House of Lords

Regina (Middleton) *v* West Somerset Coroner and another

[2004] UKHL 10

2004 Feb 2, 3, 4; March 11

Lord Bingham of Cornhill, Lord Hope of Craighead, Lord Walker of Gestingthorpe, Baroness Hale of Richmond and Lord Carswell

Coroner — Inquest — Verdict — Prisoner having threatened suicide taking own life — Coroner's direction to jury not to return verdict referring to neglect — Coroner refusing to append jury's note to inquisition indicating Prison Service's failure in duty to prisoner — Whether inquest meeting state's procedural duty to investigate deaths — Coroners Act 1988 (c 13), s 11 — Human Rights Act 1998 (c 42), Sch 1, Pt I, art 2 — Coroners Rules 1984 (SI 1984/552), rr 36, 42, 43

The deceased, a prisoner serving a long custodial sentence, hanged himself in his prison cell. His family alleged that the Prison Service knew that he was a suicide risk and should have put him on a suicide watch. At the inquest the coroner directed the jury by reference to section 11(5) of the Coroners Act 1988[1] and rule 36 of the Coroners Rules 1984[2] that their findings were confined to the identity of the deceased and to how, when and where he came by his death, and that they could express no opinion on any other matter. He further directed them that, since rule 42 prohibited an inquest verdict being framed in such a way as to appear to determine any questions of criminal liability on the part of a named person or civil liability, they could not return a verdict of neglect. However the coroner suggested that, if they wished, they might give him a note, which would not be published, indicating any matters they wished him to consider in deciding whether to exercise his power under rule 43 to make a report to the appropriate authority. The jury found that the deceased had killed himself while the balance of his mind was disturbed. They also handed the coroner a note containing factual conclusions indicating that the Prison Service had failed in its duty of care to the deceased. The coroner refused the family's request that the note should be appended to the inquisition. The claimant, the deceased's mother, sought judicial review of the coroner's direction and of his refusal to publish the note. The judge, concluding that private communications between coroner and jury were inappropriate and setting out part of the jury's note in his judgment, granted a declaration that by reason of the restrictions on the verdict the inquest was inadequate to meet the state's procedural investigative duty under article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as scheduled to the Human Rights Act 1998[3]. On appeal by the Secretary of State for the Home Department, as an interested party, the Court of Appeal concluded that where a coroner was aware that an inquest was to be the means by which the state satisfied its procedural obligation under article 2 the jury should be permitted to make a finding of systemic, but not individual, neglect. They granted a declaration accordingly and allowed his appeal in part.

On the Secretary of State's appeal—

Held, (1) that, having regard to the jurisprudence of the European Court of Human Rights that the investigation required by article 2 was to ensure the accountability of state agents for deaths occurring under their responsibility, and to be capable of leading to a determination of whether force used was justified or protection afforded to life was adequate and to identification of those involved, the

[1] Coroners Act 1988, s 11(5)(b): see post, para 24.
[2] Coroners Rules 1984, rr 36, 42, 43: see post, para 26.
[3] Human Rights Act 1998, Sch 1, Pt I, art 2(1): "Everyone's right to life shall be protected by law . . ."

A inquest, as the means by which the state sought to discharge its investigative obligation, ought ordinarily to culminate in an expression of the jury's conclusion on the central, factual issues in the case (see post, paras 13, 16–20).

(2) That since the 1988 Act and the 1984 Rules required the inquest to be directed solely to ascertaining the identity of the deceased, and how, when and where he came by his death, since "how" in section 11(5)(b)(ii) and rule 36(1)(b) was narrowly interpreted to connote "by what means" and, where the deceased was found to have
B taken his own life that was the appropriate verdict and reference to neglect was permissible only in the most exceptional circumstances, the short verdict in traditional form, while enabling the jury in some cases to express their conclusion on the central issue canvassed in the evidence, would not enable them do so in others, and that, accordingly, the current regime did not meet the requirements of article 2 in those cases (post, paras 30–32).

(3) That the scheme as enacted should be respected save to the extent that a
C change of interpretation was necessary to comply with the state's obligations expressed in the Convention; that such a change required a broader interpretation of "how" in section 11(5)(b)(i)(ii) and rule 36(1)(b) to connote "by what means and in what circumstances"; that it was for the coroner to consider in the particular case the form of verdict, whether short, narrative or in answer to questions put by him, which would elicit the jury's factual conclusion on the central issues so long as the prohibition on attributing criminal or civil liability in rule 42 was not infringed
D and that on extraneous expressions of opinion in rule 36(2) was respected (post, paras 34–38).

(4) Allowing the appeal in part and setting aside the declaration, that the jury's verdict given in accordance with the current regime did not express their conclusion on the central issues whether the deceased should have been recognised as a suicide risk and whether appropriate precautions should have been taken to prevent his suicide and, to meet the procedural obligation, the jury should have been permitted to express their conclusion on those issues; that the power to report under rule 43 was
E exercisable by the coroner not the jury and his invitation to provide the note was unnecessary and inappropriate since it derogated from the public nature of the inquest; but that since the jury's conclusions had been published and no further inquest was sought, declaratory relief was not necessary (post, paras 45–49).

Jordan v United Kingdom (2001) 37 EHRR 52; *Keenan v United Kingdom* (2001) 33 EHRR 913 and *McCann v United Kingdom* (1995) 21 EHRR 97 considered.

R v Coroner for North Humberside and Scunthorpe, Ex p Jamieson [1995] QB 1,
F CA distinguished.

Decision of the Court of Appeal [2002] EWCA Civ 390; [2003] QB 581; [2002] 3 WLR 505; [2002] 4 All ER 336 varied.

The following cases are referred to in the opinion of the Appellate Committee:

Calvelli and Ciglio v Italy Reports of Judgments and Decisions 2002-I, p 1
Edwards v United Kingdom (2002) 35 EHRR 487
G *Jordan v United Kingdom* (2001) 37 EHRR 52
Keenan v United Kingdom (2001) 33 EHRR 913
LCB v United Kingdom (1998) 27 EHRR 212
McCann v United Kingdom (1995) 21 EHRR 97
McKerr, In re [2004] UKHL 12; [2004] 1 WLR 807; [2004] 2 All ER 409, HL(NI)
Mastromatteo v Italy Reports of Judgments and Decisions 2002-VIII, p 151
Öneryildiz v Turkey (Application No 48939/99) (unreported) 18 June 2002, ECtHR
H *Osman v United Kingdom* (1998) 29 EHRR 245
Powell v United Kingdom Reports of Judgments and Decisions 2000-V, p 397
R v Coroner for North Humberside and Scunthorpe, Ex p Jamieson [1995] QB 1; [1994] 3 WLR 82; [1994] 3 All ER 972, CA
R v HM Coroner for Birmingham, Ex p Secretary of State for the Home Department (1990) 155 JP 107, DC

R v HM Coroner for Western District of East Sussex, Ex p Homberg (1994) 158 JP 357, DC
R v Walthamstow Coroner, Ex p Rubenstein [1982] Crim LR 509
R (Amin) v Secretary of State for the Home Department [2001] EWHC Admin 1043 5 October 2001, Hooper J; [2003] UKHL 51; [2004] 1 AC 653; [2003] 3 WLR 1169; [2003] 4 All ER 1264, HL(E)
R (Davies) v Deputy Coroner for Birmingham [2003] EWCA Civ 1739, CA
Salman v Turkey (2000) 34 EHRR 425
Sieminska v Poland (Application No 37602/97) (unreported) 29 March 2001, ECtHR
Taylor v United Kingdom (1994) 79-A DR 127

The following additional cases were cited in argument:

