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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/03/2007

Before :

LADY JUSTICE SMITH
MR JUSTICE COLLINS
MR JUSTICE SILBER

- -

Between :

Jean Paul and Gisele Paul and The Ritz Hotel Limited	**Claimant**
- and -	
Deputy Coroner of the Queen's Household and Assistant Deputy Coroner for Surrey (Baroness Elizabeth Butler-Sloss)	**Defendant**
Mohamed Al Fayed	**Claimant**
- and -	
Deputy Coroner of the Queen's Household and Assistant Deputy Coroner for Surrey (Baroness Elizabeth Butler-Sloss)	**Defendant**

- -
- -

Mr Richard Keen QC, Mr Thomas De la Mare and Ms Victoria Windle (instructed by **Stuart Benson & Co**) for **M. and Mme Paul**
Mr Michael Beloff QC, Mr Thomas de la Mare and Ms Victoria Windle (instructed by **Barlow Lyde & Gilbert)** for **The Ritz Hotel Limited**

Mr Michael Mansfield QC, Ms Henrietta Hill and Mr Navtej Singh Ahluwalia (instructed by **Lewis Silkin LLP**) for **Mr Mohamed Al Fayed**
Mr Ian Burnett QC and Mr Jonathan Hough (instructed by **Mr Michael Burgess**, solicitor) for **Lady Butler-Sloss**
Mr Edmund Lawson QC (instructed by **Naz Saleh**) for **The Commissioner of the Police of the Metropolis**

Hearing dates: 19/20 February 2007

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Judgment Approved by the court for handing down (subject to editorial corrections)

Lady Justice Smith : This is the judgment of the Court

Introduction

1. This is a claim for judicial review of certain rulings made on 8th January 2007 by the Rt Hon Baroness Butler-Sloss, sitting as Deputy Coroner of the Queen's Household and as Assistant Deputy Coroner for Surrey. The application is brought by interested persons to the forthcoming inquests into the deaths of Diana, Princess of Wales and Mr Emad El-Din Mohamed Abdel Moneim Fayed, to whom we shall refer as Dodi Al Fayed. The claimants are Mr Mohamed Al Fayed, father of Dodi Al Fayed, M and Mme Paul, the parents of Henri Paul, and the President of the Ritz Hotel. At the commencement of the hearing, having read the papers, we granted permission to bring the claim.

Factual Background

2. As is well known, Diana Princess of Wales and Dodi Al Fayed died on 31st August 1997, when the Mercedes motor car in which they were being driven by Henri Paul collided with a pillar in the underpass of the Pont D'Alma in Paris. Their bodies were repatriated later that day. The body of Dodi Al Fayed was brought into Battersea Heliport, from where it was taken to a mortuary in Fulham, in the coronial district of West London. The coroner for West London, Dr Burton, was informed of the presence of the body and became seized of jurisdiction to inquire into his death. The Princess's body was brought into Northolt Airport, which also lies in the coronial district of West London. Dr Burton became aware of the arrival of her body in his district and was seized of jurisdiction to inquire into her death.

3. Following Home Office guidance for coroners in relation to bodies repatriated from abroad, Dr Burton made enquiries as to where the Princess and Dodi Al Fayed were likely to be buried. This guidance was given in recognition of the fact that the family of a deceased person who dies abroad is unlikely to have any connection with the district within which the port of entry lies; it will usually be more convenient for the family if any inquest is conducted in the district in which the funeral is to take place. Enquiries of the Al Fayed family suggested that Dodi Al Fayed would be buried within the coronial district of Surrey, as in the event he was. On the basis of that information and acting under his powers under section 14 of the Coroners Act 1988 (the 1988 Act), Dr Burton transferred jurisdiction over Dodi Al Fayed's death to the coroner for Surrey. Dr Burton's enquiries at Buckingham Palace suggested that the Princess would probably be buried at Windsor, within the precincts of the Castle. In fact, she was buried at Althorp, her family home. However, acting on the information he had been given, Dr Burton transferred jurisdiction over the Princess's death to the coroner of the Queen's household. In fact, as it happened, Dr Burton was, at that time, the coroner of the Queen's household, so the transfer was a formality; he transferred jurisdiction from himself as coroner for West London to himself as coroner of the Queen's household. One of the questions which this court will have to decide is whether section 14 of the 1988 Act empowered Dr Burton to transfer jurisdiction in respect of the Princess's death to the coroner of the Queen's household.

4. Soon after the death, Mr Mohamed Al Fayed publicly raised allegations that the collision in the underpass had been engineered by persons who wished to dispose of the Princess and his son. His belief was that there had been a conspiracy between HRH Prince Philip, Duke of Edinburgh and the UK Security Services. These allegations were widely reported in the media. The French authorities carried out an investigation into the circumstances of the deaths and concluded that the car crash had been a tragic accident. During this time, no inquest was opened into the deaths. However, in 2003, no doubt on account of the continuing public concern about Mr Al Fayed's allegations, it was decided that inquests should be opened. By this time, Dr Burton's place as coroner of the Queen's household had been taken by Mr Michael Burgess, who was also the coroner for Surrey.

5. In January 2004, Mr Burgess opened inquests into both deaths and announced that they would stand adjourned pending an investigation into the deaths and the allegations of conspiracy to murder. This investigation was to be carried out by the Metropolitan Police under the personal direction of the then Commissioner, Sir John Stevens, now Lord Stevens. That investigation, known as Operation Paget, was completed in late 2006. Meanwhile, Mr Burgess had announced that his conduct of these two inquests, which were plainly likely to last for a considerable time, was incompatible with his regular duties as coroner for Surrey and, in August 2006, Lady Butler-Sloss, a retired judge and former President of the Family Division, was appointed as deputy coroner of the Queen's household and as assistant deputy coroner for Surrey. These appointments were made to enable her to conduct both inquests.

6. The Metropolitan Police decided that it would be appropriate to publish the report of their investigation. It is properly to be called 'The Operation Paget Crime Report' although it has been colloquially referred to in court and by Lady Butler-Sloss in her rulings as 'The Stevens Report'. We will do likewise. The report concluded that there was no evidence to support the allegations of conspiracy to murder. There was therefore no reason why the case should be referred to the Director of Public Prosecutions and the way was open for the inquests to proceed. The decision to publish the Stevens Report was taken by the Metropolitan Police but Lady Butler-Sloss was consulted before the decision was taken. She had no objection to publication; indeed, she supported it.

