[2004] NICA 29 (2) | *Ref:* GIRC4151

Judgment: approved by the Court for handing down (subject to editorial corrections) | *Delivered:* **10/09/04**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL FROM THE HIGH COURT OF JUSTICE (CROWN SIDE)

2001 No 188

IN THE MATTER OF AN APPLICATION BY HUGH JORDAN FOR JUDICIAL REVIEW

AND

IN THE MATTER OF A DECISION TAKEN BY THE LORD CHANCELLOR

AND

2002 No 10

IN THE MATTER OF AN APPLICATION BY HUGH JORDAN FOR JUDICIAL REVIEW

AND

IN THE MATTER OF A DECISION TAKEN BY THE CORONER

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GIRVAN J

[1] In order to understand the issues raised in these appeals it is necessary to briefly state the background to and content of the judicial review proceedings which led to the coroner's decision and to the rulings by Kerr J (as he then was) in respect of those judicial review applications. The legal landscape within which the coroner made his decision and within which Kerr J gave his ruling has changed as a result of decisions reached by the courts in the intervening period, most importantly the decisions of the House of Lords in three separate appeals in which the House sought to give

guidance on the vexed question of the relationship between domestic inquests and the European Convention on Human Rights ("the Convention").

[2] Kerr J in his judgments delivered on 29 January 2002 and 8 March 2002 set out something of the legal and factual background to the matters. The inquest arose out of the death of Pearse Jordan who died on 25 November 1992 in the course of an incident involving members of the RUC who caused the death of the deceased in controversial circumstances which are hotly contested. An inquest commenced as long ago as 4 January 1995. That inquest has been adjourned on a number of occasions. Prior to the commencement of the inquest the applicant, the father of the deceased, lodged an application before the European Court of Human rights ("the European Court") alleging a breach of article 2 of the Convention (Application No 24746 – 94). The European Court in its decision reported in [2003] 37 EHRR 52 concluded that the article 2 obligation to protect life required by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of lethal force by agents of the state. The essential purpose of such investigations 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. The investigation must be capable of leading to a determination as to whether the force used in such cases was or was not justified in the circumstances and to the detection and punishment of those responsible. The European Court concluded that the proceedings in that case for investigating the use of lethal force by the police officers had been shown to disclose a number of shortcomings. There was a lack of independence in the investigation and a lack of public scrutiny and information to the victim's family of the reasons for the decision not to prosecute any police officers. The police officer who shot the deceased could not be required to attend the inquest as a witness. The inquest procedure did not allow any verdict or findings which could play an effective role in securing a prosecution in respect of any criminal defence which might be disclosed. The inquest proceedings did not commence promptly and were not pursued with reasonable expedition. The absence of legal aid for the representation of the next of kin and the non-disclosure of witness statements prior to their appearance prejudiced the ability of the applicants to participate in the inquest.

[3] Following a number of adjournments sought by the Lord Chancellor who wanted time to consider the implications of the European Court's ruling the coroner fixed a preliminary hearing on 9 and 10 October 2001. He adjourned the issue of the compellability of the participants in the alleged shooting and the issue of the nature of the verdict until the Lord Chancellor's intentions had been clarified. He proceeded to hear the intended parties on the question of the scope of the inquest, the issue of access to documentation, screening, arrangements and public interest immunity. On the issue of the