Andronicou v Cyprus (1997) 25 EHRR 491
Bankovic v Belgium (2001) 11 BHRC 435
Bird v Keep [1918] 2 KB 692, CA
Brown v Stott [2003] 1 AC 681; [2001] 2 WLR 817; [2001] 2 All ER 97, PC
Erikson v Italy (1999) 29 EHRR CD 152
General Cleaning Contractors Ltd v Christmas [1953] AC 180; [1953] 2 WLR 6; [1952] 2 All ER 1110, HL(E)
Hutt v Comr of Police of the Metropolis [2003] EWCA Civ 1911; The Times, 5 December 2003, CA
Kelly, In re (1996) 161 JP 417, DC
Lazzarini and Ghiacci v Italy (Application No 53749/00) (unreported) 7 November 2002, ECtHR
Lister v National Coal Board [1970] 1 QB 228; [1969] 3 WLR 439; [1969] 3 All ER 1077, CA
Menson v United Kingdom (Application No 47916/99) (unreported) 6 May 2003, ECtHR
R v Attorney General for Northern Ireland, Ex p Devine [1992] 1 WLR 262; [1992] 1 All ER 609, HL(NI)
R v Director of Public Prosecutions, Ex p Manning [2001] QB 330; [2000] 3 WLR 463, DC
R v HM Coroner for Birmingham, Ex p Cotton (1995) 160 JP 123, DC
R v HM Coroner for East Berkshire, Ex p Buckley (1992) 157 JP 425, DC
R v HM Coroner for Inner South London, Ex p Epsom Health Care NHS Trust (1994) 158 JP 973, DC
R v HM Coroner for Wiltshire, Ex p Clegg (1996) 161 JP 521, DC
R v HM Coroner at Hammersmith, Ex p Peach (Nos 1 and 2) [1980] QB 211; [1980] 2 WLR 496; [1980] 2 All ER 7, DC and CA
R v South London Coroner, Ex p Thompson The Times, 9 July 1982, DC
R v Southwark Coroner, Ex p Hicks [1987] 1 WLR 1624; [1987] 2 All ER 140, DC
R v Surrey Coroner, Ex p Campbell [1982] QB 661; [1982] 2 WLR 626; [1982] 2 All ER 545, DC
R v Surrey Coroner, Ex p Wright [1997] QB 786; [1997] 2 WLR 16; [1997] 1 All ER 823
R (Hurst) v North London Coroner [2003] EWHC 1721 (Admin), DC
R (Khan) v Secretary of State for Health [2003] EWCA Civ 1129; [2004] 1 WLR 971; [2003] 4 All ER 1239, CA
R (Wright) v Secretary of State for the Home Department [2001] EWHC Admin 520; [2001] UKHRR 1399
Rapier, decd, In re [1988] QB 26; [1986] 3 WLR 830; [1986] 3 All ER 726, DC
Reeves v Comr of Police of the Metropolis [2000] 1 AC 360; [1999] 3 WLR 363; [1999] 3 All ER 897, HL(E)
Slimani v France (Application No 57671/00) (unreported) 8 April 2003, ECtHR

A *Ward v Chief Constable of the West Midlands* The Times, 15 December 1997; Court of Appeal (Civil Division) Transcript No 2282 of 1997, CA

APPEAL from the Court of Appeal

The Secretary of State for the Home Department, an interested party, appealed with leave of the House of Lords (Lord Steyn, Lord Scott of Foscote and Lord Rodger of Earlsferry) granted on 14 November 2002 from
B the decision of the Court of Appeal (Lord Woolf CJ, Laws and Dyson LJJ), dated 27 March 2002, allowing in part his appeal from Stanley Burnton J who, on 14 December 2001, on the claim by Jean Middleton, the mother of the deceased, Colin Middleton, for judicial review of the West Somerset Coroner's direction to the jury that no finding of neglect was permissible and his refusal to append to the inquisition a note from the jury,
C had declared that by reason of the restrictions on the verdict at the inquest into the deceased's death that inquest was inadequate to meet the procedural obligation of article 2.

On 31 July and 9 October 2003 House of Lords (Lord Steyn, Lord Scott of Foscote and Lord Rodger of Earlsferry) granted leave to Inquest, the Coroners' Society of England and Wales and the Northern Ireland Human Rights Commission to intervene in the appeal by way of written submissions
D only.

The facts are stated in the opinion of the Appellate Committee.

Jonathan Crow and *Rabinder Singh QC* for the Secretary of State. The scope of the investigative duty under article 2 of the European Convention on Human Rights, as scheduled to the Human Rights Act 1998, is
E determined by its jurisprudential source, which is identified by reference to the two obligations imposed expressly on the state by that article: (1) to protect the right to life by law and (2) not, by state agents, to take life intentionally.

Those express obligations and the complementary obligation under article 13 to provide an effective remedy in cases of violation require the state to implement an appropriate legal regime providing for criminal
F sanctions and civil remedies for causing another's death. The precise manner of discharging the obligations is a matter of judgment within the margin of appreciation of the individual member state. However, the state is under an express obligation to ensure that the domestic legal regime makes available a suitable range of legal proceedings for imposing sanctions and remedies where a death has occurred. In the United Kingdom that duty is
G discharged by the provision of the criminal, civil and regulatory proceedings. It is in the context of those proceedings that questions of culpability and compensation will necessarily be determined.

The protection afforded by article 2 would be theoretical and illusory if the state's duty stopped there: see *McCann v United Kingdom* (1995) 21 EHRR 97. Positive obligations have, in an appropriate case (see *Brown v Stott* [2003] 1 AC 681), to be implied into the article (1) to take operational
H measures to save a life at risk where the state knows, or ought to know, that there is a real and immediate risk to the life of an identified individual either by way of criminal acts by third parties or through self-harm (see *Osman v United Kingdom* (1998) 29 EHRR 245; *Powell v United Kingdom* Reports and Judgments and Decisions 2000-V, p 397; *Öneryildiz v Turkey*

(unreported) 18 June 2002; *Calvelli and Ciglio v United Kingdom* Reports of Judgments and Decisions 2002-I, p 1 and *Keenan v United Kingdom* (2001) 33 EHRR 913) and (2) where there is arguably a breach of article 2, to investigate the circumstances surrounding the death (see *McCann's* case 21 EHRR 97; *Salman v Turkey* (2000) 34 EHRR 425; *Sieminska v Poland* (unreported) 29 March 2001 and *Taylor v United Kingdom* (1994) 79-A DR 127).

The function of the investigative duty is procedural, or adjectival, its purpose being to ensure that the state's substantive duties under article 2 are not flouted: see *Jordan v United Kingdom* (2001) 37 EHRR 52. Accordingly it does not confer on the deceased, his personal representatives or next-of-kin a free-standing substantive Convention right to have an investigation conducted for its own sake. Given that the state already is expressly obliged to establish legal procedures to determine guilt and liability there is no need also for implication of any such duty into the investigative obligation. Under domestic law the inquest is generally the means by which the state discharges that obligation. Its task is not to attribute blame or liability or to express extraneous opinions or to determine how the deceased died, which might raise general and far-reaching issues, but to ascertain, strictly, how he came by his death, a more limited question, directed to the means by which he did so; and where it is established that a person had taken his own life, that must be the verdict, reference to neglect only being permissible in the most exceptional circumstances: see *R v Coroner for North Humberside and Scunthorpe, Ex p Jamieson* [1995] QB 1; Coroners Act 1988 and Coroners Rules 1984 (SI 1984/552).

Under the European jurisprudence the procedural obligation requires a thorough, impartial and careful examination of the circumstances surrounding the killing. The state's obligation is to marshal the evidence concerning the incident and establish the facts immediately relevant to the death to enable the domestic court to establish any violation: the obligation is not to attribute blame. If the investigation yields evidence of state delinquency any remedy will arise under article 13, not article 2. The inquest is recognised in European jurisprudence as a fact-finding exercise, not a method of attributing guilt, which is capable of satisfying the investigative requirements of article 2. The question whether any particular inquest satisfies that obligation depends on whether its conduct has prevented any particular matters relevant to the death from being examined: see *McCann's* case 21 EHRR 97 and *Jordan's* case 37 EHRR 52.

The investigation must be effective in the sense that it is capable of leading to, but not reaching, a determination of whether there has been a breach of any of the state's substantive obligations under article 2: see *Jordan's* case and *Edwards v United Kingdom* (2002) 35 EHRR 487. There is no requirement that it should itself include a determination or that the verdict should be capable of attributing blame to state agents. The procedural obligation is one of means, not of result. The state's duty to provide for a determination of state responsibility is met by the availability of criminal and civil liability. It is therefore unnecessary to imply any further obligation as part of the investigative obligation under article 2. No further purpose could be served by a verdict of neglect.

An inquest, if required to attribute blame, can never satisfy the requirements of article 6: the inquest begins from a position of ignorance so

A that an "accused" can never know in advance the nature of any charge, and any such verdict would not only constitute gross unfairness contrary to domestic law principles and article 6 but would jeopardise subsequent criminal, civil or disciplinary proceedings. There would also be a risk of inconsistent findings by different tribunals. That risk is not in the public interest and no countervailing public interest to return such a verdict
B overrides it.

There was no proper basis for the Court of Appeal's declaration, which is unjustified and unnecessary. The Court of Appeal was wrong to consider the unavailability of a verdict of system neglect as significantly detracting from proper performance of the investigative obligation and that some procedure was required to attribute system neglect. But the court was correct to consider that the state's obligation to protect lives at risk effectively imposed
C an obligation to learn from past mistakes. That obligation will only arise under article 2 if a breach of the article has been established. It is inappropriate to imply an obligation where express provision for remedial action has been made: see rule 43 of the Coroner Rules 1984 (SI 1984/552).

If the Court of Appeal was correct to consider that some procedure was required for attributing blame against state agents, the declaration is
D impractical, illogical, difficult to apply and productive of anomalous results. It is illogical to confine the declaration to cases of systemic neglect and to disregard individual fault, though either may constitute a breach of the positive obligation under article 2. It is impractical because it requires the coroner to decide if it is the inquest which is to be the means by which the investigative duty is to be discharged, and he cannot know what investigations may take place in the future, still less whether they will meet
E the requirements of article 2. A verdict of neglect will often be inadequate, particularly in the traditional short form verdict, to fulfil the purposes of the investigative obligation: see *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653, 672, para 31. "Neglect" is, in any event, undesirable in the present context: it bears a technical meaning in coronial law connoting want of nourishment or shelter as a cause of death. Neglect
F can therefore cause or contribute to death without any implication of blame against any person. A narrative verdict more appropriately indicates the factual basis of the jury's conclusions and can be readily accommodated within the existing coronial system: see *Ex p Jamieson* [1995] QB 1. Any revision of the existing system should be no greater than what is necessary to secure compliance with the Convention.

