

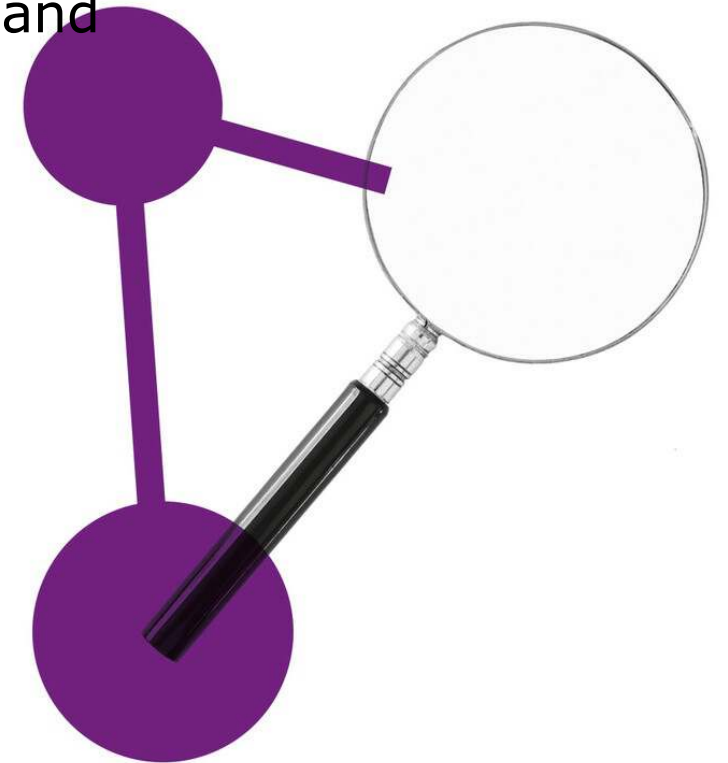
Inquests, Inquiries and Public Expectations

HSLA Conference

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Inquests, Inquiries and Public Expectations

Path of Travel

- A quick reminder – Inquests
- Article 2
- Conversion from Inquest to Inquiry consideration
- Public Inquiries
- Similarities and Differences
- Non-Statutory to Statutory
- UK Covid-19 Inquiry
 - Features of the Inquiry
 - Core Participants
 - Terms of Reference
 - What's next

Inquests, Inquiries and Public Expectations

A forum for Health and Safety Practitioners:

- S7 CJA 2009 Inquests with a jury –notifiable accident, poisoning or disease
- Aberfan disaster Inquiry /Piper Alpha /Ladbroke Grove/ Marchioness Inquiry
- The Grenfell Tower Inquiry
- Grainger Inquiry: context CPS instituted proceedings against Chief Constable of GMP for an alleged offence s3 HSWA 1974, arising out of the Force’s planning and conduct of the armed operation
- Manchester Arena Inquiry Volume 1: The health and safety regime. Duties SMG and Showsec owed to the safety of event goers and its employees
- Monitored recommendation 4
- Queen’s Speech 10th May 2022: Draft Protect Duty Bill – The Protect Duty – “Martyn’s Law”

Inquests, Inquiries and Public Expectations

Inquest Essentials

- Coroners and Justice Act [CJA] 2009
- Coroners (Inquests) Rules 2013
- Coroners (Investigations) Regulations 2013
- Law Sheets
- Chief Coroner's Guidance
- <https://www.judiciary.uk/related-offices-and-bodies/office-chief-coroner/guidance-law-sheets/coroners-guidance/>
- Jervis on Coroners: Paul Matthews

Inquests, Inquiries and Public Expectations

Inquisitorial Stick

- Concerns raised about the adversarial nature of some inquest proceedings and the standards of advocacy displayed in Coroners' Courts led the Law Society and Bar Standards Board to recently issue new guidelines for all legal professionals practising in Coroners' Courts.
- [Coroners-Court-competences-Sept2021.pdf \(barstandardsboard.org.uk\)](#).
- Coroners will be encouraged to address practice that falls short of these competences either during the hearing itself or through raising their concerns with the relevant regulator.



Record of Inquest

Following an Inquest opened on _____ and an Inquest hearing at _____
before _____
undermentioned jurors in the Coroner's Area for _____

heard
and the

The following is the record of the inquest (including the statutory determination and, where required, findings).

