



## Statistics, Causation and probability of survival. A Question for the Jury?

### Case analysis: R (Chidlow) v HM Senior Coroner For Blackpool & Fylde [2019] EWHC 581 (Admin) (12/3/19)

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The Claimant applied for judicial review of the coroner's decision not to allow the jury to consider the question of causation following the death of his brother at the age of 38.

The Divisional Court determined that where there is credible evidence that relates to causation which can be accepted together with statistical evidence of survivability that could lead a jury to the conclusion that, on the balance of probabilities, the event or omission more than minimally, negligibly or trivially contributed to the death, it would normally be safe to leave the question of causation to the jury.

#### FACTS

Late on 27th July 2009, screaming and banging was heard within the home of Mr Bibby in Kirkby, Liverpool. A concerned neighbour called the police who attended the scene shortly before midnight. During the initial interaction Mr Bibby was said to have been threatening suicide and was laying on the floor and so an ambulance was called at 23:54. 16 minutes later (00:10), the ambulance service was called again as Mr Bibby had begun to fit. The case should have been re-prioritised by the call handler at that stage but was not. As a result there was further delay and 20 minutes later (00:30), Mr Bibby stopped breathing, went into cardiac arrest and was pronounced dead at the scene when the ambulance arrived 52 minutes after the initial call was made (00:46).

At the inquest, the ambulance service, NWS, acknowledged that a failure to upgrade the case in response to a second Police call had been an error. This failure meant that the case was not prioritised with an 8-minute response time which caused detrimental delay.

The numerous pathologists in the case failed to establish the actual cause of Mr Bibby's death.

However, a Consultant in Critical Care and Emergency Medicine (Dr Andrews) gave evidence that had he been treated by paramedics before he suffered cardiac arrest he would, on the balance of probabilities, have survived (an 80% chance). His analysis was based on his own clinical experience, medical evidence of Mr Bibby's condition and post-mortem findings and statistical analysis from numerous authoritative studies.



The Coroner ruled: *“it cannot be established, in my judgment, that the rendering of care would have prevented the death if we do not know what the cause of death was.”*

As a result, it was not safe to leave the question of causation to the jury and any reliance on statistics in relation to that was too speculative.

## JUDGMENT

The Court identified the following principles when coming to its conclusion (At para 52):

*52.1 In deciding whether to leave an issue of causation to a jury, a coroner should consider both limbs of the Galbraith Plus test. Causation should be left where there is evidence upon which the jury could properly and safely find that, on the balance of probabilities, the event or omission had more than minimally, negligibly or trivially contributed to death (as per Tainton). That is the crucial test.*

*52.2 In considering whether it is safe to leave such an issue to the jury, a coroner must have regard to all relevant evidence. In addition to evidence relating to the particular deceased and the circumstances of his or her death, that may include general statistical evidence drawn from population data such as the rate of survival in a particular group.*

*52.3 Such general statistical evidence alone is, however, unlikely to be sufficient. For example, even where the rate is over 50%, a raw survival rate for the group into which (without the relevant event or omission) the deceased is said to fall is unlikely to be sufficient because, without evidence supporting the proposition derived from the population data, a jury could not safely conclude that he or she would have fallen into the category of survivors. As Croom-Johnson LJ put it, being a figure in a statistic does not of itself prove causation.*

*52.4 In most cases, there will be other evidence as to whether the deceased probably would or would not have fallen in the group of survivors. Where there is apparently credible additional evidence of causation which, if accepted, together with the general statistical evidence could properly lead the jury to find on the balance of probabilities that the event or omission more than minimally, negligibly or trivially contributed to death then it will usually be proper and safe to leave causation to the jury.*

The Court concluded that the Coroner had erred in not leaving the question of causation to the jury in these circumstances. Whilst it was submitted that the statistical evidence was not tailored to Mr Bibby’s case and therefore too



speculative, the Court held that the Consultant's evidence was additionally based on experience and Mr Bibby's own medical evidence and post-mortem. Notably at paragraph 61 of the judgment, the Court held:

*The lack of any disease or infection in an apparently fit young man was a significant finding that Dr Andrews was entitled to take into account in order to determine in his professional opinion whether Mr Bibby was more likely than not to fall into the 80% of severely unwell patients who are expected to survive with prompt treatment.*

Put simply, in addition to the statistical analysis, the expert had clearly used other forms of evidence available to him to suggest, on balance, that with treatment at the right time, Mr Bibby would have survived. This was enough to satisfy the Galbraith Plus test.

The fact there had been no medical cause of death established was not a bar to the jury considering the relevance of the actions of the NWAS.

The record of inquest was quashed and a fresh inquest ordered.

#### RAMIFICATIONS

It is clear that, generally, statistical analysis cannot prove causation alone but can be useful when considered by experts in addition to evidence contextual to the specific case. It is also clear that when such evidence exists, a lack of medical cause of death does not bar the jury from considering causation.