G *Hugh Mercer* and *Richard Eaton,* solicitor, for the coroner. Article 2 requires the state to take positive steps to secure the right to life under the criminal law and by other measures. The procedural obligation implied into article 2 requires an intensive investigation of failings by state bodies. It is for member states to decide by whom the investigative duty is to be discharged, and where negligence is involved civil proceedings may be sufficient: it is not necessarily for the coroner to satisfy that duty. It is also
H for member states to decide how the obligation is to be satisfied. There is no distinction between the standard of review required in cases of the use of deliberate force by state agents and that required where the state has negligently failed to prevent a homicide by a third party. It is however open to question whether the same standard of investigation applies where the

state has negligently failed to prevent a suicide, but the domestic court attaches particular importance to ensuring that investigation of any death in custody receives close attention that anticipates and is consistent with article 2: see *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653; *Calvelli and Ciglio v Italy* Reports of Judgments and Decisions 2002-I, p 1; *Edwards v United Kingdom* 35 EHRR 487; *Öneryildiz v Turkey* 18 June 2002; *Powell v United Kingdom* Reports of Judgments and Decisions 2000-V, p 397; *Erikson v Italy* (1999) 29 EHRR CD 152; *Lazzarini and Ghiacci v Italy* (unreported) 7 November 2002; *Slimani v France* 8 April 2003; *Mastromatteo v Italy* Reports of Judgments and Decisions 2002-VIII, p 151; *Jordan v United Kingdom* 37 EHRR 52; Carmichael, Sudden Deaths and Fatal Accident Inquiries, 2nd ed (1993), p 59; *R v Southwark Coroner, Ex p Hicks* [1987] 1 WLR 1624 and *In re Rapier, dec'd* [1988] QB 26.

The function of the inquest is to identify the deceased and ascertain how, where and when he came by his death, and to elicit useful lessons without attributing blame or expressing opinions on any other matters. The purpose of the inquest is to seek out and record as many of the facts concerning a death as the public interest requires by a process which is not adversarial but inquisitorial. The object is not to consider whether sufficient evidence exists to prefer a criminal charge; instead, where criminality is found, the appropriate verdict is unlawful killing without any decision as to guilt. Thus, the inquest process is not intended to result in a decision of criminal or civil liability; the investigation forms part of a continuum capable of leading to a determination and able to play an effective role in identifying criminal offences which have occurred: see "Report of the Departmental Committee on Coroners" (Cmd 5070) (1936); "Report of the Committee on Death Certification and Coroners" (1971) (Cmnd 4810); "Report of a Fundamental Review, Death Certification and Investigation in England, Wales and Northern Ireland" (Cm 5831) (2003); Coroners Act 1988; Coroners Rules 1984 (SI 1984/552); *R v Coroner for North Humberside and Scunthorpe, Ex p Jamieson* [1995] 1 QB 1; *R v Surrey Coroner, Ex p Campbell* [1982] QB 661; *S v Southwark Coroner, Ex p Hicks* [1987] 1 WLR 1624 ; *R v HM Coroner for Wiltshire, Ex p Clegg* (1996) 161 JP 521; *R v HM Coroner for East Berkshire, Ex p Buckley* (1992) 157 JP 425; *R v Attorney General for Northern Ireland, Ex p Devine* [1992] 1 WLR 262; *R v South London Coroner, Ex p Thompson* The Times, 9 July 1982 and *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653. It is important to maintain a conceptual distinction under article 2 between the need for an effective judicial system to establish civil, disciplinary and criminal responsibility which arises from the express duty in article 2 and the procedural duty implied into article 2 which does not require there to be a civil claim: see *Edwards v United Kingdom* 35 EHRR 487; *Sieminska v Poland* 29 March 2001; *Calvelli and Ciglio v Italy* Reports of Judgments and Decisions 2002-I, p 1; and *Mastromatteo v Italy* 24 October 2002. If the inquest is to reach a verdict which attributes fault there is a risk of non-compliance with article 6 and inconsistency in findings between different tribunals.

The Court of Appeal's declaration has caused practical difficulties and, in its current form, is unworkable. The Secretary of State's submissions on its impracticality and illogicality and on the reinterpretation of "neglect" in the

coronial system are correct: see *R v Surrey Coroner, Ex p Wright* [1987] QB 786; *Andronicou v Cyprus* (1997) 25 EHRR 491 and *Taylor v United Kingdom* 79-A DR 127; and contrast *General Cleaning Contractors Ltd v Christmas* [1953] AC 180 and *Lister v National Coal Board* [1970] 1 QB 228. Narrative verdicts as proposed by the claimant may, subject to strictly defined limits, be appropriate. Use may also be made of special verdicts and a procedure similar to that prescribed by section 6 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.

Ben Emmerson QC, *Peter Weatherby* and *Danny Friedman* for the claimant. Article 2 requires a state not only to refrain from taking life intentionally but also to take appropriate steps to safeguard it, including criminal law sanctions. There is a positive obligation to take operational measures to protect life where it is reasonably perceived to be at risk of harm, whether from others or self-inflicted. Article 2 therefore imposes a positive obligation on the state to take reasonable care to prevent a foreseeable suicide in custody. The appropriate test for determining a breach of that obligation is whether the authorities knew or ought to have known that the prisoner posed a real and immediate risk of suicide and, if so, whether they did all that reasonably could have been expected of them to prevent that risk: see *McCann v United Kingdom* 21 EHRR 97; *Osman v United Kingdom* 29 EHRR 245; *Keenan v United Kingdom* 33 EHRR 913; *Edwards v United Kingdom* 35 EHRR 487 and *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653; and contrast *R v Coroner for North Humberside and Scunthorpe, Ex p Jamieson* [1995] QB 1.

Where it is arguable that the state has failed to discharge that obligation it is under the further, procedural, duty to initiate and conduct an investigation which meets the requirements laid down in the jurisprudence of the European Court of Human Rights: see *McCann's* case 21 EHRR 97; *Amin's* case [2004] 1 AC 653; *Jordan's* case 37 EHRR 52; *Edwards's* case 35 EHRR 487 and *Salman v Turkey* 34 EHRR 425.

The purpose of the procedural obligation is to secure the effective implementation of the domestic laws protecting the right to life and, in cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility; that implies the ability of the investigation to reach a formal public determination of state responsibility; otherwise disputed issues of fact and allegations of fault would remain unresolved and public officials who were at fault would not be held to account, nor would unjustified allegations be allayed. The standards of investigation required where a person has died in custody are the same, whether the death resulted from deliberate acts of a state agent or a negligent omission; and the same elements of the investigation are required in cases where the state is alleged negligently to have failed to prevent a suicide in custody as in those where it has failed to prevent a homicide.

Any deficiency in the investigation which undermines its ability to establish the cause of death or identify those responsible will risk falling foul of the standard imposed by article 2: see *Jordan's* case 37 EHRR 52; *Edwards's* 35 EHRR 487 case; *Keenan's* case 33 EHRR 913; *R (Davies) v Deputy Coroner for Birmingham* [2003] EWCA Civ 1739; *R (Khan) v Secretary of State for Health* [2004] 1 WLR 971; *R (Hurst) v North London Coroner* [2003] EWCA Civ 1723 (Admin) and "Death Certification and

Investigation in England, Wales and Northern Ireland: The Report of a Fundamental Review" (2003)(Cm 5831). Such a determination is implicitly recognised under domestic law: see *Amin's* case [2001] EWHC Admin 1043, Hooper J; [2004] 1 AC 653.

The form of the investigation may vary in different circumstances. But whatever mode is used the authorities must act of their own motion, once the matter has come to their attention, and cannot leave it to the next of kin; the obligation arises whenever there is an arguable breach of article 2 and whenever an individual has been subjected to life-threatening injuries in suspicious circumstances: see *Menson v United Kingdom* 6 May 2003. The existence of a right to initiate civil proceedings cannot be taken into account in assessing the state's compliance with the procedural obligation. Where a person dies in custody, the availability of a civil remedy in negligence will be inadequate to discharge the state's procedural duty; and under domestic law it is a misuse of the inquest process to gather evidence as a stepping stone to a civil claim: see *R v HM Coroner at Hammersmith, Ex p Peach (Nos 1 and 2)* [1980] QB 211; *R v HM Coroner for Inner South London, Ex p Epsom Health Care NHS Trust* (1994) 158 JP 973 and *R v HM Coroner for Birmingham, Ex p Cotton* (1995) 160 JP 123.