1. Name of Deceased (if known)

2. Medical cause of death

1a

b

c

II

3. How, when and where, and for investigations where section 5(2) of the Coroners and Justice Act 2009 applies, in what circumstances the deceased came by his or her death.

4. Conclusion of the Coroner as to the death.

5. Further particulars required by the Births and Death Registration Act 1953 to be registered concerning the death

(a) Date and place of birth	
(b) Name and Surname of deceased	
(c) Sex	(d) Maiden surname of woman who has married
(e) Date and place of death	
(f) Occupation and usual address	

Signature of

Signatures of Jurors (if present)

.....

.....

.....

.....

Inquests, Inquiries and Public Expectations

Record of Inquest

- Box 1 – Name of Deceased
- Box 2 – Medical Cause of death
- Box 3 – Time place and circumstances of death
- Box 4 – Conclusion [Verdict]
- Box 5- Particulars Required by the Registration Act

Inquests, Inquiries and Public Expectations

Purpose of Inquest

- S5(1) CJA 2009
- Who, how*, when and where
- Particulars required by 1953 Act

- S5(2) – and in what circumstances –i.e. *Middleton* type inquest – engagement of Article 2

Inquests, Inquiries and Public Expectations

s5(2) CJA 2009

- 5(2) Where necessary in order to avoid a breach of any Convention rights (within the meaning of Human Rights Act 1998, the purpose mentioned in subsection (1)(b) is to be read as including the purpose of ascertaining **in what circumstances** the deceased came by his or her death. [*MIDDLETON*]
- S5(1)(b)how, when and where the deceased came by his or her death;

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Article 2

- Article 2 enshrines protection of the right to life. It imposes three separate duties on the State:
- (1) the negative duty not to take a person's life, save in specific circumstances permitted in law;
- (2) the positive obligation to protect life; and
- (3) the procedural or investigative obligation to conduct an effective and independent investigation into a death where the positive or negative duties have arguably been breached. This procedural duty is parasitic- it is dependent on an arguable breach of one or more of the substantive obligations.

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Article 2

The Article 2 positive obligation includes the following duties:

- (1) a general positive obligation to safeguard life, including by establishing a framework of laws, precautions, procedures and means of enforcement which will, to the greatest extent reasonably practicable, protect life (the “systems” or “systemic” duty); and
- (2) a positive operational obligation to take reasonable steps to protect those whose lives are at real and immediate risk from a threat about which the authorities know or ought to know (the “operational” or “Osman” duty [[1998\] 29 EHRR 245](#)).

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Article 2

- *See Middleton* [2004] UKHL 10,
- *Öneryildiz v Turkey* (2005) 41 EHRR 20
- *Savage v South Essex Partnership Trust* [2009] 1 AC 681;
- *Rabone v Pennine Care NHS Foundation Trust* [2012] 2 AC 72 (“*Rabone*”)*
- *Maguire* [2020] EWCA Civ 738
- *Morahan* [2021] EWHC 1603 (Admin)
- *Maguire* Supreme Court November 2022 - *Rabone*

Inquests, Inquiries and Public Expectations

Inquests, Inquiries and Public Expectations

- Public interests served by inquests.
- Lord Bingham's well-known summary of those interests in *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653 at [31]:
- *"to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and 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."*

Inquests, Inquiries and Public Expectations

PII and conversion considerations

- PII
- Statute prevents disclosure of some security sensitive material to the coroner him or herself. In addition to the specific types of material which cannot be disclosed by statute, there is a wider class of security sensitive material which the government treats in the same way as a matter of policy see *Secretary of State for the Home Department v HM Senior Coroner for Surrey & Ors* [2016] EWHC 3001;
- The practical effect of this is that only the fact of the existence of the security sensitive material in a specific case can be disclosed to the coroner. In some cases the need to consider security sensitive material will be obvious and the sensitive material may be so core to the investigation that the issue is best dealt with by the nomination of a judge to sit as the coroner at the very outset of the process. Under Schedule 10 CJA, the Chief Coroner may request the Lord Chief Justice, in consultation with the Lord Chancellor to nominate a person who at the time of the nomination is a judge of the High Court, a Circuit judge, or a person who has held office as a judge of the Court of Appeal or of the High Court (but no longer does so), and is under the age of 75.

