

# Duty to hold (or reopen a suspended Inquest) – Judy Dawson discusses

## Facts

Both the deceased and her daughter were under the care of the Oxford Health NHS Foundation Trust due to mental illness issues. There had been a series of incidences in which the daughter was found to have been violent or threatening to specifically her Mother and also to police officers and other carers which culminated in her being admitted to hospital pursuant to section 2 of the Mental Health Act 1983. She subsequently escaped and was then returned to hospital. A decision was made to move her to an open ward from which she absconded again and went missing, subsequently being discovered to be back at her Mother's house. Concerns were raised between the hospital and the police about the welfare of her Mother in such circumstances and there appeared to be a dispute about the responsibility of the two authorities to act. After further concerns were raised by other family members about the disappearance of the Mother, police attended at the home and discovered the Mother's body; her daughter was arrested in connection with her death.

## Subsequent legal and quasi-legal proceedings

As would be expected, an Inquest was opened into the death and immediately suspended pending the outcome of the criminal investigation. At an early plea and directions hearing, the daughter pleaded guilty to manslaughter on the basis of diminished responsibility and was sentenced to detention in a secure hospital (in fact within a year of the same she died of unrelated medical problems).

Two other investigations into the role of the public authorities took place: a "route cause analysis investigation report" by the NHS Trust, and a "domestic homicide review" by the Oxford Safer Communities Partnership under the [Domestic Violence, Crime and Victims Act 2004 s.9](#). Both were conducted in private; the family members had no input into the former and relatively little input into the latter. The Claimant (son of the deceased) applied for the resumption of the Inquest. The coroner declined (upholding such decision after the claimant invited him to reconsider) finding that the other investigations satisfied [ECHR art.2](#) when taken together.

## Legal position

The Claimant contended that the Coroner had breached his investigative duties pursuant to Article 2 and had acted irrationally and in breach of his common law duty to fully investigate the death. He therefore sought judicial review of this decision.

## **Effect of criminal proceedings and other inquiries**

Where criminal proceedings and/or other inquiries have been held, the Coroner may be correct in deciding that the matter has been fully investigated; it is a question of fact and degree. The House of Lords decision in *R (Amin) v Secretary of State for the Home Department [2004] 1 AC 653* provides a very helpful analysis and example of the law in this area. In that case a 19 year old prisoner in a Young Offender Institution was murdered by his cell-mate. The Secretary of State refused a request by the family

for a public enquiry and a Judge subsequently granted a declaration that an independent public enquiry with the deceased's family legally represented, provided with the relevant material and able to cross-examine the principle witnesses should be held to satisfy the state's procedural duty under Article 2 to investigate the death. The Court of Appeal held that the four sets of investigations that had already been carried out were sufficient. These were;

- a) The criminal trial. The only issue in this case however was whether the Defendant was guilty of murder or manslaughter by reason of diminished responsibility. Although evidence was heard as to the circumstances, there was no exploration of events before the murder or cell allocation procedures for example.
- b) The Inquest. In fact (as in the instant case) the inquest had been adjourned pending the criminal investigation and thereafter the Coroner had refused a request to resume the same.
- c) There was a police investigation into whether the Prison Service or any individual should be prosecuted. It concluded that there was insufficient evidence.
- d) There was an Inquiry by Mr Butt to investigate the circumstances of the murder and in particular the issue of shared accommodation (both specifically and generally). The family had been consulted about the terms of reference but were not present at any stage of the investigation. The family had been provided with the majority of the report which made 26 recommendations.
- e) There was a Commission for Racial Equality Investigation into racial discrimination in the prison service with specific reference to the circumstances leading to the murder of the deceased. The family's requests to be allowed to participate in its inquiry and for the hearings to be in public were both refused. There was a part of the hearing held in public at which high level policy matters were discussed and the family were given the opportunity of meeting with Counsel beforehand to put forward suggestions for cross-examination, which they refused. The report was published and made criticisms and recommendations.

In holding that such investigations and enquiries were not sufficient to properly fulfil the state's duty to investigate the death, and overturning the decision of the Court of Appeal Lord Bingham stated;

"A profound respect for the sanctity of human life underpins the common law as it underpins the jurisprudence under articles 1 and 2 of the Convention. This means that a state must not unlawfully take life and must take appropriate legislative and administrative steps to protect it. But the duty does not stop there. The state owes a particular duty to those involuntarily in its custody. As Anand J succinctly put it in *Nilabati Behera v State of Orissa* (1993) 2 SCC 746 at 767 "There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life". Such persons must be protected against violence or abuse at the hands of state agents. They must be protected against self-harm: *Reeves v Commissioner of Police of the Metropolis* [2000] 1 AC 360. Reasonable care must be taken to safeguard their lives and persons against the risk of avoidable harm.

The state's duty to investigate is secondary to the duties not to take life unlawfully and to protect life, in the sense that it only arises where a death has occurred or life-

threatening injuries have occurred: *Menson v United Kingdom* (Application No 47916/99) (unreported) 6 May 2003, page 13. It can fairly be described as procedural. But in any case where a death has occurred in custody it is not a minor or unimportant duty. In this country, as noted in paragraph 16 above, effect has been given to that duty for centuries by requiring such deaths to be publicly investigated before an independent judicial tribunal with an opportunity for relatives of the deceased to participate. The purposes of such an investigation are clear: 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.”

Most importantly and significantly in relation to the index case, Lord Bingham went on to state;

“There was in this case no inquest. The coroner's decision not to resume the inquest is not the subject of review, and may well have been justified for the reasons she has given. But it is very unfortunate that there was no inquest, since a properly conducted inquest can discharge the state's investigative obligation, as established by *McCann v. United Kingdom* 21 EHRR 97”.

### The decision

Perhaps not surprisingly in view of Lord Bingham’s comments, judicial review of the decision not to reopen the inquest was granted, with it being held that the decision not to do so was unlawful, in breach of the obligations under Article 2 of the Convention, and in breach of the common law duty to investigate a death.

### Commentary

This is another significant case enshrining the rights of family members to have a full and proper public investigation into a death.

Judy represents both families and corporate clients at inquests, utilising her technical knowledge and her detailed cross-examination skills in a sensitive manner, necessary to secure the best results.