The inquest will usually, but not always, be the appropriate forum for conducting the investigation required to discharge the procedural obligation: see *R v Southwark Coroner, Ex p Hicks* [1987] 1 WLR 1624; *In re Rapier, dec'd* [1988] QB 26; *Reeves v Comr of Police of the Metropolis* [2000] 1 AC 360; *R v Director of Public Prosecutions, Ex p Manning* [2001] QB 330; *McCann's* case 21 EHRR 97; *R (Khan) v Secretary of State for Health* [2004] 1 WLR 971; *R (Davies) v Deputy Coroner for Birmingham* 2 December 2003; section 8 of the Coroners Act 1988 and "The Report of a Fundamental Review", chap 10. But restrictions on the scope of the determination available at an inquest may render it inadequate to satisfy article 2: see *R (Wright) v Secretary of State for the Home Department* [2001] UKHRR 1399; *McCann's* case; contrast *Jordan's* 37 EHRR 52 and *Keenan's* 33 EHRR 913 cases. Where there is a breach by state agents of their positive obligation, the restriction imposed by rule 42 of the Coroners Rules 1984 (SI 1984/552) necessarily means that the inquest will be inadequate to meet the investigative obligation under article 2: see *R v Coroner for North Humberside and Scunthorpe, Ex p Jamieson* [1995] QB 1; *Jordan's* case 37 EHRR 52; *Keenan's* case 33 EHRR 913; *Amin's* case [2004] 1 AC 653; *R (Hurst) v North London Coroner* [2003] EWCA Civ 1721 (Admin); *Khan's* case [2004] 1 WLR 971 and *Davies's* case [2003] EWCA Civ 1739; and contrast *McCann* 21 EHRR 97. The availability of rule 43 is also inadequate to satisfy the requirement for a determination of state responsibility: see *In re Kelly* (1996) 161 JP 417. The coronial system, if it is the means by which the state is to discharge its duty, must be operated in line with the United Kingdom's international treaty obligations: see *Bankovic v Belgium* (2001) 11 BHRC 435.

Since an inquest jury can return verdicts of unlawful killing and gross negligence, considerations of due process do not render a determination of responsibility unfair; and in any event protection is available to those who may be at fault: see *Bird v Keep* [1918] 2 KB 692. Article 6 would not apply to the proceedings since they do not determine any issue of civil or criminal

liability; that article therefore cannot stand in the way of a verdict of neglect, when it does not do so in respect of a verdict of unlawful killing.

The risk of inconsistency already exists in cases of gross negligence and unlawful killing and has never been a basis for restricting the availability of those verdicts: the risk is not of actual, but of apparent inconsistency, based only on a possible confusion over the meaning of "neglect": the critical point is not what people might wrongly read into an inquest verdict but what, in a functional sense, it does or does not determine.

The submissions of the Secretary of State on the impracticality and undue restrictivity of the Court of Appeal's declaration are correct. Narrative or special verdicts might be more appropriately used than the short form verdict, but all forms are capable of meeting the requirements of article 2: see *Hutt v Comr of Police of the Metropolis* The Times, 5 December 2003 and *Ward v Chief Constable of the West Midlands* The Times, 15 December 1997; Court of Appeal (Civil Division) Transcript No 2282 of 1997.

Crow in reply. *R v Her Majesty's Coroner at Hammersmith, Ex p Peach (Nos 1 and 2)* [1980] QB 211; *R v HM Coroner for Inner South London, Ex p Epsom Health Care NHS Trust* (1994) 158 JP 973 and *R v HM Coroner for Birmingham, Ex p Cotton* 160 JP 123 are distinguishable on their facts.

Their Lordships took time for consideration.

11 March. **LORD BINGHAM OF CORNHILL**

1 This is the considered opinion of the Committee.

2 The European Court of Human Rights has repeatedly interpreted article 2 of the European Convention as imposing on member states substantive obligations not to take life without justification and also to establish a framework of laws, precautions, procedures and means of enforcement which will, to the greatest extent reasonably practicable, protect life. See, for example, *LCB v United Kingdom* (1998) 27 EHRR 212, para 36; *Osman v United Kingdom* (1998) 29 EHRR 245; *Powell v United Kingdom* Reports of Judgments and Decisions 2000-V, p 397; *Keenan v United Kingdom* (2001) 33 EHRR 913, paras 88–90; *Edwards v United Kingdom* (2002) 35 EHRR 487, para 54; *Calvelli and Ciglio v Italy* Reports of Judgments and Decisions 2002-I, p 1; *Öneryildiz v Turkey* (Application No 48939/99) (unreported) 18 June 2002.

3 The European Court has also interpreted article 2 as imposing on member states a procedural obligation to initiate an effective public investigation by an independent official body into any death occurring in circumstances in which it appears that one or other of the foregoing substantive obligations has been, or may have been, violated and it appears that agents of the state are, or may be, in some way implicated. See, for example, *Taylor v United Kingdom* (1994) 79-A DR 127, 137; *McCann v United Kingdom* (1995) 21 EHRR 97, para 161; *Powell v United Kingdom* Reports of Judgments and Decisions 2000-V, p 397; *Salman v Turkey* (2000) 34 EHRR 425, para 104; *Sieminska v Poland* (Application No 37602/97) (unreported) 29 March 2001; *Jordan v United Kingdom* (2001) 37 EHRR 52, para 105; *Edwards v United Kingdom*, 35 EHRR 487, para 69; *Öneryildiz v Turkey*, 18 June 2002, paras 90–91; *Mastromatteo v Italy* (Application No 37703/97) (unreported) 24 October 2002.

4 The scope of the state's substantive obligations has been the subject of previous decisions such as *Osman* and *Keenan* but is not in issue in this appeal. Nor does any issue arise about participation in the official investigation by the family or next of kin of the deceased, as recently considered by the House in *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653. The issue here concerns not the conduct of the investigation itself but its culmination. It is, or may be, necessary to consider three questions.

(1) What, if anything, does the Convention require (by way of verdict, judgment, findings or recommendations) of a properly conducted official investigation into a death involving, or possibly involving, a violation of article 2?

(2) Does the regime for holding inquests established by the Coroners Act 1988 and the Coroners Rules 1984, as hitherto understood and followed in England and Wales, meet those requirements of the Convention?

(3) If not, can the current regime governing the conduct of inquests in England and Wales be revised so as to do so, and if so how?

5 Before turning to consider these questions it should be observed that they are very important questions. Compliance with the substantive obligations referred to above must rank among the highest priorities of a modern democratic state governed by the rule of law. Any violation or potential violation must be treated with great seriousness. In the context of this appeal the questions have a particular importance also. For, as the facts summarised in paras 39–43 below make clear, the appeal concerns an inquest into the suicide, in prison, of a serving prisoner. Unhappily, this is not a rare event. The statistics given in recent publications, (notably "Suicide is Everyone's Concern, A Thematic Review by HM Chief Inspector of Prisons for England and Wales" (May 1999), the Annual Report of HM Chief Inspector of Prisons for England and Wales 2002–2003, and Evidence given to the House of Lords and House of Commons Joint Committee on Human Rights (HL Paper 12, HC 134, January 2004)) make grim reading. While the suicide rate among the population as a whole is falling, the rate among prisoners is rising. In the 14 years 1990–2003 there were 947 self-inflicted deaths in prison, 177 of which were of detainees aged 21 or under. Currently, almost two people kill themselves in prison each week. Over a third have been convicted of no offence. One in five is a woman (a proportion far in excess of the female prison population). One in five deaths occurs in a prison hospital or segregation unit. 40% of self-inflicted deaths occur within the first month of custody. It must of course be remembered that many of those in prison are vulnerable, inadequate or mentally disturbed; many have drug problems; and imprisonment is inevitably, for some, a very traumatic experience. These statistics, grim though they are, do not of themselves point towards any dereliction of duty on the part of the authorities (which have given much attention to the problem) or any individual official. But they do highlight the need for an investigative regime which will not only expose any past violation of the state's substantive obligations already referred to but also, within the bounds of what is practicable, promote measures to prevent or minimise the risk of future violations. The death of any person involuntarily in the custody of the state, otherwise than from natural causes, can never be other than a ground for concern. This appeal is

A concerned with the death of a long-term convicted prisoner but the same principles must apply to the death of any person in the custody of the prison service or the police.

6 Question (1). What, if anything, does the Convention require (by way of verdict, judgment, findings or recommendations) of a properly conducted official investigation into a death involving, or possibly involving, a
B violation of article 2?

7 The European court has never expressly ruled what the final product of an official investigation, to satisfy the procedural obligation imposed by article 2 of the Convention, should be. This is because the Court applies principles and does not lay down rules, because the Court pays close attention to the facts of the case before it and because it recognises that different member states seek to discharge their Convention obligations
C through differing institutions and procedures. In this appeal the Committee heard oral submissions on behalf of the Secretary of State, HM Coroner for the Western District of Somerset and Mrs Jean Middleton, and received written submissions on behalf of the Coroners' Society of England and Wales, the Northern Ireland Human Rights Commission and Inquest. It was not suggested that the express terms of
D the Convention or any ruling of the Court provide a clear answer to this first question before the House.