Inquests, Inquiries and Public Expectations

Conversion of Inquest to Statutory Inquiry

- Judge Led Inquest
- Set the Scope
- Chief Coroner Guidance number 30: Judge –led Inquests
- Guidance number 40: Counsel and Solicitors to the Inquest
- PII
- Closed hearings and Inquests!

Inquests, Inquiries and Public Expectations

Recent Judge Led Inquests

- Inquests into the deaths arising from the Fishmongers' Hall and London Bridge Terror attack of 29.11.19: HHJ Lucraft QC Recorder of London and Former Chief Coroner
- Inquests into the deaths arising from the sinking of the French Vessel Bugaled Breizh-HHJ Lickley QC
- Inquest into the death of Sudesh Amman – HHJ Hilliard
- Inquest into the death of William Smith – HHJ Durran
- Inquest into the death of Yassar Yaqub- HHJ Kearn QC

Converted to Inquiry:

- Inquests into the deaths arising from the Manchester Arena terror attack of 22 May 2017- Sir John Saunders
- Inquest into the death of Jermaine Baker – HH Goldstone QC

PIR PII hearing this week:

- Inquest into the death of Jamal Uddin – HHJ Teague QC – Chief Coroner

Inquests, Inquiries and Public Expectations

Fact Specific and Fact Sensitive

- The starting point is that a coroner is appointed to conduct an inquest and has a statutory responsibility to carry out the necessary investigation under the CJA. It is only where a coroner concludes that he/she is unable to discharge those statutory responsibilities in a satisfactory way that a request should be made for a different form of process to be put in place

Inquests, Inquiries and Public Expectations

Conversion of Inquest to a Statutory Inquiry: Fact Specific and Fact Sensitive

- PII High level: Consider both the damage to national security which it is said would flow from disclosure and the effect on the inquest proceedings if the material is withheld from disclosure.
- The decision to be made is acutely fact-sensitive. It turns on precisely what material is being withheld from disclosure as a result of the specific PII claims made in this case and on what the effect of the PII claims is likely to be in the context of the topics to be investigated.
- Not enough that the effect of a PII process is that some material relevant to a significant issue will be withheld: the question is what material is to be withheld and what is the effect in light of all the other evidence.

Inquests, Inquiries and Public Expectations

Fact Specific and Fact Sensitive

- If the Coroner were to uphold the PII claims, the question would be whether it is considered that an adequate investigation, addressing fully the statutory questions set out at section 5(1) of the *Coroners and Justice Act 2009* (read together with section 5(2) and bearing in mind the obligations under Article 2 of the ECHR) could still be conducted within the framework of the Inquests, or whether a Public Inquiry would then be necessary to investigate fully and properly the issues;
- the latter would involve the Coroner writing to the Home Secretary [or the relevant minister], inviting to establish a Public Inquiry under the *Inquiries Act 2005* and, if an Inquiry were established, the suspension of the Inquests under paragraph 3(1) of Schedule 1 to the *Coroners and Justice Act 2009*.
- If the Coroner were to uphold those claims in whole or substantial part, the question of whether the Inquests would be Article 2 compliant would be a very real one and for the consideration and judgement of the Judge Coroner.

Inquests, Inquiries and Public Expectations

Fact Specific and Fact Sensitive

- If the effect of upholding a PII claim is that an inquest cannot adequately investigate how the deceased came by their deaths, the proper course for the coroner is to invite the Secretary of State to establish a statutory inquiry under the Inquiries Act 2005. Such an inquiry could receive material in CLOSED session where appropriate. This would be the course to take if the investigation would be **seriously incomplete and/or potentially misleading** without the deployment of material properly subject to PII: see *R (Litvinenko) v Secretary of State for the Home Department* [2004] HRLR 6.

Inquests, Inquiries and Public Expectations

Fact Specific and Fact Sensitive

- The Coroner does not necessarily call for a public inquiry just because some relevant documents or some facts may be excluded as the result of a PII claim.
- Many inquests have been properly conducted after PII claims have been upheld, including the London Bombings Inquests, the Perepilichnyy inquest, the London Bridge Inquests, Fishmongers' Hall Inquests and numerous cases over the years involving the police and the armed forces.
- See the reference within the Fishmongers' Hall Inquest ruling to: *"In the Manchester Arena Bombing case, MI5 had twice received intelligence which could in retrospect be seen to be "highly relevant" to what had been an organised and sophisticated bomb plot (see paragraph 2.37 of Lord Anderson's report)"*

