

Chapter 20: The Article 2 Inquest

KEY MATERIALS

European Convention of Human Rights

[European Convention of Human Rights](#)

[Guide on Article 2 of the European Convention on Human Rights](#)

Legislation

[Section 5 Coroners and Justice Act 2009](#)

[Section 10 Coroners and Justice Act 2009](#)

Introduction

1. Article 2 of the European Convention of Human Rights (ECHR)¹ provides that “everyone’s right to life shall be protected by law”. It places three broad obligations upon member states:
 - a. A **positive duty** that the state takes appropriate steps to protect life, which has two distinct components:
 - i. A general duty (sometimes referred to as the *systemic duty*), and
 - ii. An operational duty (sometimes referred to as the *Osman duty*).
 - b. A **negative duty** that the state refrain from taking life which also has two distinct components:
 - i. A general duty (the same *systemic duty* as above) and
 - ii. An operational duty to refrain from taking life by force, unless that force is lawfully justified.
 - c. A **procedural (investigative) duty** to investigate potential breaches of the positive or negative duty.
2. In England, Wales and Northern Ireland, a coroner’s inquest is how the UK ordinarily discharges the procedural obligation to investigate.²
3. Jurisprudence continues to evolve in this area, and this chapter does not seek to instruct coroners on the details of the law³. Instead, it focuses on the practical matters that need to be considered by a coroner when (i) considering whether an Article 2 inquest is required and then (ii) holding an inquest that is compliant with Article 2.

¹ Article 2 of the ECHR was incorporated into domestic law by the Human Rights Act 2000 and came into force on 2 October 2000.

² [R \(Middleton\) v West Somerset Coroner 2004 UKHL 10](#) para 20, 30 and 47.

³ Coroners seeking a concise overview of the law may wish to read paragraph 14 onwards of Mrs Justice Hill’s judgment in [R \(on the application of David Ferguson v HM Assistant Coroner for Sefton, Knowsley and St Helens \[2025\] EWHC 1901 \(Admin\)](#). The [Guide on Article 2 of the European Convention on Human Rights](#) produced by the European Court of Human Rights is also a useful resource.

An Article 2 inquest

4. The term ‘Article 2 inquest’ is merely a shorthand way of saying ‘an inquest that will be conducted in such a way that it will be compliant with the procedural obligations owed by the state under Article 2 when investigating this particular death’.
5. It goes without saying that an inquest does not become Article 2 compliant merely by labelling it as ‘an Article 2 inquest’, rather it is how the proceedings are actually conducted that will meet (or not meet) the state’s ECHR obligations.
6. Similarly, an inquest that has not formally been declared to be an Article 2 inquest may, regardless of its label, still have been conducted in such a way that the state’s obligations have been met. The utility of the label is that it makes the position clear to all and focuses every participants’ attention on the need to meet the Article 2 procedural duties.

The Article 2 procedural duties

7. The primary purpose of the Article 2 procedural duty is set out by the European Court in the case of *Osman* to “*secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving the State agents or bodies to ensure their accountability for deaths occurring under their responsibility*”.⁴
8. An Article 2 compliant investigation should seek to ensure, so far as is possible that:
 - a. the full facts are brought to light;
 - b. culpable and discreditable conduct is exposed and brought to public notice, and those responsible are identified and brought to account;
 - c. suspicion of deliberate wrongdoing (if unjustified) is allayed;
 - d. dangerous practices and procedures are identified and rectified; and
 - e. lessons are learned that may save the lives of others.⁵
9. Although the precise form of the investigation is not prescribed, it must satisfy certain minimum standards:⁶
 - a. the authorities must act of their own motion;
 - b. the investigation must be independent;

⁴ [R \(Amin\) v Secretary of State for the Home Department \[2003\] UKHL 51](#) para 20(5).

⁵ [R \(Amin\)](#) (n3) para 3.

⁶ Derived from [Jordan v UK \(2003\) 37 EHRR 2](#), these are sometimes referred to as ‘the *Jordan* criteria’

- c. the investigation must be effective in the sense that it must be conducted in a manner that does not undermine its ability to establish the relevant facts; albeit this is an obligation of means rather than results;
- d. the investigation must be reasonably prompt;
- e. there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory; the degree of public scrutiny required may well vary from case to case: and
- f. there must be involvement of the next of kin to the extent necessary to safeguard his or her legitimate interests.

