



Neutral Citation Number: [2021] EWHC 3468 (Admin)

Case No: CO/20/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/12/2021

Before :

LORD JUSTICE WARBY
MR JUSTICE SAINI
and
HIS HONOUR JUDGE TEAGUE QC
Chief Coroner of England and Wales

Between :

(1) VALERIE EARL
(2) JOHN EARL

Claimants

- and -

HER MAJESTY'S SENIOR CORONER FOR EAST
SUSSEX

Defendant

- and -

CHIEF CONSTABLE OF SUSSEX

Interested Party

**Stephen Kamlish QC and Christopher Williams (instructed by Wells Burcombe LLP) for
the Claimants**

The Defendant did not appear and was not represented

George Thomas (instructed by Weightmans LLP) for the Interested Party

Hearing dates: 13 December 2021

Approved Judgment

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Mr Justice Saini:

1. This is the judgment of the Court, to which all its members have contributed.

Introduction

2. This is an application for an order under section 13(1)(c) of the Coroners Act 1988 (“the 1988 Act”) quashing the inquisition on the inquest of 27 July 1989 (“the Inquest”) into the death of Jessie Victoria Earl (“Jessie”). The application is brought by Jessie’s parents, Valerie and John Earl. The hearing was conducted by CVP. At the conclusion of the hearing, we announced that, for reasons that would follow, we would quash the inquisition and direct a new investigation. These are our reasons.
3. Jessie went missing on 15 May 1980. Her skeletal remains were found some 9 years later on 25 March 1989 in an area of thick gorse bushes at Beachy Head in Sussex. At the Inquest, the then Coroner for East Sussex (Eastern Division), Mr David Wadman (“the Coroner”), sitting alone, concluded that the medical cause of death was unascertainable and recorded an open verdict.
4. Jessie’s parents have always strongly disagreed with this open verdict. Their view at the time of the verdict, a view maintained to this day, is that their daughter Jessie was murdered. They feel that the Coroner’s verdict was against the evidence and followed an incomplete and seriously flawed police investigation. The suggestion that Jessie could have died as a result of anything other than an unlawful killing has understandably caused considerable anxiety to them. They have continued for many years to press for the verdict to be reopened.
5. By *Fiat* issued on 11 November 2020, Her Majesty’s Attorney General authorised Valerie and John Earl under section 13(1) of the 1988 Act to make this application challenging the Inquest.
6. The primary basis for the Claimants’ application to the Divisional Court is material derived from a Sussex Police investigation between 2000-2001 known as Operation Silk. That was a “cold case” investigation into Jessie’s death that detectives from that force commenced of their own motion. On concluding this investigation, the Senior Investigation Officer (SIO), Detective Chief Inspector Steve Dennis (“DCI Dennis”), said that he was in no doubt that Jessie had been murdered. The report which summarized the findings of the investigation has been referred to as “the Silk Report” before us.
7. Although the Claimants put their case in a number of different ways, the overriding theme is that the 2000 investigation revealed a serious insufficiency of inquiry by both the police and the Coroner. It is also argued that there were irregularities in the proceedings before the Coroner. The essence of the application is that the Coroner wrongly recorded an open verdict in circumstances where an unnatural cause was clearly more likely than a natural one and where a verdict of suicide could be completely ruled out. It is accordingly submitted that the inquisition should be quashed, and a new investigation directed.

