COURT NO: CO4197/2008

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

IN THE MATTER OF AN APPLICATION FOR PERMISSION TO APPLY FOR JUDICIAL REVIEW

BETWEEN

THE QUEEN

on the application of
ERICA DUGGAN

Claimant

v

H.M. ATTORNEY GENERAL

Defendant

SKELETON ARGUMENT ON BEHALF OF THE CLAIMANT

–

List of essential reading (Numbers in square brackets refer to page number in bundle for Oral Permission Hearing)

(i) This skeleton argument

(ii) Memorial of Mrs Erica Duggan [281-305]

(iii) Decision of Attorney General dated 6th February 2008 [613]

(iv) Attorney General's Pre-action protocol response dated 8th April 2008 [621-624]

(v) Coroner's summary touching the death of Jeremiah Duggan [142-147]

(vi) Conclusions of

(a) Allan Bayle, FFS MIAI [158]

(b) Terence Merston MFS, MIAI, MEWI (Forensic Examiner) [165]

(c) Paul Canning LBIPP Cert. Ed [224]; supplementary report [244]

(d) Manfred Tuve (Diplokriminlaist) [252]

(e) Dr Bernd Kopetz [255 & 256]

(f) Dr Ivica Milosavljevic, Forensic Medicine Specialist [267-269]

(vii) Conclusions of Mr Hawthorne, (used at inquest) [440-442]

(viii) H.M.Attorney General's Summary Grounds of Resistance [27-41]

(ix) Witness statement of Merry Varney and exhibits, specifically:-

(i) letter from Paul Canning LBIPP dated 13th October 2008 [630-631]

(ii) letter from Allan Bayle BSC MIAI dated 16th October 2008 [632-633]

(iii) Supplementary Report by Dr Milosaljevic dated 16th October 2008 [634-639]

(iv) Letter from Dr Bernd Kopetz dated 14th October 2008 [640-643]

(v) Supplement to report with enclosures by Manfred Tuve dated 17th October 2008 [644-661]

(vi) Letter and enclosure from Terence Merston dated 28th October 2008 [662-669]

1. The Claimant seeks permission to apply for judicial review of the decision of HM Attorney General made on 6 February 2008 ("the Decision"), by which she refused her consent to an application being made to the High Court under section 13(1)(b) of the Coroners Act 1988 for a fresh inquest into the death of the Claimant's son, Jeremiah Duggan.

2. The Claimant submits that the Decision was irrational, took account of irrelevant considerations and failed to take into account relevant considerations; and that the Attorney General failed to give any or adequate reasons for the decision. Reasons given subsequently in response to these

proceedings, to the extent that they are admissible, demonstrate that the Attorney General made assumptions about the quality and significance of the new evidence obtained by the Claimant which were unsustainable, without having first put her concerns to the witnesses or the Claimant, or giving the Claimant any opportunity to deal with her concerns, and that she thereby acted irrationally and/or unfairly.

3. The Defendant contends that her decision is immune from judicial review, and that the Claimant's claim is unarguable. It is submitted that the issue of immunity is a matter of considerable general importance which warrants a full hearing on the merits, and that, in any event, the claim is clearly arguable both on the issue of immunity and in substance.

Factual background

4. The Claimant's son, Jeremiah Duggan, died on 27 March 2003. He was found dead on the B455 road leading into Wiesbaden, Hessen in Germany. Jeremiah was a Jewish, 22 year old student at the British Institute and the Sorbonne in Paris. In the days leading up to his death, he had been attending a conference in Wiesbaden organised by the LaRouche movement, a cult-like organisation which Ms Duggan now knows is carried by a fascist and anti-Semitic ideology and is headed by Lyndon LaRouche, a convicted fraudster. Jeremiah is unlikely to have been aware of the political background. He believed he was attending a conference concerning the problems in Iraq.