8 The court has recognised (in *McCann v United Kingdom* 21 EHRR 97, para 146) that its approach to the interpretation of article 2 "must be guided by the fact that the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its
E provisions be interpreted and applied so as to make its safeguards practical and effective". Thus if an official investigation is to meet the state's procedural obligation under article 2 the prescribed procedure must work in practice and must fulfil the purpose for which the investigation is established.

9 What is the purpose for which the official investigation is established? The decided cases assist in answering that question. In *Keenan v United*
F *Kingdom* 33 EHRR 93, which concerned a prisoner who had committed suicide, the article 2 argument was directed to the state's performance of its substantive, not its procedural, obligation. The court did, however, note the limited scope of an inquest in England and Wales (paras 75–78), which was relevant to the applicant's complaint under article 13 that national law afforded her no effective remedy. In the context of that complaint the
G Government agreed (para 121)

> "that the inquest, which did not permit the determination of issues of liability, did not furnish the applicant with the possibility of establishing the responsibility of the prison authorities or obtaining damages."

In para 122, the court, still with reference to this complaint, ruled:

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> "Given the fundamental importance of the right to the protection of life, article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life . . . "

On the facts, the court held (para 131) that a civil action in damages would not have afforded the applicant an effective remedy which would have established where responsibility lay for the death of the deceased.

10 *Jordan v United Kingdom* 37 EHRR 52 arose from the fatal shooting of a young man by a police officer in Northern Ireland. The court found a violation of article 2 in respect of failings in the investigative procedures concerning the death. The court held:

> "105. The obligation to protect the right to life under article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to 'secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention', also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion, once the matter has come to their attention. They cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures . . ."
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> "107. The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances and to the identification and punishment of those responsible. This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including inter alia eye witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard."

There was argument whether the inquest, which had been opened but not concluded, would satisfy the state's investigative obligation, but the court concluded that, on the facts of this case, it would not:

> "128. It is also alleged that the inquest in this case is restricted in the scope of its examination. According to the case law of the national courts, the procedure is a fact-finding exercise and not a method of apportioning guilt. The Coroner is required to confine his investigation to the matters directly causative of the death and not to extend his inquiry into the broader circumstances. This was the standard applicable in the *McCann* inquest also and did not prevent examination of those aspects of the planning and conduct of the operation relevant to the killings of the three IRA suspects. The Court is not persuaded therefore that the approach taken by the domestic courts necessarily contradicts the requirements of article 2. The domestic courts accept that an essential

purpose of the inquest is to allay rumours and suspicions of how a death came about. The Court agrees that a detailed investigation into policy issues or alleged conspiracies may not be justifiable or necessary. Whether an inquest fails to address necessary factual issues will depend on the particular circumstances of the case. It has not been shown in the present application that the scope of the inquest as conducted so far has prevented any particular matters relevant to the death being examined.

"129. None the less, unlike the *McCann* inquest, the jury's verdict in this case may only give the identity of the deceased and the date, place and cause of death. In England and Wales, as in Gibraltar, the jury is able to reach a number of verdicts, including 'unlawful death'. As already noted, where an inquest jury gives such a verdict in England and Wales, the DPP is required to reconsider any decision not to prosecute and to give reasons which are amenable to challenge in the courts. In this case, the only relevance the inquest may have to a possible prosecution is that the Coroner may send a written report to the DPP if he considers that a criminal offence may have been committed. It is not apparent however that the DPP is required to take any decision in response to this notification or to provide detailed reasons for not taking any further action. In this case it appears that the DPP did reconsider his decision not to prosecute when the Coroner referred to him information about a new eye witness who had come forward. The DPP maintained his decision however and gave no explanation of his conclusion that there remained insufficient evidence to justify a prosecution.

"130. Notwithstanding the useful fact-finding function that an inquest may provide in some cases, the Court considers that in this case it could play no effective role in the identification or prosecution of any criminal offences which may have occurred and, in that respect, falls short of the requirements of article 2."

The court held (para 142) that the Northern Irish inquest procedure fell short of what article 2 required because (among other shortcomings) it "did not allow any verdict or findings which could play an effective role in securing a prosecution in respect of any criminal offence which may have been disclosed".

11 The killing in *Edwards v United Kingdom* 35 EHRR 487 was of a prisoner by another prisoner with whom he shared a cell. The killer was charged with murder but his plea of guilty to manslaughter by reason of diminished responsibility was accepted, and there was accordingly no investigation in the criminal trial of how the two men came to be sharing a cell. This, not surprisingly, was a feature of the case which greatly concerned the family of the deceased. In para 69 of its judgment, the court described the purpose of the investigation required by article 2 in exactly the same terms as it had used in para 105 of its judgment in *Jordan* 37 EHRR 52, quoted above. A violation was found.

12 In *Mastromatteo v Italy* Reports of the Judgments and Decisions 2002-VIII, p 151, the deceased had been killed by a group of criminals, some of whom were on leave of absence from prison and one of whom had absconded from prison. A complaint that the state had violated its substantive obligation under article 2 was rejected: para 79. So too was a complaint that the state's procedural obligation had been violated: para 96.

This complaint was primarily directed to the possibility of obtaining compensation (paras 80–82), but the court, while finding (para 92) that there was a procedural obligation to determine the circumstances of the death, found the obligation to be met by the trial and conviction of two of the murderers and the making of a compensation order.

13 Basing themselves primarily on *Keenan, Jordan* and *Edwards*, the parties made competing submissions on what the procedural investigative obligation under article 2 requires. For the Secretary of State, it was argued that what is required, where the obligation arises, is a full, thorough, independent and public investigation of the facts surrounding and leading to the death but not necessarily culminating in any decision on whether the state or any individual is responsible. The duty is to investigate, no more. If the investigation yields evidence of delinquency on the part of the state or its agents, then the victim must have a remedy. But that is a requirement of article 13, not of the procedural obligation under article 2. Counsel for Mrs Middleton challenged this approach. If an investigation is to ensure the accountability of state agents or bodies for deaths occurring under their responsibility (*Jordan* 37 EHRR 52, para 105) and be capable of leading to a determination of whether the force used had been justified (*Jordan*, para 107) and to establish the cause of death or the person or persons responsible (*Jordan*, para 107), then it must culminate in a finding which, while it need not convict any person of crime nor constitute an enforceable civil judgment against any party, must express the fact-finding body's judgment on the cardinal issues concerning the death.

14 In choosing between these submissions assistance is gained by comparing the court's decisions in *McCann* and *Jordan*. *McCann* 21 EHRR 97 arose from the fatal shooting by soldiers of three people, believed to be terrorists, in Gibraltar. A lengthy and detailed inquest was held, also in Gibraltar, when much evidence was heard. It was clear from the outset when and where the deceased had died, and that they had been shot by the soldiers. The central question was whether the soldiers had been justified in shooting and killing the deceased. On this issue the coroner directed the jury in some detail, giving illustrations of conduct which would amount to unlawful killing, and leaving to the jury three verdicts which he regarded as reasonably open to them (para 120): these were unlawful killing (unlawful homicide), lawful killing (justifiable reasonable homicide) or an open verdict. The jury could thus indicate, by returning an open verdict, their inability to decide or, by choosing one or other of the remaining verdicts, express their judgment on the central, and very important, issue. Although criticism was made of the adequacy of the inquest proceedings as an investigative mechanism, the Court concluded that the alleged shortcomings in the proceedings had not substantially hampered the carrying out of a thorough, impartial and careful examination of the circumstances surrounding the killings: para 163. The inquest could not, of course, have culminated in an award of compensation.

15 In *Jordan* 37 EHRR 52, to which reference is made in para 10 above, the central issue was very much the same but a different result was reached. One of the reasons for this was that the jury were only permitted in their verdict to give the identity of the deceased and the date, place and cause of death and not, as in England, Wales and Gibraltar, to return any one of several verdicts including "unlawful death". A verdict in the permitted form

A would not, the court held, operate to trigger criminal prosecution. In a situation where the Director of Public Prosecutions of Northern Ireland had decided not to prosecute, with no reasons given, and with no effective means of requiring reasons to be given (para 122), the court regarded the inquest as inadequate to investigate the possible breach of the state's substantive obligation under article 2.

B **16** It seems safe to infer that the state's procedural obligation to investigate is unlikely to be met if it is plausibly alleged that agents of the state have used lethal force without justification, if an effectively unchallengeable decision has been taken not to prosecute and if the fact-finding body cannot express its conclusion on whether unjustifiable force has been used or not, so as to prompt reconsideration of the decision not to prosecute. Where, in such a case, an inquest is the instrument by which the C state seeks to discharge its investigative obligation, it seems that an explicit statement, however brief, of the jury's conclusion on the central issue is required.