7. On 8th January 2007, Lady Butler-Sloss convened a pre-inquest hearing at which four issues fell to be determined. These were:

   (i) the identity of those persons properly interested in the two inquests;

   (ii) whether two separate inquests were to be held or concurrent inquests;

   (iii) whether Lady Butler-Sloss had jurisdiction to act as the deputy coroner of the Queen's household;

   (iv) whether Lady Butler-Sloss should hold the inquests with or without a jury.

8. The first two issues did not give rise to dispute. The interested persons were identified. The interested persons in respect of the Princess's inquest are HRH Prince William and HRH Prince Harry, Lady Sarah McCorquodale (the Princess's sister and executrix), Mr Al Fayed, the President of the Ritz Hotel, the parents of M. Henri Paul, Mr Trevor Rees and the Commissioner of Police of the Metropolis. In respect of the inquest of Dodi Al Fayed, the interested persons are Mr Al Fayed, the President of the Ritz Hotel, the parents of M. Henri Paul, Mr Trevor Rees and the Commissioner of Police of the Metropolis. Not all were represented at the hearing. All those who were represented were agreed in respect of the second issue, namely that the inquests must be held concurrently.

9. On the third issue, on which a dispute arose, Lady Butler-Sloss held that she had jurisdiction to act as deputy coroner of the Queen's household. We will return to that issue in due course. On the fourth issue, which was also disputed, she decided that she would conduct the inquests without a jury. That decision is also challenged in these proceedings. A further issue then arose for determination. As Lady Butler-Sloss had decided that the inquests should be held concurrently, she had to decide whether to act as deputy coroner of the Queen's household or as assistant deputy coroner for Surrey. Either the Princess's inquest had to be transferred to the coroner for Surrey or Dodi Al Fayed's inquest had to be transferred to the coroner of the Queen's household. This issue was also disputed. Lady Butler-Sloss decided to transfer the inquest of Dodi Al Fayed into the jurisdiction of the coroner of the Queen's household. However, realising that there might be a challenge to this ruling among others, she decided that she would not give effect to that decision until 5th March, at which time she intended to hold another hearing, to consider the scope of the inquests.

10. It is in respect of these three disputed decisions that these proceedings for judicial review are now brought. A fourth issue also arises, namely whether by supporting publication of the Stevens Report, Lady Butler-Sloss has compromised her independence and impartiality.

The First Issue - Jurisdiction.

11. At the hearing before Lady Butler-Sloss, it was not suggested that Dr Burton's use of section 14 of the 1988 Act to transfer jurisdiction over the Princess's death was impermissible because section 14 did not confer the necessary power. It was, however, submitted that he had had no proper factual basis to make the transfer. He was acting in the belief that the Princess was to be buried at Windsor and, in the course of the hearing, it became clear that there was material which supported that belief. Accordingly, the basis upon which jurisdiction was challenged before Lady Butler-Sloss has not been relied on before us.

12. The submission made by the claimants is that, on their true construction, the relevant provisions in the 1988 Act show that the power in section 14 does not enable transfers to be made either to or from the coroner of the Queen's household. A deputy or assistant deputy coroner has the same powers and is subject to the same obligations under the 1988 Act as the coroner. If that submission is correct, Lady Butler-Sloss has never had jurisdiction to hold an inquest into the death of the Princess and so cannot act as deputy coroner of the Queen's household in holding the inquests as she has proposed.

13. The submission is given some apparent support from the wording of the 1988 Act coupled with the anomalous and anachronistic existence of the post of coroner of the Queen's household. For the purpose of the exercise of coronial jurisdiction, the country is divided into districts which are specified in orders made either under section 4 of the 1988 Act or under provisions in the Local Government Act 1985. Prior to local government reorganisation in 1972, coroners were appointed for either counties or boroughs. Most counties were divided into coronial districts under powers conferred by section 12 of the Coroners (Amendment) Act 1926. The jurisdiction of a coroner is in general limited to consideration of dead bodies lying within his district.

14. The coroner of the Queen's household is a special case. His obligation to inquire into deaths caused in a royal palace or a house where the King was abiding was established by an Act of 1541 (33 Hen.8 CAP XII), which was entitled:

> "An Acte for murther and malicious bloodshed within the Courte."

The purpose behind the Act was to enable acts of violence at Court to be tried by a jury before the Lord Steward or another specified officer of the Court. The coroner to the household would, in the case of a death, hold the necessary inquest which would result in what would in recent years be termed a committal for trial. It is to be noted that the office of coroner to the royal house had existed before the Act of 1541, since section 22 of that Act records:

> "And forasmuch as before His Time one Richard Staverton of Lincoln's Inn, Gentleman, was commanded and appointed by the King's Majesty to occupy the Office of the Coroner to his said House, by Force whereof he hath continued Officer in the same by the Space of sixteen years or more, Be it enacted … that the said Richard Staverton shall have, occupy and enjoy the said Office of Coroner during his Life …"

Thus it is clear that the Act was concerned to put the office on a statutory basis so that there would be a coroner available at all times to ensure that violent death within the Court could be properly investigated and those responsible brought to a speedy form of justice.

15. The position of the coroner of the Queen's household is now dealt with in section 29 of the 1988 Act. This provides:

> "29. Coroner of the Queen's household.
>
> (1) The coroner of the Queen's household shall continue to be appointed by the Lord Steward for the time being of the Queen's household.
> (2) The coroner of the Queen's household shall have exclusive jurisdiction in respect of inquests into the deaths of persons whose bodies are lying –

(a) within the limits of the Queen's palaces; or
(b) within the limits of any other house where Her Majesty is then residing.

(3) The limits of any such palace or house shall be deemed to extend to any courts, gardens or other places within the curtilage of the palace or house but not further; and where a body is lying in any place beyond those limits, the coroner within whose district the body is lying, and not the coroner for the Queen's household, shall have jurisdiction to hold an inquest into the death.