5. In the early hours on the morning of Jeremiah's death, he had made a series of telephone calls to his mother, Mrs Duggan, and his girlfriend, Maya Villaneuve. The substance of these calls (set out more fully in the Memorial to the Attorney General) indicated that Jeremiah was in serious trouble and required help in escaping from LaRouche organisation which he referred to as Nouvelle Solidarite - the name of an anti-semitic journal published by the organisation.

6. Such investigations as were carried out by the German police swiftly concluded that Jeremiah's death was a "suicide by means of a traffic accident", although no post mortem was carried out by the German authorities, and the German Public Prosecutions Office halted proceedings into Jeremiah's death on the grounds that the drivers allegedly involved had stated that Jeremiah had jumped out at the cars and therefore, there was no evidence of any third party involvement in his death. No statements were taken from the drivers of the cars.

7. On 31 March 2003 Jeremiah's body arrived in the United Kingdom. A non-forensic post mortem examination was carried out by Dr David Shove, Pathologist, on 4 April 2003.

8. An inquest into the death of Jeremiah Duggan was opened on 8 April 2003 by Dr William Dolman, one of Her Majesty's Coroners for the Northern District of Greater London, and adjourned to 6 and 7 November 2003. The evidence available to the Coroner at the Inquest included evidence from the following witnesses:

    a) Erica Duggan;

    b) Maya Villaneuve;

    c) Detective Inspector Jane Cowell

9. And the following reports

    a) German Police Report dated 03.06.03;

    b) Report of Robert Hawthorne (Accident Investigator) dated 08.09.03;

    c) Post Mortem Report of Dr David Shove dated 04.04.03; and

    d) Toxicology Report by Dr Susan Paterson dated 30.04.03.

10. At the conclusion of the inquest, Dr Dolman delivered a narrative verdict stating:

> "*Jeremiah Joseph Duggan received fatal head injuries when he ran into the road in Weisbaden and was hit by two private motor cars. What other fact do we know that I must add? I really must add that he had earlier been in a state of terror. It is a word not commonly used in a Coroner's court but no other word would reflect his state of mind at the time.*"

New Information: Expert Evidence

11. The Duggan family was unhappy with (i) the fact that the post-mortem had not established how Jeremiah's injuries were sustained, (ii) the insufficiency of the inquiry into the cause of death, and (iii) the outcome of the inquest, and continued to investigate Jeremiah's death. A series of experts was engaged to investigate Jeremiah's death further, on the basis of the evidence gathered by the German authorities. As a result of this further investigation and analysis, new evidence has come to light which contradicts the apparent assumption of the police, the German Public Prosecution Service, and Dr Dolman, the Coroner, that Jeremiah had run into the road, was caught by one vehicle and then run over by another.

(1) Paul Canning: Forensic Photographer

12. Mr Paul Canning is a Forensic Photographer, formerly of the Metropolitan Police. He produced two reports dated 22 December 2005 and 24th December 2006. The first report was based on a series of photographs taken by Herr Jurgen Burg, German Accident Examiner, Police Officer Wittig and another unknown photographer. The second report is an addendum produced following a statement secured by Mrs Duggan from Herr Burg that the cars involved in the accident had been moved before he took the picture and before he had arrived on the scene.

13. Mr Canning, in his report dated 22 December 2005, was struck by the lack of any biological traces on either of the cars that purportedly hit Jeremiah, which

would indicate that neither had in fact collided with him. Mr Canning went on to conclude at page 59 of his report [224]:

"*In my opinion the photographs taken on the B455 junction, with Berliner Strasse, do not adequately support the theory that Jeremiah Duggan "ran against" the Peugeot and was subsequently run over by the Golf. The images show an inaccurate, confusing picture of events. I do not believe that they depict how Jerry came to meet his premature and alleged unlawful death. I believe that it is possible that Jerry lost his life elsewhere and was subsequently placed at the scene.*"

14. The report also contained the following significant observations (at p.59) [224]:-

"*I have never photographed a vehicle that has hit a person at speed and has caused their death, without there being some obvious signs that both body and vehicle have made contact (blood, tissue, hair, clothing).*"