17 Does that requirement apply only to the very limited category of cases just defined, or does it apply to other cases as well? The decision in *Keenan* 33 EHRR 913 shows that it does apply to a broader category of cases, since although in that case no breach of the state's investigative D obligation was alleged or found, the court based its conclusion that article 13 had been violated in part on its opinion (para 121) that the inquest, which did not permit any determination of liability, did not furnish the applicant with the possibility of establishing the responsibility of the prison authorities nor did it (para 122) constitute an investigation capable of leading to the identification and punishment of those responsible for the E deprivation of life. A statement of the inquest jury's conclusions on the main facts leading to the suicide of Mark Keenan would have precluded that comment.

18 Two considerations fortify confidence in the correctness of this conclusion. First, a verdict of an inquest jury (other than an open verdict, sometimes unavoidable) which does not express the jury's conclusion on a major issue canvassed in the evidence at the inquest cannot satisfy or meet F the expectations of the deceased's family or next-of-kin. Yet they, like the deceased, may be victims. They have been held to have legitimate interests in the conduct of the investigation (*Jordan* 37 EHRR 52, para 109), which is why they must be accorded an appropriate level of participation: see also *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653. An uninformative jury verdict will be unlikely to meet what the House in G *Amin*, para 31, held to be one of the purposes of an article 2 investigation: "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."

19 The second consideration is that while the use of lethal force by agents of the state must always be a matter of the greatest seriousness, a systemic failure to protect human life may call for an investigation which may be no less important and perhaps even more complex: see *Amin*, H paras 21, 41, 50 and 62. It would not promote the objects of the Convention if domestic law were to distinguish between cases where an agent of the state may have used lethal force without justification and cases in which a defective system operated by the state may have failed to afford adequate protection to human life.

20 The European court has repeatedly recognised that there are many different ways in which a state may discharge its procedural obligation to investigate under article 2. In England and Wales an inquest is the means by which the state ordinarily discharges that obligation, save where a criminal prosecution intervenes or a public inquiry is ordered into a major accident, usually involving multiple fatalities. To meet the procedural requirement of article 2 an inquest ought ordinarily to culminate in an expression, however brief, of the jury's conclusion on the disputed factual issues at the heart of the case.

21 Question (2). Does the regime for holding inquests established by the Coroners Act 1988 and the Coroners Rules 1984 as hitherto understood and followed in England and Wales, meet the requirements of the Convention?

22 The historical and statutory background to the Coroners Act 1988 and the Coroners Rules 1984 was accurately summarised by the Court of Appeal in *R v Coroner for North Humberside and Scunthorpe, Ex p Jamieson* [1995] QB 1. There has been little significant legislative change in England and Wales since then, and that account need not be repeated. It is enough to identify the main features of the regime so far as relevant to this appeal.

23 By section 8(1) of the Act an inquest must be held where there is reasonable cause to suspect that a deceased person "(a) has died a violent or an unnatural death; (b) has died a sudden death of which the cause is unknown; or (c) has died in prison or in such a place or in such circumstances as to require an inquest under any other Act."

If there is reason to suspect that the death occurred in prison or in police custody or resulted from an injury caused by a police officer in the purported execution of his duty, the inquest must be held with a jury (section 8(3)), and the independence of jurors dealing with prison deaths is specifically protected (section 8(6)). The requirement to summon a jury in such cases recognises the substantive and procedural obligations of the state which are now derived from article 2 as well as from domestic law. If a coroner fails to hold an inquest when he should, he may be ordered to do so, and if a coroner misconducts an inquest, another inquest may be ordered: section 13.

24 The task of the jury is to "inquire as jurors into the death of the deceased" (section 8(2)(a)) and they are sworn "diligently to inquire into the death of the deceased and to give a true verdict according to the evidence": section 8(2)(b). The coroner is to "examine on oath concerning the death all persons who tender evidence as to the facts of the death and all persons having knowledge of those facts whom he considers it expedient to examine": section 11(2). Thus the character of the proceedings is quite different from that of an ordinary trial, civil or criminal. The jury, where there is one, must hear the evidence and give their verdict: section 11(3)(a). Section 11(5) requires that the inquisition, to be signed by the jury or a majority of them, must set out in writing, so far as such particulars have been proved, and in such form as the Lord Chancellor may by rule prescribe, "(i) who the deceased was; and (ii) how, when and where the deceased came by his death".

25 The 1988 Act recognises that a death which is the subject of an inquest may also be the subject of criminal proceedings, and also recognises the general undesirability of investigating publicly at an inquest evidence

A pertinent to a forthcoming criminal trial. In a departure from previous practice, section 11(6) of the Act provides:

> "At a coroner's inquest into the death of a person who came by his death by murder, manslaughter or infanticide, the purpose of the proceedings shall not include the finding of any person guilty of the murder, manslaughter or infanticide; and accordingly a coroner's
B inquisition shall in no case charge a person with any of those offences."

Thus the inquest jury may no longer perform its former role as a grand jury. Section 16 of the Act (and rules 27 and 28 of the Rules) make provision for the adjourning of an inquest when criminal proceedings are or may be pending on certain specified charges or in certain specified circumstances
C (but not solely because any criminal proceedings arising out of the death of the deceased have been instituted: rule 32 of the Rules). After the conclusion of criminal proceedings the coroner may resume the adjourned inquest "if in his opinion there is sufficient cause to do so": section 16(3). Section 17A makes provision for the adjourning of an inquest when a public inquiry into a death is to be conducted or chaired by a judge. A coroner may only resume an inquest so adjourned "if in his opinion there is exceptional reason for
D doing so", and then subject to conditions: section 17A(4).

26 The Coroners Rules 1984 have effect as if made under section 32 of the 1988 Act, which gives the Lord Chancellor, with the concurrence of the Secretary of State, a wide power to make rules for regulating the practice and procedure at inquests and to prescribe forms for use in connection with inquests. The 1984 Rules prescribe a hybrid procedure, not purely
E inquisitorial or purely adversarial. On the one hand, notice of the inquest must be given to the next-of-kin of the deceased and a widely defined group of other interested parties (rule 19), who are entitled to examine witnesses either in person or by an authorised advocate (rule 20); witnesses are privileged against self-incrimination; notice must be given to, and attendance facilitated of, persons whose conduct is likely to be called into question: rules 24 and 25. On the other hand, the coroner calls and first
F examines all witnesses, the representative of a witness questioning him last (rule 21); no person is allowed to address the coroner or the jury as to the facts (rule 40); and there is no particularised charge or complaint as in criminal or civil proceedings. In addition to examining the witnesses the coroner (rule 41) sums up the evidence to the jury and directs them as to the law, drawing their attention to rules 36(2) and 42. Rule 43 provides:

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> "A coroner who believes that action should be taken to prevent the recurrence of fatalities similar to that in respect of which the inquest is being held may announce at the inquest that he is reporting the matter in writing to the person or authority who may have power to take such action and he may report the matter accordingly."

H Attention should be drawn to two important rules. The first of these, rule 36, provides:

> "(1) The proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely—(a) who the deceased was; (b) how, when and where the deceased came by his death; (c) the

particulars for the time being required by the Registration Acts to be registered concerning the death. A

"(2) Neither the coroner nor the jury shall express any opinion on any other matters."

The second, rule 42, provides:

"No verdict shall be framed in such a way as to appear to determine any question of—(a) criminal liability on the part of a named person, or (b) civil liability." B

27 Rule 60 provides that the forms set out in Schedule 4 may be used for the purposes for which they are expressed to be applicable, with such modifications as circumstances may require. Schedule 4 includes, as form 22, a model form of inquisition. This suggests that, when recording the conclusion of the jury as to the death, one or other of certain forms should be adopted. The form provides that a finding that "the cause of death was aggravated by lack of care/self-neglect" should be added only where the finding is of a death caused by natural causes, industrial disease, dependence on or abuse of drugs, or want of attention at birth. In the case of murder, manslaughter or infanticide the suggested form of conclusion is that the deceased was "killed unlawfully". C D

28 Remarkably, as it now seems, the Court of Appeal made no reference to the European Convention in *Ex p Jamieson* [1995] QB 1, and the report does not suggest that counsel referred to it either. Counsel for Mrs Middleton criticised the reasoning of that decision, but it appears to the committee to have been an orthodox analysis of the Act and the Rules and an accurate, if uncritical, compilation of judicial authority as it then stood. Thus emphasis was laid on the function of an inquest as a fact-finding inquiry: p 23, conclusion (1). Following *R v Walthamstow Coroner, Ex p Rubenstein* [1982] Crim LR 509, *R v HM Coroner for Birmingham, Ex p Secretary of State for the Home Department* (1990) 155 JP 107 and *R v HM Coroner for Western District of East Sussex, Ex p Homberg* (1994) 158 JP 357, the Court of Appeal interpreted "how" in section 11(5)(b)(ii) of the Act and rule 36(1)(b) of the Rules narrowly as meaning "by what means" and not "in what broad circumstances": p 24, conclusion (2). It was not the function of a coroner or an inquest jury to determine, or appear to determine, any question of criminal or civil liability, to apportion guilt or attribute blame: p 24, conclusion (3). Attention was drawn to the potential unfairness if questions of criminal or civil liability were to be determined in proceedings lacking important procedural protections: p 24, conclusion (4). A verdict could properly incorporate a brief, neutral, factual statement, but should express no judgment or opinion, and it was not for the jury to prepare detailed factual statements: p 24, conclusion (6). It was acceptable for a jury to find, on appropriate facts, that self-neglect aggravated or contributed to the primary cause of death, but use of the expression "lack of care" was discouraged and a traditional definition of "neglect" was adopted: pp 24–25, conclusions (7), (8) and (9). Where it was found that the deceased had taken his own life, that was the appropriate verdict, and only in the most extreme circumstances (going well beyond ordinary negligence) could neglect be properly found to have contributed to that cause of death: pp 25–26, conclusion (11). Reference to neglect or self-neglect should not be made in a E F G H

A verdict unless there was a clear and direct causal connection between the conduct so described and the cause of death: p 26, conclusion (12). It was for the coroner alone to make reports with a view to preventing the recurrence of a fatality: p 26, conclusion (13). Emphasis was laid on the duty of the coroner to conduct a full, fair and fearless investigation, and on his authority as a judicial officer: p 26, conclusion (14).

