

5/17/13

Print

Subject: FW: Liberty – your query

From: Gillian Mackenzie [Code A]

To: [Code A]

Date: Friday, 10 May 2013, 15:55

Peta – I contacted Liberty months ago re. the article 2 issue . Gillian

From: Gillian Mackenzie [Code A]

Sent: 10 May 2013 15:54

To: 'White, John'

Cc: 'HOLT, Stephen'

Subject: FW: Liberty - your query

John - for info .Gillian Why no suggestion from you ?

From: Katy Watts [Code A]

Sent: 10 May 2013 15:51

To: Gillian Mackenzie

Subject: Liberty - your query

Dear Ms Mackenzie

Thank you for your query received on 20th November 2012. I am sorry for the very long delay in replying to you, which is a result of the large number of queries we are currently processing and our limited resources.

We understand that your relative passed away in 1998 and the verdict of the subsequent inquest has been delivered. You wish to know if the inquest is subject to the enhanced investigative duty imposed on the state by Article 2 of the European Convention on Human Rights (“**ECHR**”).

Article 2 inquests

Article 2 of the ECHR imposes a procedural obligation on the state to investigate the circumstances of deaths

where agents of the state are potentially implicated. This is known as an article 2 inquest and only applies in certain circumstances such as when an individual dies as a result of lethal force by agents of the state or whilst under the care or protection of the state. Article 2 inquests are required to be more thorough and wide-reaching than inquests into deaths that do not engage this duty. This is a very complex area of law and you should seek advice from a solicitor as to whether this applies to your relative's death.

The Human Rights Act 1998 ("HRA") implemented the ECHR into English law and came into force on 2 October 2000. Generally, the HRA will not apply retroactively, i.e. to circumstances that occurred prior to the HRA coming into force. As such, the UK is not under a continuing obligation under Article 2 to carry out investigations into deaths prior to that date, including the death of your relative in 1998. However, if an inquest has been held or is going to be held, the inquest must comply with Article 2 as far it is possible under domestic law even in respect of deaths which occurred prior to 2 October 2000 (*McCaughey [2011] UKSC 20*). If an Article 2 type inquest has been held into your relative's death, regardless of the fact the death occurred prior to the implementation of the HRA, then Article 2 should apply to your relative's inquest. However, as stated above, this is a very complex area and without all of the facts it is not possible to give a definitive answer and you should seek advice from a solicitor.

Challenging the coroner's decision

Although there is no right of appeal from an inquest, a coroner's decision may be challenged using a) judicial review or b) an application to the Divisional Court under section 13 of the Coroners Act 1988.

Judicial review

The High Court may review the Coroner's decision and in doing so has the power to order a new inquest in certain circumstances such as where there has been insufficiency of inquiry. However, applications for a judicial review must be made no later than three months from the date of the inquest decision to be challenged. You should seek urgent advice from a solicitor, however it seems that you would be out of time for such a judicial review.

An application under section 13 of the Coroners Act 1988

A challenge may be made to the coroner's decision by way of an application to the High Court, which must be made or authorised by the Attorney-General on grounds that by reason of rejection of evidence, irregularity of proceedings, insufficiency of inquiry, the discovery of new facts or evidence or otherwise, it is necessary in the interests of justice that another inquest be held. The High Court may order an inquest to be held by the same or another coroner, and quash the verdict of the original inquest if one took place. This

option may be the most appropriate option for you as there is no time limit to bring an application under section 13 of the Coroners Act 1988.

Next steps

If you wish to challenge the decision of the coroner you must seek the advice of a solicitor as soon as possible. You can find a solicitor in your local area with the relevant expertise online at <http://www.lawsociety.org.uk/find-a-solicitor/>.

If you wish to complain about a coroner's personal conduct (as opposed to complaints about a decision made by him), you can make a complaint to the Office for Judicial Complaints (OJC). The Office for Judicial Complaints (OJC) deals with complaints about the personal conduct of various types of judicial office-holder, both inside and outside of the courtroom. The OJC is an associated office of the Ministry of Justice (MoJ). All details regarding this procedure can be found at <https://ojc.judiciary.gov.uk/OJC/complaintlink.do>.

Further support and information regarding inquests and bereavement can be found at <http://www.inquest.org.uk/>.

I hope you find the above information useful and I am sorry we cannot assist you further. I wish you all the best and thank you for contacting Liberty.

Kind regards

Code A

Advice and Information Officer

Liberty

Protecting civil liberties

Promoting human rights

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What's not to love about the Human Rights Act? www.love.commonvalues.org.uk

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