"*I have never seen or photographed a pointed / sharp dent in a car door that has been caused by an impact with a person. This dent is more likely to have been caused by contact from a heavy instrument, or even another vehicle.*"

"*Both vehicles show the same light brown coloured, sandy substance that is seen on Jerry's jeans and embedded in the treads of his training shoes – yet there is no sign of the sandy substance on the road … it looks as though Jerry went through a significant quantity of wet sand...*"

15. His second report dated 24 January 2006 concluded, at p.20 [244]:-

"*The fact that the two vehicles had been moved raises questions about the legitimacy of the investigation that was carried out, as there is no longer any scene integrity*"

(2) Allan John Bayle – Forensic Scene Examiner report dated 3rd September 2005

16. Mr Bayle provided a report dated 3 September 2005. Mr Bayle is an independent forensic scientist of 30 years experience, formerly of the Metropolitan Police. Mr Bayle also examined the photographs of the scene of the accident and other photographs of Jeremiah's body.

17. Mr Bayle made the following observations in his conclusion [158]:

"*The Blue Volkswagen Golf car showed no evidence of hitting Mr Duggan, although there was damage to the front bumper, there were no fibres, hairs, blood or skin or any other evidence to prove that this car was involved in an accident.*"

"*The red / brown Peugeot 406 Estate car had considerable damage.*"

"*The windscreen had been hit several times with an instrument, possibly a crow bar or something similar. There was also no evidence of any fibres, hairs, blood or skin on the broken glass.*"

"*The offside driver's door had also been hit with probably the same instrument … The dent in the side of the door was too sharp and pointed and therefore, could not have been made by the human body.*"

"*Mr Duggan and the two cars were together in another place, possibly a builder's yard.*"

"*I could not find any physical evidence to show that these two vehicles ever came into contact with Mr Duggan. There appeared to be no tyre marks on Mr Duggan or on his clothing*"

"*The pathologist's report was very short and did not explain the lack of injuries consistent with a traffic accident.*"

"*I firmly believe this incident was stage managed and Mr Duggan met his death somewhere else and the body dumped in its position on the road.*"

(3) Terence Merston, Forensic Examiner (also ex-Metropolitan police)

18. Terence Merston, a Forensic Examiner (also ex-Metropolitan police) visited the scene of Jeremiah's death in addition to viewing the photographs. Mr Merston states [165]:

"*Based on my years of experience in attending thousands of crime scenes as a forensic scene examiner, it is my opinion that the evidence at the scene points towards Jeremiah's death being extremely suspicious and not a road traffic accident, it is also my view that the damage to the Peugeot car has been deliberately caused.*"

"*The alleged damage to the Volkswagen car (light lens missing and piece of metal hanging down), together with a total lack of physical evidence from Jeremiah on the vehicle and vice versa, it is total[ly] inconsistent with that vehicle having been involved in the alleged accident.*"

(4) Herr Manfred Tuve – forensic scientist and engineer.

19. Herr Tuve a German forensic scientist prepared a report dated 19 September 2005. His report is based upon the photographs of the incident and the notes and sketches of the positions at the scene prepared by Herr Burg (the German police accident investigator). Herr Tuve also examined the notes taken by the German police. He concludes as follows [252]:

"…the head injuries cannot be matched to the damage to the right-hand side of the Peugeot."

"No drag marks attributable to movement from the right-hand side of the left-hand lane to the left-hand edge of the carriageway were observed on the road surface near the final position of the body. No adhesions of blood or hair were found on the Golf. These would necessarily have been detectable if the deceased had collided with or been run over by the car and if this had caused the severe head injuries, as alleged. What caused the head injuries therefore remains an open question."

"There are mud-coloured stains and adhesions on the Peugeot, the Golf and the clothing of the deceased, particularly on his shoes. These are not normal grey-black road dust, which is a mixture of different soils, road grit and abraded rubber. Since all three objects can be assigned to a single causal group, it can at least be concluded that they come from a common location."