8. The Defendant is Her Majesty's Senior Coroner for Sussex, Mr Alan Craze, a successor to Mr Wadman. Mr Craze has indicated that he does not oppose or support the Claimants' application to quash the inquisition and is content to let the Court decide the matter. He has not appeared by Counsel. As we describe further below, the conclusions in the Silk Report were presented by the Sussex Police to Mr Craze in 2000 but he declined at that time to apply for a fresh inquest.
9. The Chief Constable of Sussex is an Interested Party in these proceedings. She takes a neutral stance and does not oppose the application for a new inquest. The Chief Constable does not seek to depart from the historic view expressed in 2000 by DCI Dennis in the Silk Report that Jessie was murdered. The Chief Constable has also served evidence in which the current SIO charged with the investigation, Superintendent Emma Heater, has made clear that the view of the force remains that Jessie's death should be regarded as a case of murder and the case remains open.
10. In the course of these proceedings, the Chief Constable has provided substantial additional disclosure of materials from Operation Silk. The Chief Constable has appeared by Counsel who has provided helpful submissions on the law and certain aspects of the facts.
11. We were also greatly assisted by the concise oral and written submissions presented on behalf of the Claimants by their Leading and Junior Counsel.
12. The Claimants' pleaded case advances 5 grounds for the application which are described as follows: (1) New Facts or Evidence; (2) Insufficiency of Inquiry; (3) Irregularity of Proceedings; (4) Necessary or desirable in the interests of justice for a new inquest; and (5) The possibility of a different verdict.
13. These grounds overlap in substantial respects and as we said at the hearing, we considered grounds (2) and (3) raised essentially the same points. It also appeared to us that underlying these grounds was in essence a direct attack on the reasonableness of the verdict. Grounds (4) and (5) are more properly issues concerned with relief if the earlier grounds are made out. Ground (1) principally concerns the potential new evidence which may emerge if Jessie's remains are exhumed. As we explain below, Ground (1) raises matters which it is more appropriate for the coroner to consider at the new inquest which we will direct.
14. The Attorney General gave the Claimants authority to bring this challenge before the decision of the Supreme Court in *R (Maughan) v Her Majesty's Senior Coroner for Oxfordshire* [2020] UKSC 46 ("*Maughan*") and there has been argument before us as to the effect of that decision. Nothing turns on that case but when the matter returns to a new coroner, they will need to apply the law as declared by the Supreme Court.
15. The Claimants confirmed that they do not rely on the *Maughan* case in support of their arguments that a new inquest should be ordered. We accordingly say nothing further about that case.
16. We will begin with the facts. Our summary is based on the contemporaneous documents, the witness statements and what appears in the Silk Report. At certain points in the narrative there are gaps in the evidence, but we will proceed on the basis

of the inferences which we consider it appropriate to draw. Given the length of time since the original Inquest, there are understandable gaps in the record.

Jessie's disappearance

17. Jessie was born in Woolwich on 16 December 1957. She was last seen alive on Thursday 15 May 1980 at her student home, No. 10 Upperton Gardens, Eastbourne, East Sussex. At the time of her disappearance she was aged 22 years and studying at Eastbourne College of Art and Design.
18. On Wednesday 14 May 1980, Jessie called her parents at their home in South London, from a telephone box on the seafront in Eastbourne. Jessie had that week received good results in a college assessment and was looking forward to the visit of a pen friend from Australia. She told her mother she would be home on Friday 16 May 1980.
19. Jessie did not come home on the Friday night. Her parents thought she must have missed the last train. As her mother Valerie says “But in the morning, there was still no phone call. So, I went shopping and came back, and I just thought, there’s something not right. I said to John, *I’m going to go down to Eastbourne*”.
20. Valerie Earl gained entry to Jessie’s bedsit with the assistance of another tenant on Saturday 17 May 1980 and reported Jessie as missing to the police.
21. The police searched the bedsit and examined for blood and fingerprints. They found no blood or relevant fingerprints in the room and there were no signs of a struggle. The bedsit had signs of Jessie having cooked and consumed a meal. There was extensive news coverage, but searches of the area proved negative.
22. As explained by Mr Earl, the investigating officer’s assessment was that Jessie had obtained a passport and had gone abroad. Mr Earl informed the police that she did not have her passport and was told by the officer she must have obtained another one. The police refused the Earls’ request that the police make a public appeal for information and the family, at their own cost, arranged for the printing and distribution of leaflets. The attitude of the police seems to have been that this was at most a missing person case, but it was more likely that Jessie had simply left the country.
23. It is of some significance that at the time she disappeared in 1980, Valerie Earl gave the police information as to a middle-aged man hanging around Jessie and giving her perhaps unwanted and inappropriate attention. She made a witness statement in this regard on 28 May 1980 in which she said:

“Jessie last visited us at home on Friday 2nd May 1980 and staying at home until Tuesday 6th May 1980 when she returned to Eastbourne early morning. During this time she appeared her normal self and very happy. My husband John bought her a music book and Jessie spent most of the weekend playing the piano. At some stage during this weekend she stated that she had met a middle-aged man on the downs during one of her walks. She stated that she had talked to him and that he was a married man but separated and had four children. She then said

something like “Oh I wish men would be prepared to be just friends”. I didn’t ask her any questions but gained the impression from that remark that possibly the man had wanted more than just a casual friendship. On Monday 5th May 1980 Jessie stated that she may return to Eastbourne that evening but said something to the effect that she would leave it later than usual so that if “he” was passing through Eastbourne on “his” way to Brighton and knocked on her door she would be out. I took this to mean that she was referring to the middle-aged man. In fact Jessie did not leave that evening but left early the following morning to catch a train to Eastbourne”.

24. There is no evidence that the police followed up on this potential lead.
25. There were no developments for some 9 years and one cannot begin to imagine the distress suffered by Jessie’s parents over this time.