scope or remit of the inquest he decided he could not reach a decision on that issue until he had sight of all relevant material and decided to write to the public authorities to ask them to make available documentation to him and having considered the documentation would make a decision on the scope of the inquest. He adjourned the other applications for consideration to another preliminary hearing on 9 and 10 January 2002. By then it had become clear that the Lord Chancellor intended to amend Rule 9(2) of the Coroners' Rules so as to remove the exemption from compellability of those persons suspected of causing the death of the deceased. Those amendments were to be introduced expeditiously once proper consultation on the draft had taken place. Those rules have in fact since been changed. In relation to the other issues under consideration the coroner was referred to a number of decisions in the English courts including ex parte Wright (2001), Amin (2001) and ex parte Middleton (2001) Amin and Middleton subsequently went to the House of Lords. The coroner on 29 January 2002, the issue of access to the documentation and information still being unresolved, adjourned the inquest until March 2002. He considered that with the attendance of the participants in the shooting as witnesses the inquest should be able to effectively enquire into the facts which were relevant to the lawfulness of the force that caused the death of the deceased. Although the inquest will be a fact finding exercise as opposed to a method of apportioning guilt it could, in his view, nevertheless investigate the lawfulness of the force which caused the death of Mr Jordan. According to his affidavit sworn on 18 February 2002 the coroner was not persuaded by the arguments advanced on behalf of the next of kin of the deceased to the effect in order for the inquest to be article 2 compatible, the jury should have expressly made available to them the power to bring in a verdict of unlawful killing or an open verdict.

[4] In the application 2002 No 10 the applicant challenged the decision of the coroner on 9 January 2002 on a number of issues. In essence so far as is relevant to this appeal this challenge was directed to the decision of the coroner to proceed on the basis of the existing coroners' law and practice in Northern Ireland and not to make available to the jury the possibility of bringing in a verdict such as unlawful killing or an open verdict. The applicant sought an order that the coroner be directed to hold an inquest complying with the article 2 requirements of the Convention which, it was alleged, required such a verdict.

[5] In a separate application 2001 No 188 the applicant challenged the failure of the Lord Chancellor to introduce the necessary legislation to ensure that the inquest system in Northern Ireland complied with article 2 of the Convention and sought an order of mandamus against the Lord Chancellor to oblige him to comply with the article 2.

[6] In relation to the case against the Lord Chancellor Kerr J held that the implementation of the European Court's ruling in Jordan clearly called for the

removal of the exception in Rule 9(2) so that a person who was suspected of and causing the death of the deceased should normally be required to give evidence at an inquest into the death where an assessment of his reliability or credibility was required. He concluded that the response of the UK government to the judgment in the Jordan case was appropriate. There had not been undue delay in making the proposal to amend Rule 9(2). When he heard the case the abolition of the rule in respect of the compellability of witnesses such as Sergeant A (who was involved in the alleged shooting) was imminent and would be in place before the inquest was held. In his view it was inappropriate to make any declaration against the Lord Chancellor in the circumstances. Kerr J accepted that in the absence of any proposal by the Police Ombudsman to conduct an enquiry into the death of the deceased the inquest was the obvious forum in which the investigation into his death should take place. It did not follow that an order to establish the facts relevant to the lawfulness of the force that caused the death of the deceased a verdict of unlawful killing must be available to the jury. On his interpretation of Jordan the European Court accepted that a procedure which did not include a method of apportioning guilt is not, on that account alone, incompatible with article 2. Provided the inquest investigated the lawfulness of the force that caused the death of the deceased it is not necessary that the jury should express any view as to the guilt of any individual who may have been responsible for the death. What was vital was that the inquest should be able to play its part in the identification of criminal offences and to contribute to any prosecution of the offender by bringing the offences to the attention of those who were responsible for directing prosecutions. The prosecuting authority should be required to give reasons which are amenable to challenge in the courts. In Northern Ireland there is lacking any direct nexus between the investigation carried out by a properly conducted inquest and the decision to be taken by the DPP in relation to the prosecution of a criminal offence identified in the course of the inquest. By a properly conducted inquest Kerr J meant one that would investigate the facts that were relevant to the lawfulness of the force that caused the death of the deceased. He concluded that such an investigation was possible within the existing rules. Giving the jury the right to return a verdict of unlawful killing did not fill the gap that existed. That gap was filled by ensuring that the DPP was required to consider the possibility of launching a prosecution in respect of criminal offences identified in the course of the inquest or to explain the reason for a decision not to prosecute. He concluded, accordingly, that the Lord Chancellor was not under an obligation to introduce subordinate legislation to allow inquest juries power to return a verdict of unlawful killing.

