeed what Mr Bradley later told Kelly, but the contemporaneous document in the medical record, which Mr Bradley did not have when corresponding with Kelly, suggests his recollection was mistaken: it records Dr Rial as saying that that was Ray's wish. But whether or not it was conveyed to Mr Bradley as Ms Burden's wish, it is clear from Dr Moretto's letter of 7 October 2016 that the wish originated with Ray himself. Such a desire on his part is all of a piece with other evidence of his approach to handling his diagnosis and disease and his clear minded determination to be in control of his treatment. His request does nothing to justify any suspicion of Ms Burden.
37. As to the suggestion that at 1030 on 24 October 2016, the morning after Ray's death, Ms Burden rang the GP and said that Ray's parents were present when he died, which was untrue, this seems to be based on a document amongst the medical records. Those records include the Out of Hours reports of Dr Tighe which make no such mention of any such assertion. There is then a single page record dated 24 October as follows:

Telephone triage encounter (Overton Surgery) BARTLETT, David  
(Dr)

Problem      **Patient died at home** (*First*)

History        0130, partner and parents present

Reported to Coroner (Mesothelioma), details given to Sec, Coroner out of the building at present.

38. It is not clear where Mrs Farrell got her 1030 timing from, but Dr Bartlett was the GP who Mr Bradley identified as having certified the cause of death to him, and this would appear to be a very compressed summary of Dr Bartlett's understanding of the events of the night up to the moment he notified the coroner's secretary. It is far from clear that the reference to the partner and parents being present means at the time of death. It may simply reflect Dr Bartlett's understanding that the death was discovered at 0130, that Ms Burden and Ray's parents were present when it was reported, and that Dr Bartlett reported it to the coroner in the morning as a mesothelioma death, all of which is uncontroversial. It is unlikely that Ms Burden would tell the GPs that *she* was present when he died, when she had not been. Moreover, the motive attributed to Ms Burden for the alleged deceit about Mrs Farrell and her husband being present, namely that it was to avoid the police being notified which is what would otherwise have happened, is itself misguided. Expected deaths of patients in the final stages of terminal cancer at home will often not have anyone with the patient at the moment of death, especially at night, and this would not be a cause for any different course to be taken in a case of this kind

from that which in fact occurred. There is nothing to support Mrs Farrell's suspicions of poisoning by Ms Burden in this document.

39. As to the two carrier bags of medicines, according to the uncontradicted evidence of Professor Britton there is nothing surprising about this quantity, and the method of disposal was entirely appropriate. The volume is consistent with the medical records of what was prescribed, which Professor Britton reviewed. Mrs Farrell argued that there was something suspicious in Ms Burden asking a neighbour to return them to the pharmacy. I do not see why. There is no suggestion that the neighbour was asked to conceal from the pharmacy where the medication came from, and Ray's name would be on it. If Ms Burden had an inappropriate quantity of medication and/or it included unprescribed medication obtained on the internet, as Ms Farrell hinted, and Ms Burden had used it to poison Ray, she would be unlikely to involve a neighbour who might note or remember the contents; and indeed unlikely to return it to the pharmacy at all, but rather to discard or destroy it herself. As Professor Britton's uncontradicted evidence confirms, this was the proper and appropriate method of disposal.
40. In my view, therefore, the matters relied on by Mrs Farrell as justifying her suspicion of Ms Burden, even taken at their highest and cumulatively, are not realistically capable of supporting it.
41. Moreover, and standing back, there are a number of aspects of the evidence which make her theory that Ms Burden deliberately shortened Ray's life by administering inappropriate medication for financial gain highly improbable. At the hearing the thrust of Mrs Farrell's attack was not that some unknown and unprescribed medication had been administered, but rather that what Mrs Farrell described as a lethal combination of drugs had been prescribed, and that Ms Burden was not qualified to administer them. She identified in particular five of the drugs which the records showed had been prescribed and their dosages, and suggested that as a result of website research she had done (not shared with the court or the other parties) such dosages would have been dangerous. Yet it is clear that they were all prescribed by Ray's GPs, following the advice of Dr Moretto who was carefully monitoring his condition and palliative care. Mrs Farrell complains that Ms Burden should not have been permitted to administer them, but this too was what was permitted by all the healthcare professionals who advised and prescribed them. For example, in Dr Moretto's letter of 7 October 2016 she specifically sanctions the administration of Midazolam by the family. Mrs Farrell's theory of inappropriate medication being administered therefore appears to have been expanded to allege professional impropriety or worse against the GPs and Dr Moretto without any supportive medical or expert evidence (and contrary to the uncontradicted evidence of Professor Britton).
42. Further, the medical records show that Ray's death from his mesothelioma was imminently expected by all his healthcare professionals. Dr Moretto's opinion in her letter of 7 October 2016 was that the prognosis was very short, possibly weeks or maybe days. Her opinion in her letter of 19 October 2016 was that time was very short and the prognosis probably a short number of days. Dr Rial expected the death shortly when he spoke to Mr Bradley about Ray's wish to avoid a post-mortem on 10 October 2016. The GP records evidencing notification on 13 October 2016 to the out of hours service of the appropriate procedure, as per Dr

Phillips' email on that date, state the prognosis as "a few days". Dr Tighe and the GP medical notes recorded the death as expected. All the medical records recognise that Ray's death from mesothelioma was expected to occur at the time he in fact died. There is simply no medical evidence to suggest that anything occurred to hasten his death or that it was anything other than the recognised terminal stage of his mesothelioma.

43. Moreover, the suggested financial motive attributed to Ms Burden therefore makes little sense: there would be no real financial motive for someone who had been his partner for over 8 years to hasten his passing by at best a matter of days in the absence of any suggestion or grounds for thinking that his financial dispositions might change in that period.
44. Having concluded that there is no realistic prospect of a fresh inquest reaching a different conclusion or any different or additional findings of fact, I readily conclude that it is not in the interests of justice for one to be held. There can be no new toxicology report or any new empirical data. Ray has been dead and buried for over 4 years and there are no surviving tissues or blood samples. A fresh inquest would have no more than the witness and documentary record available to this court. To permit a reinvestigation would cause unwarranted distress to Ms Burden by the continued public airing of the serious allegations being made by Mrs Farrell, and similarly to other healthcare professionals accused of impropriety or failings. It would cause cost and delay to the coroner's service. It would divert the health professionals involved away from their public service by requiring preparation for and attendance at a hearing. The interests of justice do not require that Mrs Farrell be given a platform to air her unjustified suspicions. This is not the kind of exceptional case in which there has been an insufficiency of investigation and a fresh inquest can be justified simply to allay concerns of members of the bereaved family irrespective of the possibility of a different outcome. Judging by the misguided passion with which Mrs Farrell advanced her suspicions before this court, and her maintenance of arguments flatly contradicted by the contemporaneous records, I fear that she would no more be satisfied by their rejection at a second inquest than she is with the fact they were not considered at the inquest which has taken place.

### **Conclusion**

45. Accordingly, I would dismiss the application.

### **His Honour Judge Teague QC:**

46. I agree.

### **Mr Justice Cavanagh:**

47. I also agree.