B **29** How far, then, does the current regime for conducting inquests in England and Wales match up to the investigative obligation imposed by article 2?

30 In some cases the state's procedural obligation may be discharged by criminal proceedings. This is most likely to be so where a defendant pleads not guilty and the trial involves a full exploration of the facts surrounding the death. It is unlikely to be so if the defendant's plea of guilty is accepted C (as in *Edwards* 35 EHRR 487), or the issue at trial is the mental state of the defendant (as in *Amin* [2003] 3 WLR 1169), because in such cases the wider issues will probably not be explored.

31 In some other cases, short verdicts in the traditional form will enable the jury to express their conclusion on the central issue canvassed at the inquest. *McCann* 21 EHRR 97 has already been given as an example: see para 14 above. The same would be true if the central issue at the inquest D were whether the deceased had taken his own life or been killed by another: by choosing between verdicts of suicide and unlawful killing, the jury would make clear its factual conclusion. But it is plain that in other cases a strict *Ex p Jamieson* [1995] QB 1 approach will not meet what has been identified above as the Convention requirement. In *Keenan* 33 EHRR 913 the inquest verdict of death by misadventure and the certification of asphyxiation by E hanging as the cause of death did not express the jury's conclusion on the events leading up to the death. Similarly, verdicts of unlawful killing in *Edwards* and *Amin*, although plainly justified, would not have enabled the jury to express any conclusion on what would undoubtedly have been the major issue at any inquest, the procedures which led in each case to the deceased and his killer sharing a cell.

F **32** The conclusion is inescapable that there are some cases in which the current regime for conducting inquests in England and Wales, as hitherto understood and followed, does not meet the requirements of the Convention. This is a conclusion rightly reached by the judge in this case (see para 44 below) and by the Court of Appeal both in the present case (see para 44 below) and in cases such as *R (Davies) v Deputy Coroner for Birmingham* [2003] EWCA Civ 1739 at [71].

G **33** Question (3). Can the current regime governing the conduct of inquests in England and Wales be revised so as to meet the requirements of the Convention, and if so, how?

34 Counsel for the Secretary of State rightly suggested that the House should propose no greater revision of the existing regime than is necessary to secure compliance with the Convention, even if it were (contrary to his main submission) to reach the conclusion just expressed. The warning is salutary. H There has recently been published "Death Certification and Investigation in England, Wales and Northern Ireland: The Report of a Fundamental Review", June 2003 (Cm 5831). Decisions have yet to be made on whether, and how, to give effect to the recommendations. Those decisions, when made, will doubtless take account of policy, administrative and financial

considerations which are not the concern of the House sitting judicially. It is correct that the scheme enacted by and under the authority of Parliament should be respected save to the extent that a change of interpretation (authorised by section 3 of the Human Rights Act 1998) is required to honour the international obligations of the United Kingdom expressed in the Convention.

35 Only one change is in our opinion needed: to interpret "how" in section 11(5)(b)(ii) of the Act and rule 36 (1)(b) of the Rules in the broader sense previously rejected, namely as meaning not simply "by what means" but "by what means and in what circumstances".

36 This will not require a change of approach in some cases, where a traditional short form verdict will be quite satisfactory, but it will call for a change of approach in others: paras 30–31 above. In the latter class of case it must be for the coroner, in the exercise of his discretion, to decide how best, in the particular case, to elicit the jury's conclusion on the central issue or issues. This may be done by inviting a form of verdict expanded beyond those suggested in form 22 of Schedule 4 to the Rules. It may be done, and has (even if very rarely) been done, by inviting a narrative form of verdict in which the jury's factual conclusions are briefly summarised. It may be done by inviting the jury's answer to factual questions put by the coroner. If the coroner invites either a narrative verdict or answers to questions, he may find it helpful to direct the jury with reference to some of the matters to which a sheriff will have regard in making his determination under section 6 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976: where and when the death took place; the cause or causes of such death; the defects in the system which contributed to the death; and any other factors which are relevant to the circumstances of the death. It would be open to parties appearing or represented at the inquest to make submissions to the coroner on the means of eliciting the jury's factual conclusions and on any questions to be put, but the choice must be that of the coroner and his decision should not be disturbed by the courts unless strong grounds are shown.

37 The prohibition in rule 36(2) of the expression of opinion on matters not comprised within sub-rule (1) must continue to be respected. But it must be read with reference to the broader interpretation of "how" in section 11(5)(b)(ii) and rule 36(1) and does not preclude conclusions of fact as opposed to expressions of opinion. However the jury's factual conclusion is conveyed, rule 42 should not be infringed. Thus there must be no finding of criminal liability on the part of a named person. Nor must the verdict appear to determine any question of civil liability. Acts or omissions may be recorded, but expressions suggestive of civil liability, in particular "neglect" or "carelessness" and related expressions, should be avoided. Self-neglect and neglect should continue to be treated as terms of art. A verdict such as that suggested in para 45 below ("The deceased took his own life, in part because the risk of his doing so was not recognised and appropriate precautions were not taken to prevent him doing so") embodies a judgmental conclusion of a factual nature, directly relating to the circumstances of the death. It does not identify any individual nor does it address any issue of criminal or civil liability. It does not therefore infringe either rule 36(2) or rule 42.

A 38 The power of juries to attach riders of censure or blame was abolished on the recommendation of the Report of the Departmental Committee on Coroners under the chairmanship of Lord Wright (1936) (Cmd 5070). It has not been reintroduced. Juries do not enjoy the power conferred on Scottish sheriffs by the 1976 Act to determine the reasonable precautions, if any, whereby the death might have been avoided (section 6(1)(c)). Under the 1984 Rules, the power is reserved to the coroner B to make an appropriate report where he believes that action should be taken to prevent the recurrence of fatalities similar to that in respect of which the inquest is being held. Compliance with the Convention does not require that this power be exercisable by the jury, although a coroner's exercise of it may well be influenced by the factual conclusions of the jury. In England and Wales, as in Scotland, the making of recommendations is entrusted to an C experienced professional, not a jury. In the ordinary way, the procedural obligation under article 2 will be most effectively discharged if the coroner announces publicly not only his intention to report any matter but also the substance of the report, neutrally expressed, which he intends to make.

The present case

D 39 Colin Campbell Middleton took his own life by hanging himself in his cell at HMP Horfield on 14 January 1999. He had been in custody since, aged 14, he was convicted in April 1982 of murdering his 18-month old niece.

40 His career in prison was uneven, periods of progress being interrupted by setbacks, some of his own making, some attributable to the hostility of fellow-prisoners. After trial periods in open prisons in 1993, E 1994 and 1996 he was transferred to Horfield where, in November 1998 he harmed himself seriously. A self-harm at risk form (F2052SH) was then opened, but closed a few days later. There was evidence that he was depressed, and he was receiving medication at the time of his death. On 11 January 1999 he wrote to the Wing Governor, unhappy about his status and referring to his mental illness. He spoke of suicide to another prisoner F who may, or may not, have passed on this information to the authorities. Although he was aged only 30, he had spent more than half his life in custody.

41 The verdict reached at a first inquest was quashed for want of sufficient enquiry, and a second inquest was held over three days in October 2000, when oral evidence was received from eleven witnesses and written evidence from a further seven. It is accepted by Mrs Middleton and the G family of the deceased that at this inquest the issues surrounding the death were thoroughly, effectively and sensitively explored.

42 At the end of the evidence the coroner ruled that the issue of "neglect" should not be left to the jury. But he told the jury that if they wished to do so they could give him a note regarding any specific areas of the evidence about which they were concerned, and he would consider the note, H which would not be published, when considering exercise of his power under rule 43.