Jessie’s skeletal remains are found

26. On 25 March 1989, Jessie’s skeletal remains were found in dense undergrowth by a member of the public, Gordon Cross, who had gone into an area of thick undergrowth to recover his daughter’s kite. The location was above Beachy Head in an area locally known as *Well Combe*. Mr Cross had substantial difficulty in accessing this site to recover the kite. The evidence is that it was a virtually inaccessible area.
27. Whilst attempting to retrieve the kite, Mr Cross came across a human skull which was reported to a Mr Ferguson in the vicinity. Both remained at the scene until the police arrived.
28. None of Jessie’s clothing or personal items were found with her remains except for a brown Marks & Spencer bra which was later identified as belonging to Jessie by her mother, Valerie. The bra was tightly knotted. This is a matter of some significance, as we explain below.
29. A post-mortem examination was carried out by a pathologist, Dr Rouse, on 28 March 1989. Dr Rouse recorded the following matters:
 - (1) He considered the remains were likely to be of female origin.
 - (2) Jessie’s dental records matched the dental structure of the skull and jaw.
 - (3) The skull showed no evidence of fracture but there was some brown staining over the right temporo-parietal bone which might have been blood staining.
 - (4) As to the brown bra which he noted was knotted with a loop, he that in his opinion *‘both wrists of the individual may have been tied together by this brassiere’*.
 - (5) He determined the cause of death was *‘unascertainable.’*

30. On the same day a Dental Surgeon and Forensic Odontologist, David Foulds, compared dental records against the upper and lower jaw, and confirmed the remains were those of Jessie.
31. Dr Clarke, Jessie's GP, made a witness statement stating that Jessie had no known medical conditions or ailments which would have caused or contributed to her death.

The police investigation of 1989

32. Following the discovery of Jessie's remains, a 'short term' police investigation commenced (this was the description used by the police in the document). Although the inquiry into the discovery of the skeletal remains was started immediately, on 25 March 1989, an incident room was not set up at Eastbourne Police Station until 29 March 1989. A policy decision was made by the Detective Chief Superintendent on 4 April 1989 to open a 'mini-incident' room and keep enquiries restricted to a small team. The SIO directed no overtime was to be worked.
33. The SIO said that "*we will solely deal with evidence; we will not speculate to the media in any way that this is a case of murder....*" and "*at this stage, the discovery of the skeleton will not be crimed as possible murder.*" PS Capon was seconded to the 1989 investigation team and her evidence is that the SIO "*...insisted that officers on the inquiry were not to refer to it as murder*". PS Capon later became DS Capon and was involved in the 2000 investigation and we shall use that designation below.
34. The last internal police policy document dated 27 April 1989 confirms that outstanding 'actions' were reduced to a bare minimum. By 28 April 1989, about 1 month after it began, the investigation was closed and officers were stood down. No crime was recorded as having been committed.
35. DS Capon's evidence is that the investigation did not pursue all lines of inquiry, and a policy decision was made by the SIO to close the investigation for reasons of which she had no knowledge. We do not have any documents indicating why the investigation was closed. DS Capon's position in 1989 was that Jessie had been murdered and she was upset the investigation was closed. The evidence is that 225 lines of inquiry/actions were raised by the team and at least 103 of these were never completed before the SIO closed the investigation.
36. Because the SIO decided not to record that any crime had been committed (let alone that homicide was in issue) the force's policy dictated that certain key pieces of evidence in the case, notably the bra and soil samples collected from the location of the body, were destroyed after the 1989 police investigation was closed.
37. It was not disputed before us that there appears to have been a rather rapid and rudimentary investigation in 1989. Indeed, the Chief Constable's Counsel went as far as to submit that the 1989 investigation was "flawed from the start" because the SIO discounted the possibility that Jessie was murdered from the beginning. That was a wholly appropriate concession.
38. Before turning to the Inquest, it is important that we record that certain expert evidence on knots from Geoffrey Budworth had been obtained by the police in 1989 as part of their investigation. Mr Budworth is an eminent and highly qualified expert in the art,

craft and science of knots of many years standing. He is a consultant on knotting matters to the National Maritime Museum and British Museums as well as police forensic science laboratories. He is the author of two knot books including the textbook “Knots & Crime” published by the Police Review Publishing Company Ltd. He also completed 25 years’ service in the Metropolitan Police, leaving in 1981 with the rank of Inspector.