*" …after evaluation of the individual set of marks, there are already **considerable reservations** as to the assessments of the accident event contained in the file…"*

(5) Dr Bernd Kopetz – German doctor of medicine

20. Dr Kopetz carried out a preliminary medical comparison of the injuries sustained by Jeremiah in light of the eye witness description of the incident. The report was produced on 15 November 2005. The report includes the following [254 & 255]:

"…the damage to the vehicle, in particular to the upper part of the front passenger door, shows evidence of a serious collision. with material deformations. With damage such as this, corresponding injuries to the body of the victim are also to be expected. There is no description of a corresponding injury…"

Report of Dr Ivaca Milosavljevic, MD, MSc, Fpath.

21. Dr Milosavljevic is a Forensic Pathologist. He produced a report dated 24 February 2007. In that report, Dr Milosavljevic concludes inter alia that [266 & 267]:

"'Dr Shove has established [an] abundant quantity of fresh blood in all respiration tracts, as well as numerous bruises on the surface of both lungs… [This indicates] directly the aspiration ([inhaling) of a large quantity of blood in both lungs to the level of alveoli and it is, most probably, the direct consequence of haemorrhage from the hurt blood vessels around the fracture of bones [at the] base of the skull and bones of the face, and it also indicates the fact that the death….was not instant, which should be expected from an injury of head made by overrunning …"

"…[the] injury of the head did not arise at once…but by multiple action of some other mechanical force…"

"The shape, volume, localisation and symmetric pattern of these injuries on both arms clearly indicate their defensive character, i.e. that these injuries had been inflicted, most probably, by multiple actions of [the] blunt side of a mechanical tool brandished (fists, feet with shoes on, and similar object) onto the surface of both hands and … forearms … when these parts of the body were in [an] elevated position… level [with] the head, aiming to protect it from the action of the abovementioned blunt side of a mechanical tool…"

22. Furthermore, (as noted in the Memorial to the Attorney General) the Coroner's pathologist, Dr Shove, did not give evidence at the Inquest, so no questions were ever asked of him as to what his Post Mortem meant. In subsequent discussions with Mrs Duggan, Dr Shove stated that Jeremiah was not killed in a road traffic accident, although he declined to sign a written statement to this effect. If the inquest were reopened, he could be summoned to attend and give evidence. The significance of this fact has never been addressed by the Attorney General.

23. In the light of this new information, on 8 May 2007, an application for a new inquest was made by Mrs Duggan, under s13(1)(b) of the 1988 Act to the Attorney General.

24. Some nine months later (and with no explanation for the delay) by a letter dated 6 February 2008, the Attorney General refused her consent [613]. In her letter, the Attorney General concluded:-

"*that there is no reasonable prospect of success that the High Court would order a fresh inquest, having particular regard to the nature and purpose of an inquest in accordance with Rules 36 and 42 of the Coroners Rules 1984.*"

25. By a pre-action protocol letter dated 19 March 2008 sought to challenge the Attorney General's refusal of consent, alleging that the Attorney's conclusion that there was "no reasonable prospect of success" of the High Court ordering a fresh inquest was, in the light of the new evidence, irrational and inadequately reasoned [614-618].

26. By letter dated 8 April 2008, the Attorney General rejected the Claimant's challenge stating, in summary, that [621-624]:

a) the decision of the Attorney General was not amenable to judicial review;

b) the Attorney General's decision was not irrational;

c) the Attorney General's decision was procedurally proper.

27. No reasons for rejecting the "new evidence" were given in this letter, which merely stated:

"*The reason for the Attorney General deciding not to grant her authority for an application under section 13 of the 1988 Act was that she concluded that there was no reasonable prospect that the High Court would order a fresh inquest. The Attorney General therefore applied the correct test as approved in ex. p. Ferrante, namely whether there is a reasonable prospect that the High Court would conclude that it is necessary or desirable in the interests of justice that a fresh inquest be held.*

The fact that new evidence is provided in support of an application pursuant to section 13 of the 1988 Act does not mean that the Attorney General's authority must automatically be granted. In applying the test referred to above, the Attorney General will carefully consider new evidence, its weight in all the circumstances and its potential impact together with the evidence that was given at the original inquest".