(4) The jurors on an inquest held by the coroner of the Queen's household shall consist of officers of that household, to be returned by such officer of the Queen's household as may be directed to summon the jurors by the warrant of the coroner.

(5) All inquisitions, depositions and recognizances shall be delivered to the Lord Steward of the Queen's household to be filed among the records of his office.

(6) The coroner of the Queen's household –
(a) shall make his declaration of office before the Lord Steward of the Queen's household; and
(b) shall reside in one of the Queen's palaces or in such other convenient place as may from time to time be allowed by the Lord Steward of the Queen's household.

(7) The provisions of Schedule 2 to this Act shall have effect with respect to the application of this Act and the law relating to coroners to the coroner of the Queen's household."

Schedule 2 disapplies the provisions of the Act which cover the appointment of other coroners. In addition section 5 which deals with the jurisdiction of coroners is excluded. It provides:

"(1) Subject to subsection (3) [which gives powers to act for another coroner in a district within the same administrative area where that other coroner is ill, incapacitated, or absent or there is a vacancy] and section 7 [which deals with deputies] and 13 to 15 below, an inquest into a death shall be held only by the coroner within whose district the body lies.

(2) … a coroner shall hold an inquest only within his district."

In addition, the powers to appoint deputies and their functions are to have the necessary modifications required by the terms of section 29. Provisions relating to juries are excluded following section 29(4). Paragraph 5 is important. It reads:

"Subject to the provisions of this Schedule and Section 29 of this Act, the coroner of the Queen's household shall, within the limits laid down in subsection (3) of that section –

(a) have the same jurisdiction and powers; and

(b) be subject to the same obligations, liabilities and disqualifications; and
(c) generally be subject to the provisions of this Act and the law relating to coroners in the same manner as any other coroner."

16. Section 14 is not specifically disapplied in Schedule 2. It provides, so far as material:

> "(1) if it appears to a coroner that, in the case of a body lying within his district, an inquest ought to be held into the death but it is expedient that the inquest should be held by some other coroner, he may request that coroner to assume jurisdiction to hold the inquest, and if that coroner agrees he, and not the coroner within whose district the body is lying, shall have jurisdiction to hold the inquest.
>
> (4) Where jurisdiction to hold an inquest is assumed under this section, it shall not be necessary to remove the body into the district of the coroner who is to hold the inquest.
> (7) On the assumption by a coroner of jurisdiction to hold an inquest under this section, the coroner –
>
> (a) shall also assume, in relation to the body and the inquest, all the powers and duties which would belong to him if the body were lying within his district … and
> (b) may exercise those powers notwithstanding that the body remains outside his district or, having been removed into it, is removed out of it by virtue of any order of his for its examination or burial."

Subsection (7) enables a coroner to whom jurisdiction has been transferred under section 14 to use that section to make a further transfer if that is considered expedient.

17. It is apparent that the purpose behind section 14 is to enable inquests to be held at places which are more convenient to those interested, in particular the family of the deceased. That this will usually be the case in respect of bodies returned to this country following deaths abroad is obvious and this led to the Home Office guidance to which we have already referred.

18. The submission that section 14 does not apply to the coroner of the Queen's household is based on the limits to his jurisdiction expressed in section 29(3) coupled with the reference in section 14 to the need that the body to be transferred or to be received is within the coroner's district (see section 14(1) and (4)). The coroner of the Queen's household does not have a district: indeed, he is not a district coroner, which is the description applied in, for example, Jervis on Coroners (see 12th Edition Paras: 2-12). Section 5(1), which has been disapplied by Schedule 2 Paragraph 1, limits the jurisdiction of a coroner to his district, subject to, *inter alia*, section 14. Section 13 deals with orders of the High Court to hold an inquest where the coroner has failed to hold one when he should have done or there have been defects in the inquest that has been held. Section 15 gives power to the Secretary of State to direct an inquest where

he receives a report from a coroner that 'a death has occurred in or near his district' which requires an inquest but 'owing to the destruction of the body by fire or otherwise, or to the fact that the body is lying in a place from which it cannot be recovered, an inquest cannot be held except in pursuance of this section.'

19. Section 29(2)(b) means that the jurisdiction of the coroner of the Queen's household is moveable in that it depends upon where Her Majesty may happen to be residing if not in one of her palaces. Thus, it is submitted that even if, by a stretch of language, a royal palace could be regarded as a district, a place where Her Majesty might from time to time be could not. Furthermore, it is clear from the Act that coroners are to be appointed 'for each coroner's district' (section 1(1)) and that the districts are to be identified by the Secretary of State (section 4). Accordingly, the word 'district' when used in the Act must, it is said, refer only to the districts to which ordinary coroners are appointed and cannot be extended to include the palaces or houses within s.29(2). Mr Keen QC (who appeared for the parents of Henri Paul) submitted that, as he put it, the gateway to section 14 was contained in section 5(1) and that that section's exclusion by virtue of Paragraph 1 of Schedule 2 meant that section 14 could not apply to the coroner of the Queen's household.

20. The result, if the claimants' submissions are correct, is indeed strange. It is to be noted that many of the sections of the Act which concern the powers of a coroner are related to bodies lying within that coroner's district. Thus section 19 enables a coroner to direct a post-mortem if he considers that such an examination may prove an inquest to be unnecessary. Section 22 enables a coroner to direct removal of a body for a post-mortem examination 'to any place … either within his district or within an adjoining district of another coroner'. The absence of such a power for the coroner of the Queen's household would produce an obvious difficulty, since presumably any post-mortem examination would have to be held in the palace or house concerned.

21. In addition, the section which establishes the duty to hold an inquest is section 8. Section 8(1) provides:

> "Where a coroner is informed that the body of a person (the deceased) is lying within his district and there is reasonable cause to suspect that the deceased –
>
> (a) has died a violent or an unnatural death;
> (b) has died a sudden death of which the cause is unknown; or
> (c) has died in prison or in such a place or in such circumstances as to require an inquest under any other Act, then, whether the cause of death arose within the district or not, the coroner shall as soon as practicable hold an inquest into the death of the deceased with or, subject to subsection (3) below, without a jury."