39. In summary, Mr Budworth’s findings in his report were:

- a) It was clear that Jessie’s bra had been tied with a common granny knot in such a way that the left-hand bra cup formed a loop of material about 30-35cm diameter.
- b) The granny knot is considered the most common knot found at scenes of crime worldwide and requires little skill in performing.
- c) There was a possibility of foul play, although he cannot afford any reason why the bra was knotted or the use to which it was put.
- d) The knotted bra was similar to impromptu handcuff contrivances commonly found on victims at scenes of crime.
- e) The knot was found to have been very tight and at some point had been subjected to considerable force to the extent that a pointed implement was required to loosen it. We note that he stated that fingers would have been insufficient to loosen the knot.
- f) The tightening of the knot was not down to prolonged exposure. It was more likely the result of the knot being tied tightly, or subjected to struggling, or loaded with a weight (e.g. suspension or dragging).

The Inquest

40. The Inquest into the death of Jessie was held at Eastbourne Law Courts on 27 July 1989.
41. Prior to the Inquest, the Claimants had made written submissions to the Coroner arguing that an open verdict would be unsatisfactory and that an unlawful killing verdict was appropriate in circumstances where natural cause and suicide could be ruled out.
42. The list of witnesses whose evidence was read into the record or called before the Coroner is as follows: Dr Rouse (pathologist), Mr Foulds (forensic odontologist), Valerie Earl, Ivy Selby (Jessie’s landlady), WPS Chawner (the officer attending the scene when the remains were discovered), DI Cornwall (part of the 1989 investigation team), and DS Capon.
43. Notable absentees from this list of witnesses are Mr Budworth, the knot expert, and Dr Clarke, Jessie’s GP, who stated that she had no medical conditions or ailments that could have caused or contributed to her death, nor any mental health problems. It does not necessarily follow that their evidence was not provided to the Coroner. Coronial practice and record-keeping have changed a good deal since 1989. What we can say, however, is that this was plainly highly significant evidence. If it was provided to the Coroner, it was not recorded nor was any proper account taken of it by him.

44. We have a copy of DI Cornwall's witness statement for the inquest. It is an incomplete account of material facts. It makes no mention of the discovery of the tightly knotted bra (and Mr Budworth's views on that matter), or the fact that no other clothes belonging to Jessie were found with her remains. It makes no mention of the fact that murder might be suspected. Of most concern however is the fact that DI Cornwall said in his statement to the Coroner that "all possible lines of inquiry were pursued". That was plainly not accurate. We refer to the evidence at [35] above. A substantial number of lines of inquiry/action points had not been completed by the time the SIO decided to close the investigation.
45. Valerie Earl's evidence at the Inquest was to the effect that Jessie's state of mind was happy at the time of her disappearance. There were no reports from those who knew her of anything suspicious or unusual about her personal circumstances. No evidence of suicidal ideation was present. She was in good general health and a physically active person. It was also noted that Jessie was not known to have any health problems other than allergic asthma and eczema. Her personal diary revealed no concerns about her mental well-being. There were no suicide messages or messages expressing unhappiness or lack of self-worth. To the contrary, there were entries in the diary making reference to diarised commitments beyond her disappearance, suggestive that the taking of her own life was not contemplated.
46. DS Capon gave oral evidence to the Coroner. She said that she was in no doubt that Jessie met her death unlawfully. It was her firm view that Jessie had been murdered. As we have recorded, this was not however the view of the SIO who had closed the investigation without recording that any crime had been committed.
47. The evidence is that the Coroner orally announced at the time he recorded his findings on the Inquisition Form that he did not consider Jessie's death to have resulted from suicide and that he felt that the evidence pointed to an unnatural cause but believed that the evidence before the court was insufficient to identify a cause of death with any precision. None of these points were however recorded in any official manner.
48. The Coroner recorded on the Inquisition Form the following limited matters in boxes 3 and 4:

"3. Time place and circumstances at or in which injury was sustained: The deceased was a student at Eastbourne Art College and was last seen alive by her landlady during the morning of the 15th May 1980. She was reported missing by her mother and then made the subject of extensive police enquiries. At 1.30 pm on Saturday 25th March 1989 a member of the public found a number of bones in dense scrubland on the Downs at Beachy Head. A dental examination was carried out and confirmed identity.

4. Conclusion of jury/coroner as to the death: Open Verdict."

49. Following the Coroner's open verdict Mr Earl made the following statement to the press:

“We fully understand the coroner's reason for arriving at this verdict, but it is clear to us and, we believe, to the police that Jessie was murdered -or at least that she was unlawfully killed and her body deliberately concealed. The complete absence of any trace of clothing -not even a button - with the single exception of a tightly knotted bra which seems to have been used as arestraint, can only lead to one conclusion.”