[7] Since Kerr J gave his ruling in the matter the law relating to coroners' duties in relation to inquests has fallen for consideration by the House of Lords which in a trilogy of cases enunciated guiding principles applicable in the content of inquests where article 2 issues arise. These decisions are Re McKerr [2004] 1WLR 807 (on appeal from Northern Ireland), and R (Sacker) v

the West Yorkshire Coroner [2004] 1WLR 794 and R (Middleton) v West Somerset Coroner [2004] 2WLR 796. (I shall refer to these cases as McKerr, Sacker and Middleton.)

[8] Re: McKerr related to the question whether a proper investigation complying with article 2 of the Convention had been carried out in relation to the death of Gervaise McKerr who died in November 1982 (i.e. before the Human Rights Act 1998 came into effect in October 2000). He was shot by a member of a unit of the RUC in controversial circumstances raising issues of whether the state was applying a so called "shoot to kill" policy in relation to certain alleged suspected terrorists. In that case an inquest into the death was opened in 1984 but following adjournments was abandoned in 1994. The applicant alleged that article 2 of the Convention had been breached in that the applicant's son had been unlawfully killed and there had been no effective investigation into the circumstances of the death. The European Court had found that there had been a number of shortcomings in the various investigations. It awarded the applicant £10,000.00 as just satisfaction in respect of frustration, distress and anxiety. The United Kingdom Government paid the compensation and did not propose to undertake any further investigation. On a judicial review challenging the state's failure to conduct a proper investigation the Court of Appeal granted a declaration that the Government had failed to carry out a proper investigation compatible with article 2.

[9] In the House of Lords the state, through the Attorney General, contended for the first time that section 6 of the Human Rights Act 1998 was not applicable to deaths occurring before the Act came into force on 2 October 2000. The House held that the Convention was not part of the domestic law save insofar as incorporated by the provisions of the 1998 Act. The Act was not generally retrospective in respect of the obligations under section 6(1) and the duty under article 2 of the Convention to carry out a proper investigation into a violent death had not applied to the deceased before 2 October 2000. Since there had been no breach of the obligations before that date there could be no continuing breach thereafter. The House also rejected the argument that the common law could be developed to impose a duty on the state corresponding to that in article 2 of the Convention. As to the first point the position was distinctly stated by Lord Rodger thus at paragraph 80:

> "The applicant relies on the Human Rights Act as part of the domestic law of Northern Ireland. Under the Act the right to an investigation deriving from an article 2 Convention right pre-supposes that the killing could have been in violation of that self same Convention right. So when the (deceased) died in 1982 his relatives had no right to an investigation under the Act.

> Moreover since the Act was not retrospective they are not now to be regarded as having had such a right in 1982 or at any time thereafter. Conversely the Secretary of State is not to be regarded as having been in breach or in continuing breach of such a right either in 1982 or at any time after that."

[10] Middleton and Sacker were heard by a differently constituted chamber of the House of Lords at the same time as the argument was proceeding in McKerr. Both cases related to inquests of persons who had died in suspicious circumstances before the Human Rights Act came into force. In neither case did the state seek to take the point argued by the Attorney General before the House in McKerr. In both cases the House proceeded on the basis that the Human Rights Act and the Convention applied. No question was raised as to the retrospective application of the Human Rights Act 1998 and Convention. The House stated that those cases were not to be understood to throw doubt on the conclusion of the House in McKerr.