28. The Claimant issued judicial review proceedings in early May of 2008. In summary grounds dated 23 May 2005, the Defendant for the first time purported to give reasons for rejecting the new evidence put forward by the Claimant, at paragraphs 26 – 27.

29. **Statutory Provisions**

30. Section 13 of the Coroners Act 1988 provides:

> "*13-(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") either –*
>
> *(a) that he refuses or neglects to hold an inquest which ought to be held; or*
>
> *(b) where an inquest 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 another inquest should be held.*
>
> *(2) The High Court may –*
>
> *(a) order an inquest or, as the case may be, another inquest to be held into the death either –*
>
> *(i) by the coroner concerned; or*
>
> *(ii) by the coroner for another district in the same administrative area;*
>
> *(b) order the coroner concerned to pay such costs of and incidental to the application as the court may appear just; and*
>
> *(c) where an inquest has been held, quash the inquisition on that inquest.*"

31. Rule 36 of the Coroners Rules 1984 provides as follows:

> "*Matters to be ascertained at inquest*
>
> *(1) The proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely*
>
> *(a) who the deceased was;*

(b) how, when and where the deceased came by his death;

(c) the particulars for the time being required by the Registration Acts to be registered concerning the death.

(2) Neither the coroner nor the jury shall express any opinion on any other matters."

32. Rule 42 of the Coroners Rules 1984 provides as follows:

> *No verdict shall be framed in such a way as to appear to determine any question of*
>
> *(a) criminal liability on the part of a named person, or*
>
> *(b) civil liability.*"

Submissions

Issue 1: Is the Attorney General's decision amenable to judicial review?

33. The Attorney General argues that her decision to refuse consent is not amenable to judicial review. She relies on *R v Attorney-General, ex p Ferrante* [1995] COD 18, which is said to apply the decision of the Court of Appeal (approved obiter by the House of Lords) in *Gouriet v. Union of Post Office Workers* [1978] AC 435; *R v. HM Attorney General ex p. Roy Edey* (judgment of 26th February 1992) and *R v. Solicitor General ex p. Taylor and Taylor* (1996) 8 Admin LR 206.

34. The Claimant submits that the case-law has substantially moved on since *Gouriet, Ferrante*, and *Taylor*, and those decisions should no longer be regarded as good law and/or should be confined to their particular facts[1].

[1] see *inter alia*, Wade on Administrative Law (Ninth Edtn. at p.584):-

35. It is plain from cases such as: *R(Corner House Research and another) v. Director of Serious Fraud Office* [2008] UKHL 60 ("the BAE case"); *R(Campaign for Nuclear Disarmament) v. Prime Minister* [2002] EWHC 200 (Admin) ("the CND case"); and *R(Gentle) v. Prime Minister* [2008] UKHL 20; that there are no longer any "no-go" areas for the courts whether on the ground that the source of the power being exercised is the prerogative or because it is being exercised in relation to a particularly sensitive part of public administration. As was observed in submissions for the Claimant in the CND case, Lord Roskill's list of "excluded categories" (*CCSU v. Minister for Civil Service*, [1985] AC 374, 418), now lies in tatters[2].

