



Inquests: Article 2 Engagement and Effect



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1



Agenda

- 1. Sunyana Sharma: Article 2**
- 2. Susan Jones: Article 2 Effects**
- 3. Elisabeth Bussey-Jones: Practical considerations for Article 2 inquests**

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2



Article 2

By Sunyana Sharma

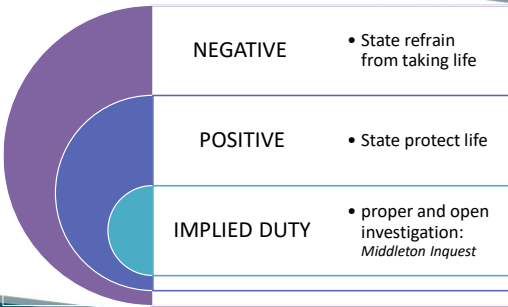
3

Article 2

1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which the penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - a. in defence of any person from unlawful violence
 - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained, and
 - c. in action lawfully taken for the purpose of quelling a riot or insurrection.



4



5

R (Maguire) v HM Senior Coroner for Blackpool Fylde [2020] EWCA Civ 738



- Professionals did not appreciate Jackie’s life threatening condition
- Failures in communication
- No advance plan in place to get Jackie to a hospital in the event that she refused to co-operate and admission was urgent.

6

The Divisional Court



COURT CONCLUDED: The Coroner was not wrong to decide that the procedural duty did not arise on the evidence deployed at the inquest.

DISMISSED

"We have reached the conclusion that the touchstone for state responsibility has remained constant: it is whether the circumstances of the case are such as to call a state to account...In the absence of either systemic dysfunction arising from a regulatory failure or a relevant assumption of responsibility in a particular case, the state will not be held accountable under article 2."



7

The Court of Appeal

Ground 1:

Erred in concluding that procedural obligation under article 2 did not apply. It was not a medical case such as *Parkinson*

Ground 2:

If *Parkinson* applied, wrong to conclude that the failure to have in place a system for admitting JM to hospital on 21/02/17 did not amount to a systemic failure.

Ground 3:

Erred in failure to take account of the wider context of premature deaths of people with learning disabilities, which was relevant to the application of article 2 in these circumstances.

8

Decision

1. There was no basis for believing that JM's death was the result of a breach of the operational duty of the state to protect life...therefore the procedural obligations on the State did not arise.
2. An operational duty is not automatically owed to those who are in a vulnerable position in a care home.
3. JM's case could be distinguished from a voluntarily a psychiatric patient who was a suicide risk (*Rabone*). JM was accommodated at the care home to be looked after by carers. She was not there for medical treatment.
4. State might be in breach of operation duty in 'two' exceptional circumstances:
 - a. where the state knowingly put an individual's life in danger by denying access to life-saving emergency treatment.
 - b. where a systemic dysfunction resulted in a patient being denied access to life-saving treatment in circumstances where the authorities knew or ought to have known of the risk but failed to take preventative measures.



9



Lopes de Sousa Fernandez v. Portugal (2018) 66 EHRR 28, paras 195 to 197

“... the dysfunction at issue must be objectively and genuinely identifiable as systemic or structural in order to be attributable to the state authorities, and must not merely comprise individual instances where something may have been dysfunctional in the sense of going wrong or functioning badly...The dysfunction at issue must have resulted from the failure of the state to meet its obligations to provide a regulatory framework in the broader sense indicated above.”
– *The Grand Chamber*

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10



<p>ARTICLE 2 applies</p>	<p><i>Rabone v. Pennine Care NHS Foundation Trust</i> [2012] 2 WLUK 249</p>	<p>ARTICLE 2 does not apply</p>	<p><i>Lopes de Sousa Fernandes v. Portugal</i> (56080/13) (2018) 66 E.H.R.R. 28</p>
	<p><i>Nencheva v. Bulgaria</i> (48609/06) (18 June 2013)</p>		<p><i>R. (on the application of Parkinson v. HM Senior Coroner for Kent</i> [2018] EWHC 1501 (Admin)</p>
	<p><i>Watts v. United Kingdom (Admissibility)</i> [2010] 5 WLUK 24</p>		<p><i>Dumpe v. Latvia</i> (71506/13) unreported (17 May 2019).</p>

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11



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12

Article 2 Effects

By Susan Jones

13

Article 2 Engagement Effects

Enhanced Inquest

- ✓ Independent, effective, sufficient public scrutiny, next of kin must be able to be involved.
- ✓ "By what means and by what circumstances the deceased came by his or her death"
- ✓ In Article 2 a narrative conclusion can include:
 - ✓ Factual findings and causes of death which are possible (i.e. more than speculative) but NOT probable
 - ✓ Judgmental words: "inadequate", "inappropriate", "insufficient", "unsatisfactory", "failure".



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14

R (on the application of Teresa Tainton) v HM Senior Coroner for Preston and West Lancashire & Lancashire Care NHS Trust [2016] EWHC 1396 (Admin)



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15

Tainton [2016]

Judicial Review


Whether the Coroner should have directed the **Jury** to include non-causative admissions on the record of inquest?

16

“ Although these facts were not disputed, we consider that the coroner should have directed the jury to **include in the Record of Inquest a brief narrative of admitted shortcomings** of the health care staff responsible for the late diagnosis of Mr O’Neil’s cancer. In light of the fact that the coroner **withdrew the issue of causation** from the jury, **such a statement would have to have been supplemented by an explanation that it could not be concluded that these shortcomings significantly shortened Mr O’Neil’s life.....** (Tainton [73]) ”

17

“...misleading by omission..” [78]



“...In this case, such a statement would have **completed the incomplete account of the circumstances** in which Mr O’Neil met his death,..... And would have been a fair reflection of the issues that the inquest had focused upon even if the issue was left to the jury only on the basis of a choice between a conclusion of death by natural causes and an open conclusion” (Tainton [73]) ”

18

Smith [2020]

Application for Judicial Review


Was the Decision and Record of Inquest compliant with an investigation under Article 2?

22



*"Both the Reasons and the Record were delivered **in public**. Both, therefore, were **part of the public record**. The argument that more of what appears in the Reasons should have been repeated in the Record has the appearance of an argument of form over substance and we would reject it on that ground alone" (Smith [77]).*

23



*"It was **neither necessary nor convenient** for the points in the second paragraph of the Draft to be added to the Record. In our judgment, it would have been **wrong** to put them there. They would have compromised the essential **brevity and simplicity** required of a Conclusion answering the question 'How, when and where, and [this being an Article 2 case] in what circumstances the deceased came by his or her death'. It was **correct** for the points in the Draft to be **placed in the Reasons** where the Coroner placed them, and **not in the Conclusion**" (Smith [81]).*

24

Where do these 2 cases leave us?




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25

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26

Practical considerations for Article 2 inquests

By Elisabeth Bussey-Jones

27



Questions welcome

28



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29



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30