[11] We received no real explanation how it came about that the state authorities were taking opposite views on the applicability of the Convention in the English cases and the Northern Ireland case. Mr Morgan QC argued that Middleton had been seen as a vehicle by which the House of Lords could take the opportunity to clarify the law for future inquests. In that case the inquest was over and done with and nothing in the case detracted from its effect. Mr Morgan argued that the case was in the nature of a moot. Whether that be so or not, in the case of Sacker (which proceeded before the same chamber as heard the case in Middleton) the matter was not academic. Lord Hope held that the inquest in that case had not been able to identify the cause or causes of the deceased suicide, the steps (if any) that could have been taken and were not taken to prevent it and the precautions (if any) that ought to have been taken to avoid or reduce the risk to other prisoners. The House then went on to hold that the most convenient and appropriate course to take was to direct a new inquest. It must be presumed that the intention was that the coroner in that case would follow the approach expressed by the House of Lords. The necessary implication is that the coroner was being directed to conduct an article 2 compliant inquest in respect of a pre-Human Rights Act death unless the House's directions were meaningless in the light of McKerr. McKerr and Sacker are in apparent conflict unless they can be reconciled in some way.

[12] In an earlier decision of the House in R: (Amin) v Secretary of State [2003] 4 All ER 1264 the House also was dealing with the case of a pre-Human Rights Act death. In that case the House of Lords concluded that the investigations conducted had neither singly nor together met the minimum standards required to satisfy article 2. The House of Lords proceeded on the

basis that the Human Rights Act and article 2 were engaged. The state in that case was represented by the Secretary of State who took no point on retrospectivity.

[13] From the speeches in McKerr we must conclude that the House has definitively ruled that the obligation to carry out an article 2 compliant investigation did not apply where the death had occurred before the Act came into force. That case, however, was not dealing with a situation which applies in the present case where there was an ongoing and incomplete inquest in respect of the deceased which falls to be completed subsequent to the commencement of the Human Rights Act. The ongoing inquest falls to be conducted in accordance with domestic law but the question which arise are how is the domestic law to be interpreted and applied and whether section 3 of the Human Rights Act 1998 has the effect of leading to a re-interpretation of the Coroners Act (Northern Ireland) 1959 in relation to the nature of the inquest to be conducted.

[14] Under section 31(1) of the Coroners Act (Northern Ireland) 1959 as amended it is provided:

> "Where all members of the jury at an inquest are agreed they shall give, in the form prescribed by rules under section 36, their verdict setting forth, so far as such particulars have been proved to them, who the deceased person was and how, when and where he came to his death."

The rules made under section 36 and in form 22 set out the requirements in respect of the inquest verdict. Paragraph 10 (11) of the form of verdict contains space for the recording of the "findings" of the jury. Mr Treacy QC argued that in approaching the proper interpretation of the word "how" in Section 31(1), even in cases falling outside the ambit of the Human Rights Act the word should be interpreted in the light of the Strasbourg authorities (applying the approach of the courts in Brind and applying Middleton).

[15] In ex parte Jamieson [1995] QB 1, a pre-Human Rights Act decision of the Court of Appeal in England given in April 1994 the court interpreted "how" in section 11(5)(b) (ii) of the English Act and Rule 36 (1)(b) of the English Rules narrowly as meaning "by what means" and not "in what broad circumstances". It was not the function of a coroner or an inquest jury to determine or appear to determine any question of criminal and civil liability, apportioning guilt or attributing blame. 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 provide detailed factual statements. This approach was followed in this jurisdiction (see Re Ministry of Defence [1994] NI 279).

[16] In Middleton the House referred to Re Jamieson as a "somewhat uncritical summation of judicial authority" and Lord Bingham pointed out that; "Remarkably, as it now seems the Court of Appeal made no reference to the European Convention." Had the retrospectivity issue been raised in Middleton the House would have had to rule on whether Re Jamieson should be developed in the light of Convention case law. The House, however, proceeded on the assumption that it remained a correct statement of domestic law. It appears that the next of kin in McKerr argued for a wider "common law" form of inquest, an argument rejected by the House. No question, however, arose as to the proper application of section 3 to the interpretation of the statutory concept of "how" in the relevant domestic legislation and no questions arose as to the reinterpretation of those provisions, apart from section 3 , in the light of the Strasbourg authorities.