36. The proper approach to justiciability is not derived from the history of the power (*Taylor*), or the source of the power (*Ferrante),* but rather from consideration of the particular matter in issue, and the suitability of judicial review to that subject matter. This is how Lord Phillips has described the correct approach in the *Abbassi* case [2003] UKHRR 76 paras 84 and 85 referring to the speeches of Lord Scarman and Lord Diplock in *CCSU*, viz.:

> "*the issue of justiciability depends, not on general principle, but on subject matter and suitability in the particular case"*

37. Neither the subject matter, nor the facts of the present case render it unsuitable for judicial review. On the contrary, a decision such as this, which engages the particular interests of the family of the deceased, and

---

> *"The above decision [Gouriet], it now appears, ought to be confined to its peculiar subject matter, which is the use of civil proceedings for the purpose of enforcing the criminal law. That is a highly abnormal procedure and there may be good reasons for allowing only the Attorney General to employ it".*

[2] Immunity of prerogative power in CCSU itself; the refusal of a passport *R v. Secretary of State for Foreign and Commonwealth Affairs ex. p. Everett* [1989] QB 811; the prerogative of mercy in *R v. Secretary of State for the Home Department ex p. Bentley* [1994] QB 349

appropriateness of the re-opening of a judicial process, is one which is particularly suitable for the Court's supervision. There is no reason in logic or principle why decisions of the DPP to terminate a prosecution or investigation should be amenable to judicial review, but not a decision such as this: see *R v DPP ex parte Kebilene* [2000] 2 AC 326, at 372 and 375. The fact that Article 2 of the European Convention on Human Rights would in many cases be engaged, and would require the family of the deceased to be closely involved in the investigation of the death makes the argument that the Defendant's decision under this statutory provision is not justiciable wholly unsustainable.

38. In any event the case of *Ferrante* was a case determined explicitly on its facts, and is distinguishable from the present. In particular, in *Ferrante,* there was no "new evidence" worthy of the name. Moreover, the principle in *Gouriet* is one which, in the light of subsequent case-law and the development of principles of judicial review, should now be confined to its particular facts, see inter alia, Wade on Administrative Law (Ninth Edtn. at p.584):-

> *"The above decision [Gouriet], it now appears, ought to be confined to its peculiar subject matter, which is the use of civil proceedings for the purpose of enforcing the criminal law. That is a highly abnormal procedure and there may be good reasons for allowing only the Attorney General to employ it".*

Irrationality

39. s.13 of the Coroners Act 1988 re-enacts s.6 of the Coroners Act 1887 as extended by section 19 of the Coroners (Amendment) Act 1926. Although s.13 itself lays down no criteria express or implied governing the exercise of the Attorney General's discretion, in *R v. Attorney General ex p. Ferrante* [1995] COD 18, the test applied by Popplewell J. was whether the Claimant "*had a reasonable prospect of establishing that it is necessary or desirable in the interests of justice for a fresh inquest to be held*".

40. Having regard to the factors of central importance to be considered by the High Court in an application under s.13 (see [54] of *Sutovic*), viz:-

    a) the assessment of the possibility (as opposed to the probability) of a different verdict;

    b) the number of shortcomings in the original inquest;

    c) the need to investigate matters raised by new evidence which had not been investigated at the original inquest;

    the relevant question for the Attorney General in the present case was: "*Whether the Claimant had a reasonable prospect of satisfying the High Court that by reason of insufficiency of inquiry, the discovery of new facts or evidence or otherwise, there was a real possibility of a different outcome at a fresh inquest and, accordingly, that another inquest should be held under s.13 (1)(b) of the Coroners Act 1988."*

41. The test of "no reasonable prospect of success" echoes that found in the CPR in cases on striking out and summary judgment, albeit that the wording in the CPR is "no reasonable grounds for bringing the claim" and "no real prospect of success". The threshold is not a high one, and in *Ferrante*, was held by Popplewell J. to be indistinguishable from the question of "reasonable grounds for taking proceedings" and "arguability" – the threshold for judicial review.

42. On the basis of the evidence put forward to the Defendant, it is submitted that the only rational answer to that question was to consent to the matter being referred to the High Court. The six substantial new pieces of evidence put forward by the Claimant clearly raise a significant possibility of a different verdict if the inquest were reopened.