50. It is fair to observe that at this stage that the available evidence all appears to have pointed to Jessie having been unlawfully killed. There was in our view substantial justification for Mr Earl's views about the verdict, which he expressed in courteous and measured language.

The second police Investigation – Operation Silk 2000.

51. Unsurprisingly, the Claimants continued to be dissatisfied with the verdict. Given these concerns and as part of a “cold case” policy initiative, a fresh investigation was opened on 10 January 2000 by the Sussex Police Force. This was led by DCI Dennis as the SIO and was called Operation Silk. The operation culminated in the Silk Report. The Sussex Police began this investigation as part of a policy to look at “cold cases” in the light of new DNA and investigative procedures. DS Capon (who had been involved in the 1989 investigation, as we have noted above) was seconded to Operation Silk.
52. The Silk Report questioned the sufficiency of the 1989 investigation and for the first time the police officially recorded Jessie's death as being the result of her murder.
53. The family of Jessie originally had sight of only a redacted version of the Silk Report. The Silk Report and documents referred to in it have now been disclosed in their entirety, following an interlocutory hearing. The Silk Report is a detailed and impressive document. It is clearly the product of extensive work by DCI Dennis and his team. The main body of the final Silk Report was an internal document first prepared by DS Capon which was then supplemented by DCI Dennis to create the final version
54. In broad terms, the Silk Report dealt with two main issues: (1) the insufficiency of the 1989 police enquiry and (2) the new evidence. We will summarise the contents on each aspect.

Insufficiency of the 1989 police inquiry

55. The authors of the Silk Report concluded there was a serious error in the original 1989 police investigation not treating Jessie's death as homicide from the very start. It was said that this initial and unjustified conclusion had a significant impact on the nature and scale of that investigation.
56. The authors noted that although Dr Rouse concluded that Jessie's cause of death was ‘unascertainable’, he had remarked that both wrists may have been tied together by the

bra. When considered together with the expert opinion of Mr Budworth, the fact that there was nothing to suggest any peculiar or unusual features of Jessie's lifestyle, and the fact that no other clothes of Jessie were found, the authors of the Silk Report observed that it was difficult to see how this did not prompt a conclusion by the force and the Coroner that Jessie's death must have been unlawful.

57. It was also noted that Jessie was not known to have any health problems other than allergic asthma and eczema. Her personal diary revealed no concerns about her mental well-being. The Silk Report identified the rapid conclusion of the 1989 investigation and the failures to complete inquiries which had been opened. We have summarized these matters above.
58. It is fair to observe that the Silk Report does not hold back in criticizing the limited extent of the 1989 investigation. It also notes that key evidence in the case, notably the bra and soil samples collected from the location of the body, were wrongly destroyed after the 1989 police investigation was closed. That destruction is said to be because the death of Jessie was not classified as a homicide.

Further investigation

59. As described in the Silk Report, the 2000 investigation used modern day scientific techniques to review available physical exhibits, re-trace and identify witnesses, interview suspects and to obtain new evidence generally. Although some evidence had been disposed of, a great deal of paperwork, statements and actions were retained and reviewed by DCI Dennis' team. Mr and Mrs Earl had also retained a substantial amount of material which they provided to DCI Dennis' team.
60. Within the Silk Report, the new lines of enquiry identified included the following action points: (a) to examine Jessie's teeth for any sign of 'The Pink Teeth Syndrome' (a term used to refer to signs on the teeth of oxygen starvation); (b) to examine Jessie's nasal passages to establish the type of pollen contained inside them to compare with the pollens found at the scene of her remains (to assist in determining where she may have died). The Silk Report does not describe the outcome of the "Pink Teeth" and "Pollen" lines of investigation, and we will return to these points below when we address Ground 1. However, the evidence of investigative reporter Mark Williams-Thomas is that when he interviewed DCI Dennis on 28 April 2018 the officer said this:

"I wanted to see whether we could find evidence she died where we found her so we did tests on her nasal passages and found 17 pollens in her skull, which suggests her last breath was in the Downs so she must have died in that location.

Q. That's significant evidence?

A. From the fact that the pollens in her nasal passages - the teeth and apparently with starvation of oxygen the inside of teeth go pink and the doctor we spoke to indicated Jessie's teeth had the pink teeth syndrome that suggests she was starved of oxygen. ... That all came out of the 2000 review, they couldn't have done that in 1989."