If, by virtue of the limitation to a body lying within his district, that duty cannot be said to apply to the coroner of the Queen's household, there is precious little left of the obligations, jurisdiction or powers or any provisions of the Act which could apply in accordance with Paragraph 5 of Schedule 2. It seems to us that to adopt such a narrow construction of the reference to district would be contrary to the intention of

Parliament. It was, in our view, contemplated that, subject to the express exclusions, the provisions of the Act which laid down the powers and the obligations of coroners should apply equally to the coroner of the Queen's household. While we recognise that the word 'district' does not easily, in its natural meaning, fit in with what was referred to before us as the topographical limit to the jurisdiction of the coroner of the Queen's household, to construe it as the claimants would wish would be to produce an absurd situation. We were not impressed with the submission of Mr Beloff QC (who appeared for the President of the Ritz Hotel), that, since the office of coroner of the Queen's household itself was an anomaly and there were very few calls on him, the administrative difficulties were not of any real significance.

22. If the argument is refined to submit that it is only sections 13 to 15 which do not apply because of the reference to them in section 5(1), in our view it fares no better. Section 15 contains a necessary power to deal with a situation where a body is destroyed. Section 29(2) gives the coroner of the Queen's household exclusive jurisdiction in relation to inquests into the death of persons "whose bodies are lying" within the limits of a palace or house. If, for example, the body of the unfortunate lady who was killed in the fire at Hampton Court in 1983 had been destroyed, the coroner of the Queen's household would not have been able to act. It may be argued that, in such circumstances, the coroner for the adjoining district could use section 15 and the Secretary of State could direct the coroner of the Queen's household to hold the inquest. While that might provide a possible solution, it is an unsatisfactory situation since it is clearly anticipated that the coroner of the Queen's household is to concern himself with deaths in royal palaces, albeit the reference to a 'body lying' is not limited to a 'body dying'.

23. In any event, it is obviously desirable that the coroner of the Queen's household should be able to make use of section 14. While we recognise that it will be exceptional for it to be expedient for him to assume jurisdiction over a body lying elsewhere, the same cannot be said in relation to transfer out of his jurisdiction. If, for example, a visitor to a royal palace were to be killed in an accident, it would almost certainly be more convenient for any inquest to take place where he lived or was to be buried. Furthermore, it might well be desirable to be able to avoid the holding of an inquest altogether by use of the powers conferred by section 19 and it might be far more convenient for those powers to be exercised by the coroner who otherwise would be holding the inquest.

24. While the claimants submitted that the natural meaning of the sections in the Act led to the conclusion they espoused, they accepted that, if we were of the view that the provisions were ambiguous, it might assist us to look at the their history. At one stage of the argument we were of that view and we agreed to examine the history.

25. The 1988 Act was a consolidating Act with amendments to give effect to recommendations of the Law Commission. The only relevant recommendation was to make clear in section 29 that the jurisdiction of the coroner of the Queen's household applied to palaces generally and in addition to houses at which Her Majesty was residing. Section 29(2) of the Coroners Act 1887 provided:

> "The coroner of the Queen's household shall have exclusive jurisdiction in respect of inquests on persons whose bodies are lying within the limits of any of the Queen's palaces or within

> the limits of any other house where Her Majesty is then demurrant and abiding in her own royal person, notwithstanding the subsequent removal of Her Majesty from such palace or house."

This could be construed to mean that the jurisdiction only applied to a palace or house in which at the material time Her Majesty was 'demurrant and abiding'. This gave rise to some concern whether the coroner of the Queen's household ought to have assumed jurisdiction to deal with the death resulting from the fire at Hampton Court (at which Her Majesty was not then nor has ever been 'demurrant and abiding'). The terms of section 29(2) of the 1988 Act clear up that ambiguity.

26. Since the 1988 Act is otherwise a consolidating Act, it is to be assumed that it did not change the meaning of the Acts which it consolidated. Thus it can assist us in determining the true construction of the 1988 Act to look at its predecessors. The main Act was that of 1887, itself a consolidation of a number of exceedingly ancient Acts mainly passed in the reigns of Edward I, Edward III and Henry VIII. Section 3(1) of the 1887 Act (now section 8(1) of the 1988 Act) commenced as follows:

> "When a coroner is informed that the dead body of a person is lying within his jurisdiction …"

Section 6 (now section 13 of the 1988 Act) provided by subsection (2) that the court might order that the inquest it directed should be held 'either by the said coroner, or if the said coroner is a coroner for a county, by any other coroner for the county, or if he is a coroner for a borough or for a franchise then by a coroner for the county in which such borough or franchise is situated, or for a county to which it adjoins …'

The coroner of the Queen's household was a coroner for a franchise – see section 29(8) and section 42. Section 42 also stated:

> "the expression 'franchise' means the area within which the franchise coroner exercises jurisdiction."

27. There can therefore be no doubt that, under the 1887 Act, the coroner for the Queen's household was subject to all the general duties imposed and had all the general powers granted by the Act. Furthermore, since he was a franchise coroner, the area in which he exercised his jurisdiction was and could only have been the palaces or houses where Her Majesty was demurrant and abiding or, to use more modern terminology, residing.

28. Section 16 of the Coroners (Amendment) Act 1926 introduced a power to enable a coroner to allow a body lying within his jurisdiction to be removed to the jurisdiction of another coroner if that other coroner agreed. This was the precursor for what has become section 14 of the 1988 Act, but removal of the body was required. It is to be noted that it refers, in accordance with the 1887 Act, to the jurisdictions of the respective coroners. This power was extended by section 2 of the Coroners Act 1980 to comprehend powers which are now contained in section 14 of the 1988 Act. Section 2(1) commenced as follows:

> "If it appears to a coroner that an inquest ought to be held on a body lying within his area …."

Section 3(4) of the Act, reads:

> "At the beginning of section 7(1) of the Coroners Act 1887 (jurisdiction of a coroner dependent on the presence of the body in his area) there shall be inserted … [some words which are not material].

Section 7(1) of the 1887 Act in fact uses the word 'jurisdiction', not area, but the draftsman of the 1980 Act clearly thought that there was no difference, since the jurisdiction was limited to an area, whether of a franchise or a county or a borough.