43. The Defendant referred in the Decision to Rules 36 and 42, without any explanation as to their relevance to her decision. The references make no

sense. Rule 36 enjoins the Coroner to ensure that the proceedings and evidence at an inquest are directed solely to ascertaining: (a) who he deceased was; (b) how and when, and where the deceased came by his death, and (c) the particulars for the time being required by the Registration Acts to be registered concerning the death. The real issue to which the new evidence is relevant is (b): "how when and where" the deceased came by his death. The new evidence suggests it was not in the manner described by the Coroner, nor at the place described by the Coroner, nor at the time described by the Coroner in the narrative verdict. Rule 42 is concerned with ensuring that no verdict shall be framed in such a way as to appear to determine any question of – (a) criminal liability on the part of a named person, or (b) civil liability. It is wholly unclear precisely what relevance the Attorney General considered that Rule 42 had to the question under consideration.

Lack of reasons

44. The Claimant submits that the Attorney General has failed to provide any or any adequate reasons for the decision to refuse to consent to the s.13 application at the time the decision was taken. Clearly the requirement for and content of reasons given in a particular case depends on the context. In the present, there was clear evidence from respectable and competent experts that the narrative verdict may well have been in error. The Attorney General's rejection of the compelling case made by the new evidence required to be supported by sufficient reasons to demonstrate that the evidence had been carefully considered and weighed by the Attorney General. In fact the only reasons given in the 6th February 2008 letter were that:-

> *"Having carefully considered all of the papers in this case, she has concluded that there is no reasonable prospect that the High Court would order a fresh inquest, having particular regard to the nature and purpose of an inquest in accordance with rules 36 and 42 of the Coroners Rules 1984. Accordingly she has refused her consent"*

45. No further or better reasons were given in the Attorney General's pre-action protocol response. Purported reasons were given for the first time in the Attorney General's summary grounds at paragraphs 24-27. They were not accompanied by any witness statement or disclosure verifying that these were actually the reasons for the decision taken months earlier.

46. Not only are these reasons late such that the Court should be cautious before accepting them – they are, as may be seen from the further evidence submitted, factually flawed. The flaws could easily have been rectified by the Attorney seeking clarification from the Claimants. Notwithstanding a 9 month delay in dealing with the matter, no such clarification was sought.

47. It appears from paragraphs 24 to 27 of the summary grounds that the Attorney General reached certain conclusions as to the quality of the "new evidence" by reference to certain assumptions she made about the experts who gave that evidence. As noted above, no request for clarification as to the expertise of the doctors/experts in question was made. Had such inquiries been made the Attorney General could not rationally have reached the conclusions she is said to have reached in her summary grounds.

48. Dealing with the points made sequentially:

(i) ***Paul Canning*** – he is a Forensic photographic expert. He was instructed to examine a number of photographs taken by Herr Jurgen Burg, involving the death of Jeremiah. The purpose of his examination was to seek to establish whether the photographs represented a death caused by a traffic accident or a crime scene in which Jeremiah was unlawfully killed. In particular he was looking for evidence that the two vehicles involved had come into contact with the deceased. He found no such evidence. This matter is entirely within his expertise –

see letter dated 13th October 2008 exhibited to the witness statement of Merry Varney at [630-631];

(ii) ***Allan Bayle*** – contrary to the suggestion that forensic scene examination is only a subsidiary area of his expertise, he has in fact been attending crime scenes for over 30 years since 1977. He has passed advances forensic examinations in forensic crime scenes and has lectured in basic and advanced forensic scene examination at the Metropolitan Police Training School in Hendon since 1996 – see letter dated 16th October 2008 exhibited to the statement of Merry Varney [632-633]. The suggestion that "*his conclusions on these issues can carry little if any weight, having regard to his limited expertise and the limited materials on which he expressed his opinion*" in the Attorney General's summary grounds, is thus entirely misplaced.