The legislative framework at an Article 2 inquest

10. [Section 5\(1\)](#) Coroners and Justice Act 2009 (the 2009 Act) sets out the matters to be ascertained at an inquest, namely;
 - a. who the deceased was;
 - b. how, when and where the deceased came by his or her death; and
 - c. the particulars (if any) required by the 1953 Act⁷ to be registered concerning the death.
11. Following the decision in *Jamieson*⁸, and prior to the ECHR being incorporated into UK law, the question of ‘how’ the deceased came by his/her death was always understood to mean ‘by what means’. The word ‘how’ was given a limited interpretation that could be satisfied by an inquest examining only the proximate cause of death. Such inquests are now often termed ‘*Jamieson inquests*’.
12. However, following the decision of the House of Lords in *Middleton*,⁹ the question of ‘how’ the deceased came by his or her death must be given a broader and wider interpretation when Article 2 obligations are engaged, and as a consequence, is now understood to mean ‘by what means and in what circumstances’. That position is reflected in [s5\(2\)](#) of the Act which states:

‘where necessary in order to avoid a breach of any Convention rights (within the meaning of the Human Rights Act 1998), the purpose mentioned in

⁷ Births Deaths and Registration Act 1953.

⁸ *R v HM Coroner for North Humberside ex p Jamieson* [1995] QB 1.

⁹ [R \(Middleton\) v West Somerset Coroner 2004 UKHL 10](#).

subsection (1)(b) is to be read as including the purpose of ascertaining in what circumstances the deceased came by his or her death’.

Such inquests are now often also termed ‘*Middleton* inquests’.

Threshold for engaging Article 2

13. The trigger for engaging Article 2 procedural obligations is an *arguable* breach of a substantive Article 2 duty.
14. In *Maguire*¹⁰ the Court of Appeal made it clear that the coroner should ask themselves whether there is a ‘*credible suggestion*’ that a breach of a substantive Article 2 right might be established on the basis of the further and fuller investigation of all the evidence which will be available at the inquest. In *Skelton*¹¹ the Court noted the threshold is a low one. To impose a more onerous burden would run the risk of the Coroner determining, in advance of the full evidential picture, what the outcome of any inquest might be.

The Timing of an Article 2 decision

15. A decision on the engagement of Article 2 should be made at the earliest stage possible in the coronial investigation, as it will help to set the scope of the investigation and the various procedural steps that must then follow; particularly, it will assist when identifying the necessary witnesses.
16. The Article 2 threshold can often be reached at an early investigative stage. As it is never necessary for a coroner to determine if an Article 2 obligation has *actually* been breached.
17. However, making an early decision may not always be possible where there is a need to make further enquiries and obtain further evidence before coming to a final decision on whether a breach of rights is arguable. In all cases, coroners are encouraged to keep an open mind in relation to whether or not the Article 2 procedural duty has been engaged.

¹⁰ *R (Maguire) v HM Senior Coroner for Blackpool & Fylde* [2020] EWCA Civ 738, [2020] Inquest LR 83

¹¹ *R(Skelton) v HM Senior Coroner for West Sussex* [2020] EWHC 2813 (Admin), [2020] Inquest LR 155

It will not be considered an unreasonable course of action if the coroner defers his or her decision until such time all the relevant information / evidence has been gathered.

18. In some cases, making a final decision on whether Article 2 obligations arise and a conclusion compliant with s5(2) of the 2009 Act is required may not be practicable until all the evidence has been heard.
19. When not dealing with an obvious case of engagement (or non-engagement) of Article 2 the coroner should indicate that a decision in relation to the Article 2 duty will be considered once there is sufficient evidence available. As evidence is gathered, it should be reviewed without delay and a determination should be made.
20. In such cases, the coroner will have needed to keep the scope of the inquest and the matters investigated sufficiently wide to be Article 2 compliant, even in the absence of the 'Article 2 label' being attached to the case.
21. Occasionally a coroner may have made an earlier formal ruling that Article 2 obligations were not engaged which then falls to be revisited after further evidence has emerged during the examination of witnesses. Where such review is required or requested, the coroner should invite submissions from Interested Persons on the issue before delivering the summing up and conclusion.
22. Where the question of whether Article 2 obligations are engaged is contentious or disputed, the coroner should give reasons for the determination they have come to. Ideally, reasons arrived at after full legal argument should be formally handed down either in writing or, if given ex tempore, by making an audio recording of their ex tempore decision or a transcript available on request. If the matter is uncontentious or has been dealt with briefly at a PIR hearing, a brief note of the reason for the determination might be recorded in the minutes of the PIR.
23. It is good practice to indicate (particularly in cases where it is considered Article 2 is not engaged) that the decision on the applicability of Article 2 can be revisited in due course, if such a step is justified by fresh evidence.