[17] Two separate points arise. Firstly apart from the Human Rights Act itself, would it be open to this court to depart from the approach adopted by the English Court of Appeal in Ex parte Jamieson and the Northern Ireland Court of Appeal in Re Ministry of Defence on the basis that the Strasbourg case law under article 2 now shows that an inquest should be more wide-ranging than the narrower scope of inquiry established by Ex parte Jamieson and Re Ministry of Defence. Lord Hoffman in R v Lyons [2003] 1 AC 976 at 922 stated that:

> "There is a strong presumption in favour of interpreting English law (whether common law or statute) in a way which does not place the United Kingdom in breach of an international obligation. As Lord Goff of Chievely said in Attorney General v Guardian Newspapers Limited (No 2) [1990] 1 AC 109 at 203:
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> > `I conceive it to be my duty, when I am free to do so, to interpret the law in accordance with the obligation of the Crown under the Convention'."

The question arises as to whether this court is free to do so in the light of the earlier and binding authority. Secondly, does section 3 of the Human Rights Act come into play so as to require the Coroners Act (Northern Ireland) 1959 section 31(1) and the rules under that Act to be read and given effect in a way which is compatible with the Convention rights in relation to the inquest in this case.

[18] The principles of stare decisis in civil matters continue to apply other than in cases now governed by the statutory requirements under section 3 of

the Human Rights Act to read legislation in a way which is compatible with the Convention rights and obligations. Re Ministry of Defence stated and applied the principles enunciated in Ex parte Jamieson which adopted the more restrictive interpretation of "how". Following traditional principles of stare decisis the decision in Re Ministry of Defence would appear to bind this court unless the effect of that decision has been overruled by the House of Lords in Middleton and Sacker or unless there is some other grounds justifying this court in treating it as no longer binding. In Trendtex Trading Corporation v Central Bank of Nigeria (1977) 1 All ER 881 the Court of Appeal concluded that the principles of stare decisis had no application to rules of international law. The rules of international law which form part of English law are the existing and prevailing rules agreed among nations, as defined by reference to the decisions of foreign courts, the writings of jurists, treaties and conventions and justice and they are not confined to those rules which have been adopted as part of English law by decisions of English courts or by Act of Parliament. A previous decision of an English court on the basis of the then prevailing view of a part of international law would not bind a later court in international law had changed or developed at a later stage. Until the enactment of the Human Rights Act and the incorporation of the Convention into domestic law it was never held by the courts in the United Kingdom that Convention law represented part of the domestic law as being an aspect of public international law. In any event it could not be said the Convention law represented generally accepted the principles of public international law. It represented principles agreed by the signatories of the Convention. The Human Rights Act was enacted to bring Convention rights home. The route offered by Trendtex Trading Corporation to treat Minister of Defence as no longer binding on this court cannot be used. The decision can only be treated as overruled if the effect of the House of Lords decisions in Middleton and Sacker have held that the reasoning in Ex parte Jamieson as wrong. Those cases in the House of Lords proceeded on the apparently incorrect concession that the Human Rights Act applied to the deaths in those cases. Accordingly, it was not necessary for the House of Lords to consider whether, apart from the Human Rights Act, the decision in Ex parte Jamieson could be treated as wrongly decided. It may be implied in the reasoning and in the wording of the decisions in Middleton and Sacker that in an appropriate case the House of Lords may treat the decision in Ex parte Jamieson as incorrect but since the point was not a live one and was not necessary for the decision of the House of Lords I cannot read the House of Lords decisions as having effectively overruled Ex parte Jamieson. It is thus necessary to turn to consider what impact the Human Rights Act has in the present context.

[19] Section 3 of the Human Rights Act obliges the court, so far as it is possible to do so, to read and give effect to primary and subordinate legislation in a way which is compatible with the Convention rights. The 1959 Act and the rules made thereunder are both subordinate legislation.