29. It is in our view clear that, before 1988, the coroner of the Queen's household was able to make use of the powers contained in the 1980 Act which were foreshadowed in the 1926 Act as well as all other powers which were given to coroners generally. Parliament in a consolidating Act could not have intended to change that. The use of the word 'district' was, it seems, regarded as a satisfactory synonym to 'area' since it was to do no more than identify the area which defined a particular coroner's jurisdiction. The history of the provisions relating to the coroner of the Queen's household confirm beyond any doubt that the sensible construction is the correct one and that accordingly Dr Burton had jurisdiction to transfer the Princess's inquest to himself as coroner of the Queen's household and Lady Butler-Sloss has jurisdiction to transfer it away from herself to any other coroner who is agreeable if to do so is considered expedient.

The Second Issue – Should the Coroner sit with a Jury?

30. The claimants submitted that Lady Butler-Sloss should sit with a jury and had erred by refusing to do so. It was submitted that she should have considered whether she was obliged to sit with a jury by reason of the provisions of section 8(3)(d) of the 1998 Act and, if she had done so, she would have concluded that she was required to sit with a jury. At the preliminary hearing, her attention was not drawn to this provision; indeed, all counsel submitted that the mandatory provisions of section 8(3) did not apply in the instant case.

31. Section 8(3) of the Act provides four sets of circumstances in which a coroner is obliged to conduct an inquest with a jury. In so far as material, the section provides:

> "(3) If it appears to a coroner, either before he proceeds to hold an inquest or in the course of an inquest begun without a jury, that there is reason to suspect –….;
>
> (d) that the death occurred in circumstances the continuance or possible recurrence of which is prejudicial to the health or safety of the public or any section of the public,
>
> he shall proceed to summon a jury…"

32. We are uncertain of the reasons or justification for this provision but our task is to apply it. A number of points may be made about this mandatory provision. It applies to deaths that have occurred abroad (*Re Neal* [1995] 37 BMLR 164). For the provision to apply, the circumstances need not "cause the death" (see Jervis 10-27). The prospect of recurrence required for the section to be applicable is low; it is the possibility of recurrence and not any higher chance. For the provision to apply, only a section of the public needs to be at risk from recurrence.

33. Mr. Burnett QC, who was instructed by Lady Butler-Sloss but was asked to adopt a role similar to that of *amicus* and not to take an adversarial stance, submitted that it was unnecessary for Lady Butler-Sloss to have considered this provision as the circumstances of the deaths of the Princess and Dodi Al Fayed did not require it. He drew attention to the reasoning of the Court of Appeal in *R v HM Coroner at Hammersmith ex parte Peach (No 1 and 2)* [1980] 1 QB 211 in which it was held that a coroner was obliged to sit with a jury under the section 13(2) of the Coroners (Amendment) Act 1926, as amended, where the deceased, who was watching a demonstration, was struck a violent blow on the back of his head from which he died.

34. According to Mr. Burnett, the reasoning of the Court in *Peach* shows that if Lady Butler-Sloss had considered this provision, she would not have decided that she should sit with a jury. So, he said, her decision to sit without a jury should not be quashed on that ground. In support of this submission, he attached importance to the statements in the *Peach* case of:

(a) Lord Denning MR, which was that a jury must be summoned when

> "the circumstances are such that similar fatalities may possibly occur in the future, and it is reasonable to expect that some action should be taken to prevent their recurrence" (page 226);

(b) Bridge LJ, who said that the recurrence of the circumstances referred to are those which

> "may reasonably and ought properly to be avoided by the taking of appropriate steps which it is in the power of some responsible body to take" (page 227);

and

(c) Sir David Cairns, who explained that

> "The difficulty is to find a meaning which does not do violence to the words of the Act and which gives effect to what may be taken to have been the intention of Parliament. The reference to 'continuance or possible recurrence' indicates to my mind that the provision was intended to apply only to circumstances the continuance or recurrence of which was preventable or to some extent controllable. Moreover, since it is prejudice to the health or safety of the public or a section of the public that is referred

> to, what is envisaged must I think be something which might be prevented or safeguarded by a public authority or some other person or body whose activities can be said to affect a substantial section of the public. I cannot find any justification for any further limitation of the meaning of the paragraph in question." (page 228)

We do not understand the basis for the statement that the activities must affect 'a substantial section of the public' as the statute does not include that requirement.

35. Mr. Burnett submitted that we should apply the test suggested by Sir David Cairns, which sets the highest threshold for invoking the subsection and we will assume that this is the appropriate test. He then contended that the deaths in this case were caused, according to the issues raised, either by speeding coupled with the consumption of alcohol or as the result of a conspiracy to murder. In either event, the existing criminal law covered the situation with the consequence that, even if Lady Butler-Sloss had considered the subsection, she would not have used it to summon a jury. He cited, as an analogy, the decision of this Court in *R. v HM Coroner for the Eastern District of the Metropolitan County of West Yorkshire ex parte National Union of Mineworkers* [1985] 150 JP 58 in which it was held that the coroner was correct not to summon a jury pursuant to the predecessor section of section 8(3)(d).

36. In that case, a picket had been knocked down by a lorry and it was considered of crucial importance that the facts of that case did not have

> "any particular feature which distinguishes it from any other kind of road accident to the circumstances of which courts, time and time again, have to listen in order to reach a determination be it in criminal or civil proceedings." (per Watkins LJ at page 62).

37. It is true that the deaths with which these present inquests are concerned occurred as a result of a collision on a road. However, the circumstances leading up to this collision were very unusual and had additional features to those found in a more usual type of road accident. As appears from the Stevens Report, the car carrying the Princess of Wales and Mr Al Fayed was being pursued by the paparazzi moments before the fatal crash. One eye witness, Didier Gamblin, a fire safety officer at the Ritz Hotel, explained that:

> "The couple came out at about 9.45 in the evening. Although we had come to an agreement with the paparazzi they did not do what we had asked them. They came closer to the car than expected, although they did not rush forward as they had done when the couple arrived. But when the couple's car drove off they went completely crazy. They called their motor bikes and set off like lunatics to follow the car. They could have knocked pedestrians over on the pavement. People had to press themselves against the wall to let the paparazzi's motor bikes past, they were driving on the pavement…."

