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Your ref:

Our ref:

NGG.LDL 1763/2003

3 December 2010

Dear Mr. Ginty,

Re: Dr. David Kelly, deceased

1. Thank you for your letter of 15 November. There still exists a roomful of papers relating to the case, held by the Police, who can provide better security than I can. The question of ownership of them was considered, but no final decision reached. I rather hope that I will not be asked to look through them since I have under my immediate control nearly everything I need for present purposes.
2. I am sure you were right that no thought was given to the consequences of the amendments, but it is always very easy to be wise after the event.
3. In my view, I opened an Inquest and accepted sufficient evidence for me to comply with Section 17A(2) although, interestingly, we discovered that the 1953 Act was not amended to bring it in line with an adjournment under Section 16(4) of The Coroner's Act. The Inquest was therefore adjourned under Section 17A(1) at the second hearing on 14 August. The third hearing was convened in order to make a decision on the possible resumption of the Inquest after any relevant submissions had been made.

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4. In the event, as appears from the transcript, the decision not to resume was made. The answer to the question therefore appears to be that an Inquest was opened, but under the statutory provisions, a decision was made not to resume it. The questions under Rules 36(1)(a) and 36(1)(c) had been answered and insofar as it relates to the medical question, Rules 36(1)(c) had also been dealt with at the earlier hearing. At that hearing the question of resuming the Inquest would not have been dealt with because that question cannot be answered until after the report is received.
5. You raise a very interesting question as to Section 13 and I am not really sure that I can come to any conclusion as to whether an application for a fiat should be under Section 13(1)(a) or Section 13(1)(b). It would be quite possible to argue that either could apply, but I am inclined to think that if either does, Section 13(1)(a) is more likely to be relevant, although, clearly, the interpretation of the word "ought" is critical.
6. As to the Section 8 query, had there not been an Inquiry by Lord Hutton, I would have identified, largely through my agents the Police, the witnesses that I should hear, either in person or under the provisions of Rule 37. Although I have seen material that Lord Hutton did not, I do not think that I would have called any witnesses that Lord Hutton did not call, although I am sure I would not have called all of the witnesses he did call. If I may make a personal comment, I have many years experience as a Coroner and shorn of the publicity, an Inquest of this sought would not be expected to last more than half a day.
7. As previously advised by you, I have not studied the Memorial in detail but I have looked at the paragraphs you mention.
8. There is no statutory provision for pre-Inquest proceedings. They were very rare in 2004, although have become more common since. Since they are not a creature of statute, they can take many forms and indeed, it could be convincingly argued that the hearing on 16 March 2004 was a Pre-Inquest hearing.
9. The sort of matters that I try to deal with when holding a Pre-Inquest meeting are the identity of witnesses and whether they should be called in person, the date and likely length of the Inquest. The scope of the Inquest may also be considered. If there is any question of the identity of properly interested persons, that also would be a matter to be considered. I made it clear before the proceedings in March 2004 that I was likely to regard any person or organisation that had been represented before Lord Hutton as a properly interested person and I *enclose a copy of the note that was circulated to those concerned. In the event, only the Kelly family and government departments were represented. During the course of the proceedings, I invited others who claimed to be interested persons to come forward and I had previously made it clear that I would be doing so. In the event, nobody put themselves forward and so the question as to whether or not they qualified did not arise. It not is impossible to consider the hypothetical question in the absence of argument.

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10. I consider that "interest" should be construed in what might be called the "proprietary" sense rather than the "curiosity" sense. I did not use the term *eiusdem generis*, but I think that principle probably applies to the rule. I really cannot understand how Dr. Kelly's dental records have any relevance. They are sometimes used as an aide to identification but that would certainly not apply in this case.
11. I think it most unlikely that I would have sat with a jury. None of the specific examples under Section 8(3) applied, and I would not have considered that Section 8(3)(d) was of any relevance, although after the decision in the Princess of Wales Inquest, I might be less confident of this view, however, as in many aspects of that Inquest the phrase "On the facts" comes to mind.
12. All the matters referred in paragraph 22 of the Memorial would be relevant and would largely have been covered by Dr. Hunt, Dr. Allen, the Police witnesses, in particular, Detective Superintendent Young, along with evidence as to the finding of the body; a matter which I would have had to have considered would be whether Dr. Kelly died where he was found. Evidence from the first finders of the body might be an exception in paragraph 6, but largely because of allegations that have been made after March 2004.
13. Paragraph 36 rather begs the question as to who are a properly interested person, but the Rules use the word "examine" in paragraph 20(11), "question" in paragraph 20(1)(b), "examine" in paragraph 21 and "answer" in paragraph 22. The expression "cross examine" is not used for a very good reason in that there are no parties to an Inquest, the procedure is inquisitorial rather than adversarial and I think the use of the expression "cross examined" rather illustrates that the Memorialist may not understand the process. Without knowing what questions would have been raised, it is impossible to assess the impact of Rule 36, which deals with the question of relevance.
14. I do not think I can say that an Inquest is "better" (or worse) than an inquiry, it is like comparing apples and pears. In this instance, the scope of the inquiry was far wider than an Inquest would have been, although there are of course similarities in the process.
15. Whilst writing, I think I should mention Rule 37 (A). This allows the Coroner to admit the findings of a Public Inquiry in evidence and in contrast to Rule 37, there is no provision for objections.
16. As to your penultimate paragraph, for very good reasons, Lawyers and, in particular, Judges (and Coroners), are very reluctant to consider hypothetical questions. However, I wish to assist you so far as I can, and for that reason have replied to your letter fairly fully, although you should of course bear in mind that many of the questions are indeed hypothetical.

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17. As to your final paragraph, I realise that this letter might get into the public domain. In the event that this becomes likely, I think it would be as well if we were to meet, and perhaps we should meet anyway. I will try to telephone in a few days' time.
18. You will be aware that under Rule 37(A), the findings of a Public Inquiry may be admitted as documentary evidence and there seems to be no provision for any person to object to this being done. I assume that the "findings" of the Public Inquiry would be the Hutton Report in its entirety.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'N.G. Gardiner', written over a horizontal line.

N.G. GARDINER
H.M. CORONER FOR OXFORDSHIRE
*Enc. (to follow),