Mr Morgan argued that section 3 is not relevant in this context because the applicant can point to no breach of any Convention right in the light of the decision in McKerr. McKerr he argues, establishes that article 2 is not engaged. Mr Treacy QC on the other hand argues that section 3 is of general application. Inquests frequently involve on occasions the investigation of deaths engaging or potentially engaging article 2 and the conduct of such inquests involves the requirement for an article 2 compliant investigation. "How" accordingly falls to be interpreted in a way which is article 2 compliant to ensure that those deaths are properly investigated. This has the effect, he argues, of establishing a principle of construction that must apply in all cases where the term "how" falls to be interpreted. Once an interpretation is arrived at in relation to a statutory provision to ensure that it is Convention compliant the implications of that is that the statutory provision falls to be interpreted in that way in all situations.

[20] In Wilson v First County Trust Limited [2003] 3 WLR 568 the House of Lords had to consider the question of the compatibility of section 127(3) of the Consumer Credit Act 1974 with article 1 protocol 1 of the Convention. The claimant had rights acquired before the Act and the House concluded that section 3 of the Human Rights Act was not available as an interpretative rule since section 3 could not have been intended to alter the existing rights and obligations of the parties to the agreement. The House went on, however, to consider the question whether in any event the provision was incompatible with the Convention and held that it was not. What is noteworthy in the present context is that if the House on that latter point had concluded that it was incompatible (even though the claimant's vested rights would have remained intact) the House would have arrived at a decision of general application. While the point in issue in the present case as argued by counsel was not before the House, there are dicta by their Lordships which are of some relevance. For example Lord Nichols stated:

> "On its face section 3 is of general application. So far as possible legislation must be read and given effect in a way compatible with the Convention rights. Section 3 is retrospective in the sense that, expressly, it applies to legislation whenever enacted. Thus section 3 may have the effect of changing the interpretation and effect of legislation already in force. An interpretation appropriate before the Act came into force may have to be considered and revised in post Act proceedings. This effect of section 3(1) is implicit in section 3(2)(c)."

Lord Rodger referred to the Act working "as a catalyst across the board".

[21] Taking Mr Morgan's point to its logical conclusion the effect of section 3 would be that a statutory provision could have two interpretations and effects after the Human Rights Act came into effect, depending on particular circumstances. A party in the applicant's position could only demand an article 2 compliant investigation if the deceased died after the Human Rights Act came into force. When a death clearly does not engage article 2 then the form of the inquest and the powers of the coroner and jury would be different, according to this argument. But there would, of course, be many grey areas with the coroner being left in a state of uncertainty as to how he should conduct the inquest. Examples that come to mind are whether the date of the deceased is unknown, where two people could have died as the result of one incident on different dates one dying before and one after the Act; where there is uncertainty as to whether a person died by accident, by suicide or by criminal act. An inquest may at a later stage throw up issues that could at some stage engage article 2 indirectly. For example in a motor accident case an issue might arise as to the public authority's failure in respect of road design and signage. It seems clear that a consistent interpretation of the statutory duties of the coroner and the coroner's jury is desirable. Furthermore the Convention jurisprudence points to a widening concept of what is required in relation to death investigations under article 2. In McCann v United Kingdom [1996] 21 EHRR 96 the Commission considered that:

> "The nature and degree of scrutiny which satisfies the minimum threshold must, in the Commission's view, depend on the circumstances of the particular case. There may be other cases, where a victim dies in circumstances which are unclear, in which even the lack of any effective procedure to investigate the cause of the deprivation of life could by itself raise an issue under article 2 of the Convention."

Article 2 appeared to have been engaged in Menson v UK (App No 47916-99 a decision of 6 May 2003) (where the deceased died as the result of an unprovoked arson attack, which the police incorrectly attributed to suicide) and in R (Hurst) v HM Coroner for Northern District of London [2003] EWHC 1721 (the failure of police and housing authorities to prevent a neighbour dispute ended in a killing).