38. There was other evidence to the same effect and it is clear that it is at least arguable that the fatal accident was caused or contributed to by the pursuing paparazzi. Indeed, as we have explained, it is not a condition for invoking this sub-section that the circumstances which might possibly recur actually caused the deaths in question. In our view, there is a real likelihood of people in the public eye being pursued by the paparazzi in the future. It is well known that people in the public eye (including by way of a recent example, Miss Kate Middleton, Prince William's friend) are often stalked by photographers. During the hearing we were shown letters written to the press by Sir John Major and Sir Christopher Meyer, Chairman of the Press Complaints Council, expressing concern about the harassment of Miss Middleton and pointing out the similarity between her treatment and that suffered by the Princess of Wales. They drew attention to the dangers of such behaviour and called for new sanctions against the paparazzi.

39. It is likely that there will be a recurrence of the type of event in which the paparazzi on wheels pursued the Princess and Dodi Al Fayed. It is not only members of the Royal Family and their friends who receive this unwelcome attention; any celebrity is vulnerable. Not only is the safety of the person pursued potentially put at risk but there may well be a risk to bystanders. In our view, occurrences such as this are prejudicial to the safety of a section of the public. It is possible that this danger could be prevented by legislation or other means.

40. There are a number of ways in which these events could, in the words of Sir David Cairns in *Peach*, be 'preventable or controllable' whether by rules preventing newspapers from using material obtained by the paparazzi in this way or making the pursuit of people in the way described by Didier Gamblin an aggravated form of dangerous driving or speeding. Accordingly, it is our view that, as a matter of law, Lady Butler-Sloss's decision not to summon a jury was wrong and must be quashed. It is most unfortunate that the applicability of section 8(3)(d) was not argued at the hearing, as, if it had been, this application might have been avoided.

41. In the light of our conclusion on section 8(3)(d), it is not strictly necessary for us to deal with the submissions seeking to challenge the coroner's exercise of discretion under section 8(4) not to summon a jury. However, we wish to make three observations on this issue.

42. First, Lady Butler-Sloss made her decision under section 8(4) before she had considered the scope of the inquest. In our view, the logical approach is for a coroner first to determine the scope of the inquest and only then to make a decision on the relevance and applicability of sections 8(3) and (4). Here it can properly be said, as was urged by Mr Burnett, that although Lady Butler-Sloss had not yet made decisions on the scope of the inquests, she knew a great deal about the likely scope from reading the Stevens Report. We accept that that is so, but we are of the view that, as a matter of principle, the right course is to determine the scope of the inquest before considering whether to summon a jury.

43. Our second observation is that, in reaching her discretionary decision under section 8(4), it appears to us that Lady Butler-Sloss did not some relevant matters into account. She mentioned a number of factors relevant to the issue but the dispositive reason for her decision to sit without a jury was that she, sitting alone, would be able to provide a reasoned explanation for her conclusions whereas a jury would not; it

would be able to provide only brief answers to a limited number of questions. It was in the public interest that a full explanation of the conclusions should be published. Although the validity of this reason was challenged, we do not accept the grounds of challenge; there is no need for us to explain why. In our view, the factors which Lady Butler-Sloss considered were properly taken into account.

44. However, it appears to us, from the arguments presented, that there were two additional factors relevant to the exercise of the coroner's discretion which ought to have been taken into consideration. First, it was the strongly expressed view of the family of Dodi Al Fayed that there should be a jury. That, of course, cannot be determinative but it is a relevant factor. This was recognised in the *National Union of Miners* case, and, in any event we believe that it is now regarded as good practice for coroners to consult the family of the deceased before making a discretionary decision under section 8(4). In this case, the sons and the sister of the Princess of Wales had indicated that they have no views on whether a jury should be summoned while Dodi Al Fayed's family felt that a jury would be essential for a proper investigation into the deaths. We think the views of the Al Fayed family should have been taken into account.

45. Further, it appears to us that, when considering how to exercise the discretion under section 8(4) in a case to which the mandatory provisions of section 8(3) do not apply, it is appropriate to consider whether the facts of the instant case bear any resemblance to the types of situation covered by the mandatory provisions. By examining the policy considerations behind the mandatory provisions, it might be possible to find guidance as to the manner in which the discretion should be exercised. Lady Butler-Sloss did not undertake this exercise. Had she done so, we think that her decision might well have been different and she might well have concluded that she ought not to make any decision about whether or not to summon a jury until after she had determined the scope of the inquests.

46. Sections 8(3)(a) and (b) make it mandatory to summon a jury in cases where the death occurred in prison or while the deceased was in police custody or resulted from an injury caused by a police officer in the purported execution of his duty. The policy consideration behind these provisions is clear; in order that there should be public confidence in the outcome of the inquest, a jury should be summoned in cases where the state, by its agents, may have had some responsibility for the death. As we have said, in the present case, Mr Al Fayed has alleged that Duke of Edinburgh and the Security Services conspired to kill the Princess and Dodi Al Fayed. The allegation is that agents of the state have been involved in the deaths. If, when Lady Butler-Sloss determines the scope of the inquests, she decides that Mr Al Fayed's allegation must be inquired into, the possible role of state agents would be an important consideration material to her discretionary decision whether to summon a jury. Indeed, we think that that consideration might well be determinative in favour of summoning a jury. However, our decision to quash Lady Butler-Sloss's decision not to summon a jury is based on our conclusion that the mandatory provision in section 8(3)(d) applies in the circumstances of this case.

The Third Issue – Should the Coroner have chosen to act as the Coroner of the Queen's Household?

47. The claimants contended that, if, contrary to their first submission, Lady Butler-Sloss did have jurisdiction to hold the inquests as coroner to the Queen's household, she ought not to have chosen to do so. They advanced several reasons, not all of which had been fully ventilated before her at the hearing on 8th January. In the light of the conclusion we have already expressed, that these inquests must be heard by a coroner sitting with a jury, some of the submissions made cease to be of any great relevance. Others assume greater importance. We will deal with the points arising under this head, not in the order in which they were presented to us, but in the order in which it now appears to us to be convenient.