61. The detectives on Operation Silk did not attempt to obtain Jessie's DNA profile from the skeletal remains for comparison with DNA on items collected from other homicide investigations. This is also a matter to which we will return when addressing Ground 1.
62. The Coroner's 'open verdict' was reviewed and the authors of the Silk Report made a number of observations on the evidence in ruling out death by natural causes or suicide. Overall, there was no doubt in the officers' minds in the Silk investigation that Jessie had been in some way restrained by the use of her own bra, and possibly even tied to the tree next to where the bra was found. The authors were firm in their view that Jessie was murdered. That remains the view of the current SIO, as we have noted above.
63. Operation Silk also employed the services of Lee Rainbow, a Senior Behavioural Crime Analyst who prepared a Profiler's Report in respect of Jessie's disappearance. We have considered a full version of the Profiler's report, which was disclosed in the course of these proceedings.
64. The Profiler indicated a willingness to give evidence at a new inquest. In broad summary, the Profiler's Report concludes: (i) it was unlikely that only Jessie's bra would have remained intact over the course of 9 years ; (ii) as such, it was likely that Jessie's clothing was removed by a third party with the bra being left behind; (iii) the fact that the bra was left behind and knotted was likely to mean that the bra served a purpose in the commission of an offence against Jessie with the three possibilities of being used as a restraint, a gag or ligature; and (iv) using statistical analysis, there was a "high probability" that Jessie was strangled by her own clothing, and that she was not moved after death and therefore was likely to have been murdered at, or very close to, the body dump site.
65. The Chief Constable has also recently disclosed a number of further reports. These are from Ian Hill (a Senior Lecturer in Forensic Medicine) dated 28 February 2000 (relevant to the Pink Teeth issue), and Dr Wiltshire (a Palynologist) dated 15 September 2008 (relevant to the Pollen Issue). These are relevant to Ground 1.

The Coroner is informed of conclusions of Operation Silk

66. As indicated above, on the conclusion of Operation Silk, DCI Dennis invited Mr Craze (the current coroner) to apply for a new inquest. He declined. In this regard our attention was drawn to a statement made by DS Capon who had a meeting with Mr Craze on 25 April 2000. She says he was "totally sympathetic" to the wishes of Mr and Mrs Earl in their desire for a new inquest and that "it was his belief, on the evidence put before him, that Jessie had undoubtedly been murdered, however he stated that the burden of proof for a verdict of unlawful killing ... [was] virtually the same as in a criminal court of law, i.e. it needed to be proved beyond all reasonable doubt". This account has not been disputed by the Defendant.

Jessie's remains

67. Following the discovery of Jessie's remains in 1989 her family donated them to Guy's Hospital in accordance with an expressed wish during her lifetime to donate her body to medical science. Her skeletal remains were not used for medical science and were securely stored by the hospital which allowed the Silk investigation to examine them in 2000.
68. Following the conclusion of Operation Silk Jessie's remains were interred in a child's coffin at Eltham Cemetery and Crematorium. The Claimants have been informed that the coffin was lined with zinc and the bones were wrapped in plastic on the advice of the police in order to preserve evidence for any future investigation. Subject to an order for exhumation, Jessie's remains are available for scientific analysis.

Legal framework

69. Section 13 of the 1988 Act provides as follows:

“(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 or an investigation which ought to be held; or

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

(2) The High Court may—

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

(i) by the coroner concerned; or

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

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

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

(Our underlined emphasis).

69. Although section 13(1)(b) provides a non-exhaustive list of circumstances (those we have underlined) which might cause a court to conclude a new inquest is necessary, the

ultimate issue for resolution by the Court is always whether “*it is necessary or desirable in the interests of justice*” that another inquest should be held. The “*or otherwise*” ground is capable of capturing situations such as an unreasonable verdict or the results of a new police investigation.

70. Although a number of authorities were cited to us, there was no dispute as to the legal principles.
71. The comprehensive guidance provided in *In Her Majesty's Attorney General v Her Majesty's Coroner of South Yorkshire (West), Her Majesty's Coroner of West Yorkshire (West)* [2012] EWHC 3783 (Admin) is a useful starting point.
72. In that case, Lord Judge CJ observed as follows:

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

73. The Divisional Court further explained that section 13 is not concerned with problems with the coronial process, unless the process adopted at the original inquest has “caused justice to be diverted or for the inquiry to be insufficient.” Under well-established principles, it is not a pre-condition to an order for a further inquest that the court should anticipate that a different conclusion from the one already reached will be returned. Even when significant fresh evidence may serve to confirm the correctness of the earlier conclusion, it may sometimes be desirable for the full extent of the evidence which tends to confirm the correctness of the conclusion to be publicly revealed.

