KEITH MORTON KC

The use of safety information in judicial proceedings – a treasure trove or pandora's box.

Rogers v Hoyle [2015] QB 265, Mr Justice Leggatt:

"Given that the AAIB has great experience in investigating the causes of air accidents and has plainly carried out a thorough investigation in this case, **any rational person who wants to find out what caused the accident would regard the AAIB's views as relevant to that question**".

“Overall, the AAIB report contains a wealth of relevant and potentially important evidence which bears directly or indirectly on the issues in this action, including the central issue of whether Mr Rogers's death was caused by negligence on the part of Mr Hoyle …

If any non-lawyer was told that the law does not permit a court to have regard to the AAIB report when deciding how the accident was caused, I am sure that he or she would express astonishment at the suggestion. Unless the court is prevented from doing so, it would be foolish and blinkered to ignore such a valuable resource.”

“The potential value of this material to anyone seeking to establish the cause of the accident (**and any culpability therefore**) is obvious. The inspectors are experienced and expert individuals fulfilling a public duty to investigate air accidents and incidents for the purposes of preventing further accidents or incidents in future. **It is no part of their function to attribute blame or responsibility. There is, thus, no realistic possibility of their report being slanted so as to support or refute a claim that any individual or corporation is, or is not, at fault**. …

Chief Constable of Sussex Police v Secretary of State for Transport [2016] EWHC 2280 (QB), Mr Justice Singh:

"In my view it is **almost inconceivable** that statements made to the AAIB could properly be subject to an order for disclosure when the appropriate balancing exercise is done by this court"

R (on the application of the Secretary of State) v HM Senior Coroner for Norfolk [2016] EWHC 2279 (Admin)

Mr Justice Singh:

‘Finally, in my view, it is important to emphasise that there is no public interest in having unnecessary duplication of investigations or inquiries.’

Lord Thomas, the Lord Chief Justice explained what this meant in practice:

There can be little doubt but that the AAIB, as an independent state entity, has the greatest expertise in determining the cause of an aircraft crash. In the absence of credible evidence that the investigation into an accident is incomplete, flawed or deficient, **a Coroner conducting an inquest into a death which occurred in an aircraft accident, should not consider it necessary to investigate again the matters covered or to be covered by the independent investigation of the AAIB** …

It should not, in such circumstances, be necessary for a coroner to investigate the matter *de novo*. **The coroner would comply sufficiently with the duties of the coroner by treating the findings and conclusions of the report of the independent body as the evidence as to the cause of the accident … where there is no credible evidence that the investigation is incomplete, flawed or deficient, the findings and conclusions should not be reopened** …

HM Senior Coroner for West Sussex v Secretary of State for Transport and others [2022] EWHC 215 (QB):

"However, to seek disclosure, and then new expert opinions, merely because an Interested Person in the Inquests … has identified an individual who takes a potentially different view from the AAIB, would amount to precisely the reinvestigation cautioned against in *Norfolk* …"

Inquest Jury Findings in Croydon Tram Crash included:

“The tram driver became disorientated, which caused loss of awareness in his surroundings, probably due to a micro-sleep. As a result of which the driver failed to brake in time and drove the tram towards a tight curve at excessive speed”.

R v Transport for London, Mr Justice Frazer:

“However, one important point became clear during that trial. There was very little credible evidence by the close of the trial that [the driver] had fallen asleep at the controls, a theory that emerged very shortly after the disaster itself and one that has persisted for years. That theory was no longer supported to any appreciable degree by the prosecution experts, and was also contradicted by [other aspects of the evidence at trial …]”

“One specific matter relied upon by the defendants must be specifically addressed. **This is that the report into the disaster by Rail Accident Investigation Board (“RAIB”) should be an important part of the exercise to determine culpability.** I reject that for two reasons. **Firstly, the RAIB report itself expressly recites that it does not do this, and that is not the purpose of the report**. Secondly, the trial of Mr Dorris heard a great deal of evidence from a large number of experts who did not give evidence to RAIB. **As the trial judge, I am in a far better position, having conducted the trial and having seen and heard the witnesses give their evidence, than those who prepared the RAIB report.** I have some regard to the contents of the report but take everything into account in assessing culpability, particularly