(iii) ***Terence Merston*** – his expertise is summarised on the covering page of his report [662-669] exhibited to the witness statement of Merry Varney. He has over 20 years experience in carrying out forensic scene examinations into suspicious deaths, assaults, general crime scenes, together with fatal and serious road traffic accidents. He was formerly a scenes of crime officer for the Metropolitan Police and has carried out thousands of forensic scene examinations. The Attorney General at paragraph 26(3)(iii) of the summary grounds says that his conclusion is "*simply that the case needs to be thoroughly investigated*". That is a misrepresentation or misunderstanding of actual conclusions set out at page 6 of his report which are that "(i) *the evidence at the scene points towards Jeremiah's death being extremely suspicious and not a road traffic accident, it is also my view that the damage to the Peugeot car has been deliberately caused*"; and (ii) *that the*

alleged damage to the Volkswagen car (light lens missing & piece of metal hanging down), together with the total lack of physical evidence from Jeremiah on the vehicle and vice versa, it is total[ly] inconsistent with that vehicle having been involved in the alleged accident; and that (iii) *the case is thoroughly investigated and it is essential that he drivers of both vehicles are interviewed at length and detailed statements taken*".

(iv) ***Manfred Tuve*** – his area of expertise is in Trace Analysis which was entirely appropriate and relevant for the purpose of the report he produced which was to examine the trace complexes between the cars, the road and the clothing of the deceased. He has subsequently been provided with the original negatives from the traffic accident investigation. His conclusion in the light of the sight of the negatives is that it is "not possible" that the relevant marks on the Peugeot were caused by a human body – see exhibit to witness statement of Merry Varney [644-661].

(v) ***Dr Bernd Kopetz*** – he has been a practising doctor for 34 years, and for 31 years has worked in the field of forensic medicine. He appears regularly in the local and regional courts as court-appointed expert. During his forensic medicine career he has carried out some 1000 court autopsies commissioned by the Coroner or prosecutor's office and has prepared a large number of expert opinions on the course of events during traffic accident. His last rank in the German Federal Armed Forces was Lieutenant Colonel (Medical Corps), and during active duty as a military surgeon he has worked on numerous accidents involving military jets and bullet wounds of all kinds. His final comment as to "further expert evaluation" is in fact a routine signing off of the report, reserving the right to make further

revaluations- see letter dated 14th October 2008 exhibited to the statement of Merry Varney [640-643].

(vi) ***Dr Milosavljevic*** – he is the head of Forensic Medicine at the Military Medical Academy in Belgrade. As to the use of the post-mortem his view is that he had the results of Dr Shove's post mortem on 4th April 2003, and therefore there is/was no need of a further post mortem since Dr Shove's post mortem can be used in any future reconstruction of the event. He notes that Dr Shove did not observe injuries to the body of the deceased which could be clearly identified as having been caused by the primary contact of his body with the vehicle. Neither could the injuries, because of their localisation, be identified as arising out of the relevant phase of a road traffic accident. In these circumstances the "defensive" injuries sustained by the deceased gave rise to a reasonable suspicion that he was injured in some other way, i.e. was injured by another person – see report of 16th October 2008 exhibited to witness statement of Merry Varney [634-639].

49. In the light of the foregoing the Claimant contends that the Attorney General's reasoning process was flawed by a series of mistaken and unjustifiable factual assumptions, and should be quashed.

Summary conclusion

50. For the above reasons, the Claimant submits that the case is plainly arguable on all grounds advanced and permission should be granted.

DINAH ROSE Q.C.

JEREMY HYAM

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

IN THE MATTER OF AN APPLICATION FOR PERMISSION TO APPLY FOR JUDICIAL REVIEW

BETWEEN

THE QUEEN

on the application of
ERICA DUGGAN
Claimant

v

H.M. ATTORNEY GENERAL
Defendant

SKELETON ARGUMENT ON BEHALF OF THE CLAIMANT

Dinah Rose Q.C.

Jeremy Hyam

Leigh Day & Co.
Priory House
25 St John's Lane
London EC1M 4LB

REF: FMS/MV/DUG62249.2
TEL: 020 7650 1200

Solicitors for the Claimant