Actual breach of an Article 2 obligation

24. A coroner (or jury if there is one) is not permitted to make a finding that an Article 2 obligation has actually been breached. To do so would appear to determine a question of civil liability, and would therefore contravene [Section 10 \(2\)\(b\)](#) and [Section 5\(3\) of the 2009 Act](#).
25. The only finding a coroner is permitted to make in relation to Article 2 is whether there is an arguable breach of an Article 2 substantive obligation. Such a finding is not part of the conclusion. Rather, it is one made for the purpose of determining whether an enhanced inquest in accordance with *Middleton*¹² is required pursuant to [Section 5\(2\) of the 2009 Act](#).

Article 2 and Scope

26. The investigatory scope of an Article 2 inquest will often, but not necessarily, be wider than that of a traditional *Jamieson* inquest.
27. This is because an Article 2 inquest is *required* to be a broader investigation into the surrounding circumstances in which the deceased came to his or her death. Whereas in a *Jamieson* inquest the coroner has a discretion but is not mandated to look at the broader circumstances.¹³
28. Often the difference will be that an Article 2 inquest investigates wider systems that may be relevant to the death. However, in each case the touchstone will be some causative relevance to the circumstances investigated.
29. In all cases, the investigatory scope of an inquest should include matters that have potentially caused or contributed to the death, with a view to identifying those matters that actually (i.e. probably) caused or contributed to the death. Where the coroner decides that a factor could not even arguably be said to have made any real contribution

¹² [R \(Middleton\)](#) (n3)

¹³ See [R \(Worthington\) v HM Senior Coroner for the County of Cumbria \[2018\] EWHC 3386 \(Admin\)](#) at §49. “Whilst of course we accept that the scope of purpose of a *Middleton* inquest is wider than that of a *Jamieson* inquest ... we reject the suggestion that the scope even in a *Jamieson* inquest is especially narrow. The question of how the deceased came by his death is clearly wider than merely finding the medical cause of death”

to the death, then there is no discretion (or indeed power) to investigate that issue even in an Article 2 case.¹⁴

Procedure at an Article 2 inquest

30. The manner in which an Article 2 compliant inquest is conducted in the court room is no different to any other inquest. The number of issues identified as being within scope may be wider in an enhanced investigation, but there is no special process or procedure that applies to an Article 2 inquest. The inquest is opened in the usual manner, a jury may or may not be required, relevant witness are called, and statements/reports may be read into the proceedings.
31. There is no Convention right to have an inquest held with a jury¹⁵ so the mere fact that an inquest must be Article 2 compliant does not necessarily mean a jury will be required.
32. Juries are commonly empanelled in Article 2 cases because many of the statutory circumstances that require a jury under [s7 of the 2009 Act](#) can also give rise to Article 2 obligations (such as deaths in custody or otherwise in state detention, or as a result of an act or omission of a police officer).
33. As with any inquest, an Article 2 inquest should be conducted in a manner and at a pace that enables proper participation by the bereaved. As Article 2 compliant inquests are often complex and lengthy, it is particularly important to consider the needs of the bereaved. For example, where:
 - a. English is not their first language;
 - b. Their reading and writing ability is compromised and it may take longer for them to digest lengthy (and often detailed) statements; or
 - c. They are unrepresentedcoroners should have regard to this, both when scheduling the inquest and during the hearing itself.

¹⁴ [R \(Speck\) v HM Coroner for York & \(1\) NHS England \(2\) MEDACS \(Interested Parties\) \[2016\] EWHC 16](#)

¹⁵ [R\(Ferreira\) v Senior Coroner South London](#) [2017] EWCA Civ 31 at §12

Completing the Record of Inquest in an Article 2 inquest

34. The principal distinguishing features of an Article 2 inquest from a *Jamieson* inquest is when it comes to recording the conclusion. Engagement of Article 2 allows for a judgemental conclusion to be considered and may require much broader circumstances of the death to be formally recorded.
35. For more information on completing the Record of Inquest in an Article 2 inquest, see [Chapter 15: Conclusions](#) of this Bench Guidance.