

The Unlawful Killing of Employees, Customers and Third Parties

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UNCOMMONLY INDEPENDENT

The Supreme Court has recently handed down a judgment that is likely to have a very significant impact on the Inquests that can result from deaths at work, deaths on the roads or deaths caused by corporate activities.

The previously prevailing standard of proof in Unlawful Killing and Suicide Inquests was that the Coroner should be certain 'beyond a reasonable doubt' (the Criminal standard of proof); however the Supreme Court has now ruled, in the matter of *Maughan, R (On the Application Of) v Her Majesty's Senior Coroner for Oxfordshire [2019] EWCA Civ 809*, that the Civil standard of proof should be applied to such cases. This means that Coroner should make their decisions 'on the balance of probabilities' when determining whether someone has been unlawfully killed or has committed suicide. This is likely to lead to Inquests becoming more adversarial, costly and potentially damaging for companies who will be keen to defend their brand reputation in the court of public opinion.

Inquests

An Inquest is an inquisitorial hearing conducted by a Coroner to determine who the deceased was, when and where they died, the medical cause of the death and how they came by their death.

The Coroner will call witnesses to give evidence at the Inquest, will review relevant documents and will make a determination as to the cause of death, certifying it as one of the following causes:

- Accident/Misadventure
- Neglect
- Natural Causes
- Open Conclusion
- Suicide
- Unlawful Killing
- A Narrative Verdict (given instead of or in addition to one of the above)

Those involved in the matter (individuals or businesses) may be called as 'interested parties' and they are allowed to nominate legal representatives to oversee the proceedings on their behalf.

The proceedings themselves do not generally have a significant effect on associated Criminal and Civil claims. However they can be useful to both Claimants and Defendants as they result in the widespread disclosure of documents and allow all parties to see the relevant witnesses giving evidence in public, thereby affording an opportunity to see how strong the case is under legal examination. For this reason Inquests are considered to be a 'dress rehearsal' for subsequent proceedings and are often reported upon by local and national press.

The proceedings are explicitly not designed to apportion blame, albeit this is often not clear to members of the public involved with the process or to the media who report upon it.

Impact

As a result of the ruling in Maughan, bereaved families are likely to push for unlawful killing verdicts to be made more often. This may lead to further reputational impact where the Coroner's findings conflict with decisions of the Health and Safety Executive (HSE) and Crown Prosecution Service (CPS) to not pursue Criminal charges. Further investigations being undertaken against insureds following a Coroner's verdict are not out of the question, particularly where the ruling seemingly expounds a strong condemnation of a business' involvement in a death.

Furthermore, unfavourable Inquest verdicts can lead to significant reputational damage to those involved. Despite a Coroner not being responsible for specifically identifying who was at fault, findings on how the deceased came to their death can often lead to clear impressions of which party is likely to be blamed. The fact that Coroners will now be able to conclude that a deceased has been unlawfully killed, without needing to cross the threshold of a case being proven beyond a reasonable doubt, will unquestionably increase the prevalence of this verdict. This will inevitably lead to Inquests becoming much more important for those keen to defend their actions in Coroner's proceedings, which are almost always held in public.

All this is likely to lead to corporate insureds wanting to instruct the best possible legal representation to handle Inquests where an Unlawful Killing verdict is possible. This will also make Coroner's proceedings more complicated and lengthy, thereby increasing legal costs and potentially leading to associated increases in premium.

With the HSE having just confirmed 162 reports of workplace COVID-19 fatalities between April and October 2020 the effect of this decision is likely to be visible for all to see in the very near future.



Samuel Ellerton
Regional Claims Leader

+44 (0)121 232 4563
sam.ellerton@uk.lockton.com



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