43 The jury found the cause of death to be hanging and returned a verdict that the deceased had taken his own life when the balance of his mind was disturbed. The jury also gave the coroner a note which communicated the jury's opinion that the Prison Service had failed in its duty of care for the

deceased. The family asked that the note should be appended to the inquisition, but the coroner declined to do so. The contents of the note remained private until, in the course of these proceedings, two points made by the jury were revealed. As the judge put it, the jury

> "(a) expressed concern that a form F2052SH had been closed by two officers who had no prior knowledge of Mr Middleton; and (b) expressed their belief that a letter of 11 January 1999 written by him contained sufficient information to warrant an F2052SH being opened."

In exercise of his power under rule 43, the coroner wrote a full letter to the Chief Inspector of Prisons, drawing attention to the jury's point (a) and to the jury's noting of "a failure in the prison's responsibilities towards Middleton and a total lack of communication between all grades of prison staff". The coroner pointed out that on the day before his death the deceased had not left his cell, even for meals, and had placed a rug all day over the inspection port window into the cell.

44 In her judicial review application Mrs Middleton did not question the adequacy of the coroner's investigation nor seek an order that there be a further inquest. She sought an order that the jury's findings as set out in their note be publicly recorded, and that there should thus be a formal public determination of the responsibility of the Prison Service for the death of the deceased. The issue was thus raised whether the current regime for holding inquests in England and Wales meets the requirements of article 2 of the Convention. In his reserved judgment given on 14 December 2001, Stanley Burnton J said [2001] EWHC Admin 1043 at [54]:

> "However, where there has been neglect on the part of the State, and that neglect was a substantial contributory cause of the death, my view is that a formal and public finding of neglect on the part of the State is in general necessary in order to satisfy those requirements [of article 2]."

He therefore concluded (para 56) that an inquest would not necessarily satisfy the procedural requirements of article 2 in a case such as the present. But the judge declined to order that the jury's note be incorporated in the inquisition, for a series of reasons but most importantly because he considered that the coroner had acted unlawfully in suggesting production of the note. The judge recorded (para 60) that in the view of the jury and the coroner there had been significant deficiencies in the Prison Service's care of the deceased. He considered that no declaration was needed but, at the request of the Secretary of State, declared that: "by reason of the restrictions on the verdict at the inquest into the death of [the deceased] . . . that inquest was inadequate to meet [the] procedural obligation in article 2 of the European Convention . . ."

The Secretary of State appealed to the Court of Appeal which delivered its reserved judgment [2003] QB 581 on 27 March 2002. It was found to be necessary, to comply with article 2, that a verdict of neglect be available, but the Court of Appeal distinguished between individual and systemic neglect:

> "87. A verdict of neglect can perform different functions. In particular, in the present context, it can identify a failure in the system adopted by the Prison Service to reduce the incidence of suicide by inmates.

A Alternatively it may do no more than identify a failure of an individual prison officer to perform his duties properly. We offer two illustrations, which demonstrate the distinction we have in mind. On the one hand, the system adopted by a prison may be unsatisfactory in that it allows a prisoner who is a known suicide risk to occupy a cell by himself or does not require that prisoner to be kept under observation. On the other hand, the system may be perfectly satisfactory but the prison officer responsible for keeping observation may fall asleep on duty.

B

"88. For the purpose of vindicating the right protected by article 2 it is more important to identify defects in the system than individual acts of negligence. The identification of defects in the system can result in it being changed so that suicides in the future are avoided. A finding of individual negligence is unlikely to lead to that result. If the facts have

C been investigated at the inquest the evidence given for this purpose should usually enable the relatives to initiate civil proceedings against those responsible without the verdict identifying individuals by name. The shortcomings of civil proceedings in meeting the requirements of article 2 do not in general prevent actions in the domestic courts for damages from providing an effective remedy in cases of alleged unlawful conduct or negligence by public authorities.

D

"89. In contrast with the position where there is individual negligence, not to allow a jury to return a verdict of neglect in relation to a defect in the system could detract substantially from the salutary effect of the verdict. A finding of neglect can bring home to the relevant authority the need for action to be taken to change the system, and thus contribute to the avoidance of suicides in the future. The inability to bring in a verdict

E of neglect (without identifying any individual as being involved) in our judgment significantly detracts, in some cases, from the capacity of the investigation to meet the obligations arising under article 2."

Later, the court continued:

"91. . . . In a situation where a coroner knows that it is the inquest

F which is in practice the way the state is fulfilling the adjectival obligation under article 2, it is for the coroner to construe the Rules in the manner required by section 6(2)(b) [of the Human Rights Act 1998]. Rule 42 can and should, contrary to *R v Coroner for North Humberside and Scunthorpe, Ex p Jamieson* [1995] QB 1, when necessary be construed (in relation to both criminal and civil proceedings) only as preventing an individual being named, with the result that a finding of system neglect of

G the type we have indicated will not contravene that rule. If the coroner is acting in accordance with the rule for this purpose he will not be offending in this respect section 6(1).

"92. For a coroner to take into account today the effect of the Human Rights Act 1998 on the interpretation of the Rules is not to overrule *Jamieson's* case by the back door. In general the decision continues to apply to inquests, but when it is necessary so as to vindicate article 2 to

H give in effect a verdict of neglect, it is permissible to do so. The requirements are in fact specific to the particular inquest being conducted and will only apply where in the judgment of the coroner a finding of the jury on neglect could serve to reduce the risk of repetition of the circumstances giving rise to the death being inquired into at the inquest.

> Subject to the coroner, in the appropriate cases, directing the jury when they can return what would in effect be a rider identifying the nature of the neglect they have found, the rules will continue to apply as at present. The proceedings should not be allowed to become adversarial. We appreciate there is no provision for such a rider in the model inquisition but this technicality should not be allowed to interfere with the need to comply with section 6 of the Human Rights Act 1998."

The Court of Appeal set aside the judge's declaration and instead declared:

> "In a case where (a) a coroner knows that it is the inquest which is in practice the way the State is to fulfil the adjectival obligation under article 2 of the European Convention on Human Rights, and (b) a finding of neglect by the jury at the inquest could serve to reduce the risk of repetition of the circumstances giving rise to the death being inquired into, rule 42 of the Coroners Rules 1984 can and should be construed as allowing such a finding, providing no individual is named therein."

45 It follows from the reasoning earlier in this opinion that the judge's declaration was correctly made, although not for all the reasons he gave. There was no dispute at this inquest whether the deceased had taken his own life. He had left a suicide note, and it was plain that he had. The crux of the argument was whether he should have been recognised as a suicide risk and whether appropriate precautions should have been taken to prevent him taking his own life. The jury's verdict, although strictly in accordance with the guidance in *Ex p Jamieson* [1995] QB 1, did not express the jury's conclusion on these crucial facts. This might have been done by a short and simple verdict (e g "The deceased took his own life, in part because the risk of his doing so was not recognised and appropriate precautions were not taken to prevent him doing so"). Or it could have been done by a narrative verdict or a verdict given in answer to the coroner's questions. By one means or another the jury should, to meet the procedural obligation in article 2, have been permitted to express their conclusion on the central facts explored before them.

46 Had this been done (and the coroner cannot of course be criticised for applying the law as it stood) it would not have been necessary to invite the jury to submit a note. Their assessment of the facts and probabilities would have been clear, and the coroner (having also heard the evidence) could have judged what report he should make under rule 43. As it was, he was not constrained by the jury's note in what he reported. But the judge was right to view private communications between the jury and the coroner with disfavour, since such a practice must derogate from the public nature of the proceedings.

47 The declaration made by the Court of Appeal found no friend in argument before the House. In the absence of full criminal proceedings, and unless otherwise notified, a coroner should assume that his inquest is the means by which the state will discharge its procedural investigative obligation under article 2. There is force in the criticism made by all parties of the distinction drawn between individual and systemic neglect, since the borderline between the two is indistinct and there will often be some overlap between the two: there are some kinds of individual failing which a sound system may be expected to detect and remedy before harm is done. There

A will, moreover, be individual failings which need to be identified even though an individual is not to be named. "Self-neglect" and "neglect" are terms of art in the law of inquests, and there is no reason to alter their meaning. The recommending of precautions to prevent repetition is for the coroner, not the jury.

48 There has been in this case a full and satisfactory investigation. Mrs Middleton does not seek another inquest. The conclusions of the jury, B which Mrs Middleton sought to publicise, have been published to the world. No purpose is served by a declaration.

49 The arguments of the Secretary of State and Mrs Middleton on the acceptability of the inquest regime to discharge the state's procedural investigative obligation under article 2 have, in each case, succeeded in part and failed in part. But the Secretary of State has succeeded in persuading the C House that the Court of Appeal's declaration should be set aside. To that extent his appeal succeeds. We make no order for the payment of costs by any party.

50 In this appeal no question was raised on the retrospective application of the Human Rights Act 1998 and the Convention. They were assumed to be applicable. Nothing in this opinion should be understood to throw doubt on the conclusion of the House in *In re McKerr* [2004] 1 WLR 807. D

Appeal allowed in part.
Declaration of Court of Appeal set aside.

Solicitors: Treasury Solicitor; Clarke Willmott, Taunton; Howells, Sheffield. E

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