74. For the purposes of section 13 of the 1988 Act “*new ... evidence*” is evidence which was not available at the time of the inquest, would have been admissible had it been available, is credible and relevant to an issue of significance in the inquisition and might have made a material difference to the verdict recorded at the original inquest: *Jervis on Coroners* 14th Edn. 19-14 and *Re Fletcher* (1992) 156 JP 522 DC.
75. In the case of new evidence where the reviewing court is unable to fully evaluate the extent and effect of the proposed evidence the *possibility* of a different conclusion at a fresh inquest has been said to be enough: *R. Cardiff Coroner ex p Thomas* [1970] 1 WLR 1475 per Lord Parker CJ 1478 G.
76. It has also been said that factors of central importance are an assessment of the *possibility* (as opposed to the *probability*) of a different verdict, the number of shortcomings in an original inquest, and the need to investigate the matters raised by new evidence which had not been investigated in the original inquest: *R (Sutovic) v HM Coroner for Northern District of Greater London* [2006] EWHC 1095 (Admin) at [54]-[55].
77. The question whether there has been an insufficiency of inquiry is fact-specific but examples would be an inquiry which leaves too many questions unanswered and too many issues unresolved: *R v HM Coroner for Coventry ex parte O’Reilly* (1996) 35 BMLR 48 at 53. Within this form of error one can include a failure to seek obviously relevant evidence.
78. Where there is a challenge to factual conclusions by a coroner, a court may quash an inquest upon conventional public law unreasonableness grounds: *Jervis* at [19-12] and *McDonnell v West London Assistant Coroner* [2016] EWHC 3078 (Admin) at [28]-[29].
79. This is the traditional demanding test of irrationality. It should however be emphasized that a failure to take into account relevant evidence which points to a specific conclusion (or which rules out certain conclusions) can support a submission that the ultimate verdict was unreasonable. That is no more than an application of the public law principle that if the preponderance of the evidence points to a specific conclusion, it is a reviewable error if without explanation a coroner comes to a verdict wholly inconsistent with such evidence, applying the appropriate standard of proof.
80. A coroner, when required to hear an inquest, has the power to order exhumation of a body pursuant to s.32, Schedule 5 para 6, and section 32 of the Coroners and Justice Act 2009. Thereafter, the coroner may request a pathologist to conduct a post-mortem examination: section 14 of the 2009 Act.
81. In addition, we note that the High Court has a common law power to order exhumation after quashing a coroner’s investigation: *R v Saunders* (1719) 93 ER 452, and *Jervis* at [8-07]. In their pleaded case, the Claimants asked us to exercise this power, but the argument was not pressed at the hearing.

The Challenge

82. As we have explained above, Grounds 2 and 3 raise essentially the same complaint and need to be approached together. Underlying them is a challenge to the reasonableness

of the open verdict. The Claimants' arguments under these grounds all flow from the fact that in 1989 the SIO declared the death non-suspicious. They argue that this decision by the police, in their role of supplying evidence to the Coroner, "infected" the Coroner's inquest investigation with an insufficiency of inquiry and caused irregularity in the proceedings. We will not repeat the facts they rely upon in support of this submission because they are self-evident from our summary above.

83. The Claimants further put the Silk Report at the forefront of their case. They say this report brings together a number of matters of evidence which appear to have been ignored (or at least not fully appreciated) in the 1989 police investigation and the subsequent Inquest. They argue that when these pieces of evidence are put together, they present a compelling case of a potential unlawful killing (and certainly make such a verdict possible).
84. Leading Counsel for the Claimants argued that the nature and closure of the 1989 police investigation were dictated by what he called "strategic" decisions as opposed to mere mismanagement. As developed orally, the argument appeared to be that there was some form of bad faith or deliberate misconduct on the part of the police. As we said at the hearing, this was no part of the pleaded application which the Attorney General authorised by his *Fiat*. It also did not appear in the skeleton argument. The oral submissions were the first time this suggestion of bad faith was made. It is not open to the Claimants to run this case without having ever pleaded it.

Analysis and conclusions on Grounds 2 and 3

85. We begin by reminding ourselves that although section 13(1)(b) provides a non-exhaustive list of circumstances which might cause a court to conclude a new inquest is necessary, the ultimate issue for resolution by the Court is always whether "*it is necessary or desirable in the interests of justice*" that another inquest should be held.
86. With that test in mind, in our judgment there is a clear, and indeed, overwhelming case for a new inquest. We consider that not only was there an insufficiency of inquiry but also, and in any event, the open verdict of the Coroner was not reasonable under public law principles, even applying a criminal standard of proof.
87. Out of fairness to the Coroner, we record that he was not helped by a highly unsatisfactory and flawed police investigation. That did indeed infect all that came after. Applying the principles outlined in *Sutovic* (see para. [77] above), the Claimants satisfy the requirements for seeking a new inquest on multiple grounds.
88. In our judgment, two matters in particular clearly pointed to unlawful killing:
 - (1) First, the location of Jessie's remains was a virtually inaccessible area of dense thicket. It is not apparent that this factor was properly appreciated by the Coroner. This location was entirely consistent with someone, possibly her killer, wanting to conceal her body, knowing that in that location it was going to be difficult or impossible to discover. This location was not consistent with an accidental death.
 - (2) Second, the only item of clothing accompanying Jessie's remains was her bra. The Silk investigation team rightly found this to be highly persuasive evidence

