

IN THE MATTER OF:

**AN INQUEST INTO THE DEATH OF
JEAN CHARLES DE MENEZES, deceased**

**WRITTEN SUBMISSIONS ON BEHALF OF THE IPCC
IN RELATION TO JURY CONCLUSIONS/VERDICTS**

1. The IPCC has been and remains neutral as to any specific conclusions or verdicts to be returned by the jury in this matter: its own conclusions and recommendations (based upon the evidence available to it) are set out in the body of its Report. It is submitted that when considering Article 2 obligations the existence of that independent report should not be overlooked: in itself it fulfils at least partially the adjectival obligation to undertake an independent investigation. It is however neither necessary nor appropriate for the IPCC to seek to advance any “case” in relation to the outcome of this present Inquest. The brief submissions which now follow seek to address generalities and are not intended to depart or to derogate from this position of neutrality.

What is required from the jury?

2. The principles governing a modern inquest in relation to the subject matter of which Article 2 of the ECHR is engaged are set out in *R (Middleton) v West Somerset Coroner* [2004] UKHL 10, to which repeated attention must be paid in a matter such as this. At para. 20 Lord Bingham said:

“To meet the procedural requirements 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”.

3. What form of “verdict” will best elicit the jury’s factual conclusions on central issues is a matter for the discretion of the Coroner. It is submitted that in this present case Lord Bingham’s requirement (cited above) is unlikely to be met by any short verdict in traditional form alone. There will be a need for some type of narrative conclusion either to supersede or to supplement any such short form verdict.

4. There are two particular rules arising under the Coroners Rules 1984 to which reference is often made in the authorities and the effect of which, together or separately, must be remembered at all times. It is worth setting them out in full:

“Rule 36

- (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.*

- (2) *Neither the coroner nor the jury shall express any opinion on any other matters”*

Of course the “how” in Rule 36(1)(b) must now be interpreted following *Middleton* (see para. 35) as meaning not simply “by what means” but “by what means and in what circumstances”.

“Rule 42

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”*

Traditional verdicts

5. Other interested persons will doubtless make submissions about individual verdicts which might appropriately be left to the jury. The IPCC restricts itself in this respect to the general submission that insofar as the Coroner is minded to leave any such short-form verdict to the jury, he should (in the interests of avoiding undesirable complication) be appropriately robust in seeking to restrict the range of such short-form verdicts left open. Issues such as this were considered by the Court of Appeal in *R (Bennett) v HM Coroner for Inner South London & Ors* [2007] EWCA Civ 617, especially at para. 30 (Waller LJ):

“...Coroners should approach their decision as to what verdicts to leave on the basis that facts are for the jury, but they are entitled to consider the question whether it is safe to leave a particular verdict on the evidence to the jury i.e. to consider whether such a verdict, if reached, would be perverse or unsafe and to refuse to leave such a verdict to the jury”.

Bennett is also of relevance for its discussion of the possible interplay between verdicts of unlawful killing and lawful killing, and “open” verdicts.

Narrative conclusions

6. In *Middleton* Lord Bingham described a narrative verdict as a “*verdict in which the jury’s factual conclusions are briefly summarised*” (para. 36). In circumstances of any degree of complexity, such as those which it is submitted exist here, a narrative verdict is likely to be necessary since reliance solely upon one or more traditional forms of verdict is likely to be uninformative and insufficient to satisfy that which is required from the jury in relation to Article 2 (see above).

7. The central issues which the jury must address need to be identified clearly for them by the Coroner. In *Middleton* at para. 36 Lord Bingham said:

“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 s.6 of the Fatal Accidents & 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”.

8. Whatever issues may be identified for the jury by the Coroner, he must remind them (possibly repeatedly) of the prohibitions expressed in Rules 36 & 42 of the 1984 Rules; and in a matter such as this it is submitted that there should be a specific direction to the effect that the jury should restrict any narrative conclusion, or any answers to questions, to those facts which caused or contributed to the deceased’s death – failing which there may be a serious risk that the jury’s conclusions will contravene the mandatory restriction expressed in r.36(2). It is submitted that such a direction is likely to be particularly important in a case such as this where wide-

ranging issues have been ventilated in relation to police practices and policies, and background circumstances, which extend on the face of things far beyond the events of the morning of 22 July 2005.

9. *Middleton* plainly offers the possibility of setting questions for the jury to answer in place of the more discursive narrative conclusion: but it is submitted with respect that in this present case the formulation of questions would be fraught with difficulty and would in short be undesirable. Having had their attention drawn to the requirements made of them by the Inquest process, the jury should be left to formulate their own narrative conclusion (albeit that any such conclusion when produced by the jury should be checked by the Coroner before publication in order to ensure compliance with rr.36 & 42 in particular).

10. Given the number and complexity of issues or potential issues arising in relation to the subject matter of this Inquest, and given the likely complications arising in relation to legal directions which might be necessary in respect of traditional verdicts, the Coroner may wish to consider abandoning the traditional forms of verdict and to invite narrative conclusions only. That will be an option to be considered once all submissions from interested parties have been received.

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14 November 2008

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DEATH OF JEAN CHARLES DE MENEZES
(DECEASED)**

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