48. Lady Butler-Sloss's decision to transfer the inquest of Dodi Al Fayed to the coroner of the Queen's household was taken against the background of her decision that she would sit alone, without a jury. She clearly recognised that, if she had decided to summon a jury, she would have to transfer the Princess's inquest away from the Queen's household. That was because, under section 29(4), a jury summoned by the coroner of the Queen's household must comprise officers of the household. Lady Butler-Sloss accepted the submission made by Sir John Nutting QC, appearing on behalf of the Attorney General, that it would not be appropriate for her to sit with a jury drawn from the Queen's household. He did not doubt the capacity of such officers to reach a true verdict on the evidence but he submitted that it would be undesirable, even invidious, to ask such a jury to decide the questions that would arise. It was important, he said, to avoid any appearance of bias. Lady Butler-Sloss instantly agreed with him and no interested party expressed any dissent. It follows from that, that if the inquest is to be held with a jury, it cannot be held by the deputy coroner for the Queen's household. It follows that either the Princess's inquest would have to be transferred to Surrey or both inquests would have to be transferred to some other coronial district where it would be possible to summon a jury of 'ordinary people'. For that reason alone, it is now seen that the decision to sit as the deputy coroner for the Queen's household must be quashed.

49. However, other reasons were advanced why the decision cannot stand. It was submitted that the decision was flawed because it was based upon expediency. The basis of the Lady Butler-Sloss's decision was that, if she sat as assistant deputy coroner for Surrey, she would be compelled (by section 5(2)) to sit within the coronial district of Surrey. No suitably equipped venue could be found in that district. On the other hand, if she were to sit as deputy coroner of the Queen's household, (by virtue of paragraph 1 of Schedule 2 to the Act, which disapplies section 5(2)) she could choose where to sit. She knew that a suitably equipped court could be made available for her in the Royal Courts of Justice. So, in order to take advantage of that, she chose to conduct both inquests as deputy coroner of the Queen's household. In our view, there is absolutely no reason why she should not have taken that reason of expediency into account. The provisions relating to transfer in section 14 of the Act are based on expediency.

50. However, a more important complaint was that Lady Butler-Sloss had failed to take other material matters into account. One of these was that, even assuming that the decision to sit without a jury was appropriate for the time being, Lady Butler-Sloss ought to have taken account of the need to keep open the opportunity to change her

mind. Section 8, subsections (3) and (4) both envisage the need for a coroner to decide, even after the inquests have begun, that s/he ought to summon a jury. If this need were to arise for Lady Butler-Sloss, sitting as deputy coroner of the Queen's household, she would have to summon a jury of officers of the household and she had already decided that that would not be appropriate. So, she would then have put herself into the position whereby she would have to abandon the inquests entirely, transfer them to Surrey or elsewhere and start again with a jury drawn from the population of that district. Mr Burnett suggested that that would not be a problem; it would not inhibit the coroner from taking the decision to summon a jury if that became appropriate. Well, maybe not; but in our view, it would be better to avoid the problem in the first place.

51. Another point, taken in particular by Mr Beloff, was that Lady Butler-Sloss, sitting as coroner for the Queen's household did not appear to have the necessary qualities of independence and impartiality. Mr Beloff was at pains to disclaim any suggestion that Lady Butler-Sloss lacked the personal qualities of independence and impartiality. He acknowledged her standing and integrity. His expressed concerns related to the office itself.

52. Mr Beloff submitted that Lady Butler-Sloss's position as deputy coroner of the Queen's household lacked or appeared to lack independence and impartiality for structural reasons. The very name 'Coroner to the Queen's Household' gave the appearance of partiality in the context of inquests into the deaths of two people, one of whom was a member of the Royal Family and the other was not. Further, the two Princes were interested persons. Yet further, (a point emphasised particularly by Mr Mansfield QC on behalf of Mr Al Fayed) the inquests were concerned with a very grave allegation of conspiracy to murder in which it was said that HRH the Duke of Edinburgh was complicit.

53. Mr Beloff drew attention to the fact that the Lord Steward of the Queen's household appointed the coroner of the household and, when the coroner appointed a deputy, the approval of the Lord Steward had to be given. Thus, Lady Butler-Sloss's appointment must have been subject to the Lord Steward's approval. There was in fact no suggestion that she had been chosen by the Lord Steward; indeed, the evidence was that, when Mr Burgess told the Lord Chancellor that he did not feel that, consistent with his duties as coroner for Surrey, he could continue to take personal responsibility for these inquests, the Lord Chancellor had suggested Lady Butler-Sloss as a suitable person to act as his deputy. Nonetheless, submitted Mr Beloff, there was an appearance of lack of independence in the arrangements for appointment.

54. Mr Beloff showed us the declaration which the coroner of the Queen's household makes on taking office. This includes an undertaking to act 'for the good of the persons within the household'. Mr Beloff accepted that Lady Butler-Sloss had not been required to make that declaration but he submitted that, as deputy, she must be subject to the same duties and obligations as the coroner himself. The words of the declaration suggested that the coroner had some special duty towards the members of the Queen's household.

55. Mr Beloff also suggested, albeit somewhat faintly, that Lady Butler-Sloss's position lacked independence because she did not enjoy security of tenure. However, in argument, he had to accept that her appointment was an ad hoc appointment for the

purpose of these inquests alone and that it was fanciful to suggest that she could lack independence by reason of a fear of removal or a desire to prolong her appointment.

56. Of greater merit was his submission in relation to the acceptance by all parties that it would not be appropriate for Lady Butler-Sloss to sit with a jury comprising officers of the household. Why, asked Mr Beloff rhetorically, if it is clearly unacceptable in this case to draw a jury from the officers of the Queen's household, is it any more acceptable to have a coroner who is the coroner to the Queen's household? There is, he submitted, exactly the same appearance of bias.

57. Finally, he drew our attention to the fact that, in general, inquests conducted by the coroner of the Queen's household are funded by the Queen's household monies.

58. All the claimants submitted that it would appear to any fair-minded and informed bystander that there was a real risk that the coroner of the Queen's household would not appear to be impartial as between the interests and contentions of members of the Royal Family and those of the other interested persons.