[22] What Wilson and the other cases on retrospectivity indicate is that where actions were taken before the Act came into force and where vested or contractual rights were acquired on the basis of the pre-existing law it would be unfair for those rights or the consequences of the actions to be upset by retrospective application of section 3. Lord Rodger in his speech in Wilson noted a distinction between enactments dealing with procedure and

enactments conferring vested rights. As pointed out in Republic of Costa v Erlanger [1876] 3 Chan 62 at 69 Mellish LJ stated:

> "No suitor has any vested interest in the course of procedure nor any right to complain, if during the litigation the procedure is changed, provided, of course, that no injustice is done."

Applying section 3 to the conduct of inquests so as to widen the ambit of the inquiry in line with the law set out in Middleton would not interfere with any vested rights and would merely affect the procedure of an inquest which has only really started. Accordingly, in my view there is no reason why section 3 should not apply in the context of the present case to lead to a reinterpretation of the word "how" in the statutory provision.

[23] I do not read McKerr as precluding this approach. In McKerr there was no question of an ongoing incomplete inquest. Lord Rodger stated that the next of kin in that case had no right to an investigation deriving from an article 2 Convention right. What the next of kin in the present case have is a right to an inquest under the Coroners Act (Northern Ireland) 1959. The coroner must conduct that inquest in accordance with domestic law but the domestic law duties of the coroner and the jury fall to be interpreted in a manner which is consistent with the Convention. This conclusion is in accordance with the decisions in Middleton and Sacker though the point was not argued in those terms.

[24] Middleton gives guidance as to how the coroner should conduct inquests in England and Wales. The statutory provisions and rules in that jurisdiction have some significant differences from Northern Ireland legislation. In England and Wales a coroner's jury may bring in a more specifically worded verdict than in Northern Ireland including a verdict of unlawful death. It is not open to a coroner's jury in Northern Ireland to bring in such a verdict. Rule 16 prohibits a coroner or jury expressing "any opinion on questions of criminal or civil liability or on any matter other than those referred to in rule 15". Under rule 15 the proceedings and evidence at the inquest shall be directed solely to ascertaining who the deceased was, how, when and where the deceased came by his death and the registerable particulars under the Births and Deaths (Registration) (Northern Ireland) Order 1976. In England and Wales the jury is precluded from finding criminal liability on the part of a named person nor must the verdict appear to determine any question of civil liability.

[25] What the Northern Ireland rules do provide is a form of verdict in which the jury can and should set out their findings on the contested relevant facts that must be determined to establish the circumstances of the death. In Middleton Lord Bingham stated that the jury could express its conclusions in

a short and simple verdict or it could be done in the form of a narrative verdict or a verdict given in answer to questions posed by the coroner. By one means or another the jury should meet the procedural obligation under article 2 and be permitted to express their conclusions on the central facts explored before them. At paragraph 110 of the judgment of the European Court in Jordan the court identified key factual issues which would need to be addressed at the inquest in this case. In paragraph 111 the court stated that it did not consider that there are any elements established which would have deprived the civil courts (by which it appears to include the coroner's court) of the ability to establish the facts and determine the lawfulness or otherwise of the deceased's death.

[26] Kerr J in his judgment (which as noted pre-dated Middleton) considered that a proper investigation into the facts relevant to the lawfulness of the force that caused the death of the deceased was possible within the existing rules. The unavailability of a verdict of unlawful killing did not undermine the proposition. I agree with his conclusions although the law requires to be analysed in a somewhat different way in the light of Middleton. The obligation of the coroner's jury to fully investigate the circumstances of the death and to reach facts or conclusions in relation thereto is an overriding duty arising out of the duty to investigation "how" the deceased died (interpreting "how" in the wider Middleton sense). The provisions of rule 16 must be read subject to that overriding obligation. Rule 16 must be read in a way which is consistent with the overriding duty to reach determinations of fact on the central disputed issues of fact surrounding the circumstances of the death.

[27] Kerr J concluded that the Lord Chancellor was not under an obligation to introduce subordinate legislation to allow inquest juries to return a verdict of unlawful killing. For the reasons set out in this judgment I agree with the conclusions which he reached on that topic. The position is now governed by the principles in Middleton which for the reasons stated apply in the present context. Accordingly I would dismiss both appeals.