that she did not die from natural causes. Jessie's bra had been deliberately tied in a loop and could have been used as an impromptu handcuff. This fact points clearly to the possibility that Jessie had been in some way restrained using her own bra, and possibly even tied to the tree next to where the bra was found (as suggested in the Silk Report). Mr Budworth's important evidence as the nature and type of knot he found in the bra was seemingly ignored by the Coroner (but we note also that the pathologist Dr Rouse also expressed the opinion that Jessie's wrists could have been tied together). The fact that only a bra and no other clothes were found was not consistent with an accidental death, such as Jessie having fallen when walking, as she often did, on the Downs.

89. The first and second points above point clearly to an unlawful killing unless there was evidence of some medical illness or possible suicide. In that regard, the position was as follows:
- (1) First, Dr Clarke, Jessie's GP, commented in his original statement in 1989 that Jessie had no known medical conditions or ailments which would have caused or contributed to her death. We note that Dr Clarke was not called to give evidence at the original inquest although the police had his statement. The Coroner evidently did not take it into account.
 - (2) Second, the evidence of Jessie's mental health and personal journal enabled one to rule out suicide. There were no suicide messages or messages expressing unhappiness or lack of self-worth. To the contrary, there were entries in the diary making reference to diarised commitments beyond her disappearance suggestive that the taking of her own life was not contemplated. The evidence is that Jessie was a person who loved life.
90. In our judgment, had there been a proper inquiry by the Coroner he could safely have ruled out medical causes, accident or suicide. Applying a criminal standard there was clearly a proper evidential basis and a compelling case for a finding of unlawful killing. Even applying a demanding irrationality test, in our judgment the open verdict was unreasonable.
91. However, in addition to the points above, in our judgment a new inquest is justified for the independent reason that two separate SIOs within the Sussex Police (DCI Dennis and Superintendent Heater) both express the firm view that Jessie was murdered.
92. We also note that, in part, the Silk Report relies upon the Profiler's evidence. That evidence is perhaps of a less convincing nature than the bare facts surrounding Jessie's history, her disappearance and discovery. The Profiler's report is based on statistical comparisons as opposed to direct evidence, but it is a relevant piece of evidence which supports the two SIOs' conclusions that Jessie was murdered.
93. The destruction of key evidence, in particular the bra, by the police underlines the need for the Court to do its best to put right an injustice for the family and to maintain public confidence in the coronial process by quashing the inquisition and allowing the coroner's inquest to pursue the remaining avenues of investigation into Jessie's death.

94. The Claimants have been the victims of a substantial injustice and are to be commended for the determination with which they have pursued justice over many years.

Ground 1: new evidence

95. As we indicated at the hearing, we did not consider it necessary for us to decide this ground given our other conclusions. In summary the Claimants rely upon what they call a number of “lines of new evidence” said to justify a fresh inquest.
96. First, they argue that DNA evidence from Jessie’s skeletal remains can be obtained for comparison with DNA profiles held on national police databases. Secondly, they rely upon recently disclosed reports concerning what were called the Pink Teeth and Pollen issues. The argument was that new evidence might emerge if Jessie’s remains were exhumed and examinations conducted in relation to DNA, the Pink Teeth issue and the Pollen issue.
97. In our judgment, it is appropriate for the coroner at the new investigation to decide whether there should be exhumation and pursuit of these scientific lines of inquiry. It may be that the coroner can come to a verdict without such inquiries being pursued. The recently disclosed reports are not, on their face, supportive of what DCI Dennis appears to have told Mr Williams-Thomas. We were not persuaded that an order for exhumation was necessary at this stage.

Relief

98. For the reasons given above, we will make the following orders:
- (1) The 27 July 1989 inquisition is quashed.
 - (2) We direct a new investigation into the death of Jessie Earl.
99. Given that the current coroner Mr Craze has already had an involvement in this matter, we direct that a different coroner must conduct the new investigation. That investigation should be commenced as a matter of urgency.