

# EXPLORING HUMAN RIGHTS ISSUES IN INQUESTS AND PUBLIC INQUIRIES

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JUSTICE STUDENT HUMAN RIGHTS NETWORK ANNUAL CONFERENCE  
WORKSHOP 2

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## ARTICLE 2 ECHR

- Positive procedural obligations (*Edwards*)
- **General duty** – all deaths
- **Enhanced duty** – cases where possible violation of Article 2 ECHR? (*Amin, Re(L), Smith, Letts*)?

## ARTICLE 2 ECHR

*“to ensure so far as possible that the full facts are brought to light, that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others.” (Lord Bingham)*

*R v Secretary of State for the Home Department, ex parte  
Amin [2003] UKHL 51*

## AN ARTICLE 2 INQUIRY

- State initiated;
- Effective;
- Independent;
- Public scrutiny;
- Family participation;
- Prompt;
- Systemic failings.

*Jordan v UK* [2003] 37 EHRR 52

## THE INQUEST

- Coroners and Justice Act 2009
- Duty to investigate (Section 1)
- Inquest required in all cases not explained by post mortem or suspects death violent or unnatural (Section 6)
- Jury to determine facts in certain cases (Section 7)

## THE INQUEST

- Short or 'narrative' form findings/verdicts (Section 10, CJA)
- Preventing future deaths reports (Schedule 5(7), CJA)
- "Interested persons" include listed family members and others Coroner considers to have "sufficient interest" (Section 47, CJA)
- By default, inquests are open (Rule 11(3) of the Coroners (Inquests) Rules 2013)

## THE INQUEST

- Interested parties can participate in the inquest and ask questions of witnesses.
- Coroners have the power to compel evidence, but can make special provision for video-link, screening etc (See Rules 17-18)
- Can also require disclosure, but can redact (See Rules 13 – 16)
- Public may be excluded from an inquest in the interests of national security (Rule 11(4))

## PUBLIC INQUIRIES

- Statutory or non-statutory?
- Inquiries Act 2005
- Ministerial power of initiative (Section 1, IA 2005)
- Terms of Reference (Section 5, IA 2005)
- Appoints Chair and Members (Section 4, IA 2005)
- Chair may designate person(s) as “core participants” to the inquiry (Inquiries Rules 2006, Rule 5)
- Chair can compel evidence, including attendance of witnesses (Section 21, IA 2005)
- Chair reports to Minister, who then will lay before Parliament (Sections 24-25, IA 2005)



## PUBLIC INQUIRIES

- Both Chair and Minister may restrict public access to the inquiry and control the disclosure of material presented to the inquiry, including material considered damaging to national security or commercially sensitive (Section 19, IA 2005)
- Ministers retain the power to suspend or end an inquiry (Sections 13-14, IA 2005)
- The Minister may retain the power to redact an inquiry report before publication, if it serves the public interest (Section 25, IA 2005)

## LEGAL AID & REPRESENTATION

- Chairs have the power to make an order providing for compensation for participant and witnesses, including to cover legal expenses (Section 40, IA 2005)
- Post-LASPO, pre-inquest advice may be covered by legal aid but representation will not be unless covered by Section 10, Exceptional Funding
- *Letts v The Lord Chancellor & Ors* [2015] EWHC 402 (Admin) (20 February 2015)

## FURTHER READING

- Inquests: A Practitioners Guide (Third Edition), LAG, Thomas, Straw, Freidman, March 2014.
- [www.inquest.org.uk](http://www.inquest.org.uk)
- Report of the Select Committee on the Inquiries Act 2005, March 2014.

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