59. In response to these submissions, Mr Burnett reminded us of the factual position that would become apparent to any fair-minded observer who informed himself of the facts. The Queen's household is in fact a department of state and is entirely distinct from the Royal Family. He explained the position of the Lord Steward. This official had no real power in respect of the appointment of Lady Butler-Sloss; nor could he have any influence over the way she conducted the inquests or bring about her removal. Mr Burnett accepted that, at first blush, the independence of the deputy coroner of the Queen's household might seem open to question, rather in the way in which the multiple functions of the Law Officers were thought by some to be open to question. However, he submitted that, on examination, they were found to be perfectly proper. The same was true of the position of deputy coroner to the Queen's household.

60. In our view, the point in issue here is not whether Lady Butler-Sloss ought to recuse herself on account of any personal lack of independence or appearance of partiality. The complaint is not about her but about the appearance of her position. The point in issue is whether, when choosing between the Surrey jurisdiction and the Queen's household jurisdiction, Lady Butler-Sloss should have taken account of the appearance of her title, Deputy Coroner of the Queen's Household. We think that there is much to be said for the suggestion that she should have considered the impression that the title might make on the world-wide public who will follow these inquests. They cannot be expected to understand the true nature of the Queen's household and the distinction between that and the Royal Family. It might look to them as though the coroner is on the side of the Royal Family. If this danger is taken into account, it would suggest that the right decision would be to sit in the Surrey jurisdiction where the problem would not arise. We are of the view that these matters should have been taken into account.

61. When these additional matters are taken into account, the expedience of sitting in the Royal Courts of Justice assumes rather less significance. That is not to say that it is not important. But there was another way in which Lady Butler-Sloss could have achieved (and still could achieve) the desirable end of sitting in a suitable venue. She could have invited the coroner for Westminster (in whose district the Royal Courts

lie) to accept jurisdiction over both inquests, pursuant to section 14. He could then have appointed her as an assistant deputy coroner for his district. In view of the fact that the Department of Constitutional Affairs has undertaken to fund much the greater part of the cost of these exceptionally expensive inquests, it is highly unlikely that the Westminster coroner would be uncooperative. Even if he were, the Secretary of State could direct him to assume jurisdiction.

62. When this broader view of the issues is taken, it is clear that the decision to opt for the jurisdiction of the Queen's household was flawed, even when taken against the background of the decision to sit without a jury. But if the coroner is to sit with a jury, it is clear that for the reasons we explained in paragraph 48 above, she cannot sit as deputy coroner of the Queen's household.

The Final Issue – Has Lady Butler-Sloss's Independence and Impartiality been compromised?

63. We can deal with the last issue quite briefly in view of the holdings we have already made and a concession made by Mr Mansfield towards the close of his submissions. All the claimants had submitted that Lady Butler-Sloss had compromised her personal impartiality by the way in which she had supported the publication of the Stevens Report. The report expresses a number of firm conclusions on many of the issues that will have to be determined during the inquests. The nub of the submissions was that, by supporting publication of the report, Lady Butler-Sloss had given the impression that she supported its conclusions. That was so, it was contended, despite the fact that Lord Stevens had said, at the publication Press Conference in December 2006, that it was not the role of the police report to prejudge those matters that would be heard in the coroner's court. That was all very well, submitted counsel, but it did not go far enough. Lady Butler-Sloss had not said anything herself at the time of publication. It was accepted that, in her ruling following the hearing on 8th January, Lady Butler-Sloss had said that, at the inquests, she would call and question all the witnesses whose evidence was relevant. But, submitted counsel, bearing in mind the way in which the contents of the Stevens Report had been reported in the media, Lady Butler-Sloss's remarks had not been enough to make it completely clear that all the issues remained open for determination.

64. These submissions were advanced mainly by Mr Mansfield although Mr Keen associated himself with them. Counsel asserted that it was most unusual, probably unique, for a police report to be published before the opening of an inquest in the way that had occurred here. Mr Lawson QC, for the Commissioner of Police, explained that the decision to publish the report had been taken because there was a real risk that it would be leaked, probably selectively and possibly inaccurately. Completeness and accuracy were preferable. In any event, it was likely that the report would be discussed publicly before long; indeed it appears likely that it will be discussed at the next hearing, at which the scope of the inquests is to be determined. Mr Mansfield explained that the claimants' complaint was not so much that Lady Butler-Sloss had supported publication of the report; it was the fact that she had not clearly dissociated herself from its conclusions that gave rise to the impression that she accepted them. In the course of argument, Mr Mansfield accepted that, if Lady Butler-Sloss were now to make it clear that the conclusions of the report were entirely a matter for the police

and that she would be approaching all issues with a completely open mind, any possibly misleading impression could be put right. Moreover, Lady Butler-Sloss could say that she would be giving the jury a direction to put all that they had read and heard in the media completely out of their minds. Mr Mansfield accepted that, if such statements were to be made and if Lady Butler-Sloss were to sit with a jury, there could be no further objection to her continuing as coroner on these inquests.

65. For our part, we do not think that there was anything of substance in these complaints. We do not think that Lady Butler-Sloss's support for the publication of the report could come anywhere to giving rise to a real possibility of bias in the eyes of the fair-minded and informed observer: see *Porter v Magill* [2002]1 AC 357. In any event, we consider that the function of the report was made adequately clear by Lord Stevens at the Press Conference and the process that she would follow was made sufficiently plain by Lady Butler-Sloss on 8th January. Now that the issue has been raised, no doubt she will make it even more clear that, so far as the inquest is concerned, nothing has been decided by the Stevens Report and that all issues are open for determination by the jury. In any event, a clear direction to the jury to put out of their minds what they have read and heard will be essential. It is our view that, when the members of the jury have heard the evidence for themselves, they will find no difficulty in making their own minds up regardless of the conclusions of the Stevens Report. We repeat that, in our view, there is no reason at all why Lady Butler-Sloss should not continue to conduct these inquests.

Conclusion

66. For these reasons, we grant the application for judicial review and quash the decisions to conduct the inquests as Deputy Coroner for the Queen's Household and without summoning a jury.