Inquests, Inquiries and Public Expectations

Fact Specific and Fact Sensitive

- There is no power in an inquest to hold CLOSED material procedures, such as may be carried out in some civil proceedings and in inquiries under the Inquiries Act 2005.
- Any evidence taken into account by the coroner (or a jury) in an inquest must have been provided to PIPs. *R (Secretary of State for the Home Department) v Inner West London Assistant Deputy Coroner* [2011] 1 WLR 2564.
- Accordingly, where a PII claim has been upheld, the material for which PII was claimed is not taken into account for most purposes. However, it is legitimate for a coroner who has upheld a PII claim to take account of the material in order to ensure that no question is later asked which he/she knows (from CLOSED material) would be misleading or based on a false premise.
- Approach of Dame Heather Hallett in the London Bombings Inquests and which the Divisional Court approved; HH Judge Hilliard QC in the Perepilichnyy inquest; HHJ Lucraft QC took in the London Bridge / Borough Market Inquests and Fishmonger Inquests.
- Open Statements and Gisting

Inquests, Inquiries and Public Expectations

Fact Specific and Fact Sensitive

- Submissions of CTI and counsel for PIPs [e.g. counsel for the Secretary of State/ counsel for the Chief Constable] is it possible and appropriate to carry out an adequate investigation into the deaths within the framework of inquests.
- [Microsoft Word - 23206787_1 \(independent.gov.uk\)](#)
- Fourth Ruling on Case Management 1.4.21 Fishmongers' Inquests
- The relevance of the PII material needs to be seen in context. Where the withholding of material prevents an inquest properly examining facts central to the deaths, as in the Litvinenko case and the Anthony Grainger inquiry, a request for a public inquiry may be clearly warranted

Inquests, Inquiries and Public Expectations

Fact Specific and Fact Sensitive: Grainger Inquiry

- *“After careful consideration, I concluded that none of the material upon which I had been asked to rule could be disclosed without risking serious damage to certain identified aspects of the public interest, and, further, that there would be no adequate means of guarding against such risk within the inquest process. Accordingly, on 30 October 2015, I issued an open ruling and two closed rulings in which I upheld the PII claims. In the absence of any mechanism for closed inquest hearings, the practical effect of my PII rulings is to exclude from evidence the entirety of the material to which they relate. Accordingly, I expressed a provisional view that without access to such material, the inquest would be unable to discharge its function and, further, that only a public inquiry would be adequate to the task of carrying out a full, fair and fearless investigation into the death of Anthony Grainger.”*

Inquests, Inquiries and Public Expectations

Fact Specific and Fact Sensitive: Manchester arena Inquiry

- [Rulings-on-Public-Interest-Immunity-applications-13-September-2019.pdf \(manchesterarenainquiry.org.uk\)](#)
- [2019-09-27-Letter-to-SSHD-1.pdf \(manchesterarenainquiry.org.uk\)](#)
- *"I was satisfied that disclosing the materials over which PII was claimed would make it easier for terrorists to kill people by avoiding detection before they are able to carry out an attack. The balancing exercise strongly favoured non-disclosure to avoid similar atrocities such as the Arena bombing occurring in future. However, as I explained at paragraph 40 of my ruling, the material over which I have upheld the claims for PII is not only relevant but is also central to the scope of the inquests. As an inquest must be held in public, in the presence of Interested Persons, the effect of my ruling is that material of central importance to the inquests cannot now be deployed in them. At the time of my ruling, I held the view that excluding the PII material means that the inquests could not be Article 2 compliant, as they cannot investigate all the matters that are within scope, in particular the issue of whether the Arena attack could have been prevented."*

Inquests, Inquiries and Public Expectations

Fact specific and Fact Sensitive: Manchester Arena Inquiry

- *“To continue as inquests will mean that I cannot disclose or hear evidence on centrally important material. I remain of the view that the inquests will therefore not be Article 2 compliant if that material is not available to me, or the issue of 'preventability' is removed from the scope of the inquests. In either circumstance, I am satisfied that I will not be able to address properly the statutory questions required in section 5 of the 2009 Act to ascertain by what means and in what circumstances each of the deceased were killed. Furthermore, I have not yet ruled as to whether there is a requirement or discretion for me to sit with a jury. I do not consider that issue can properly be considered in light of the PII ruling.*
- *For the avoidance of doubt, I am also of the clear view that the inquests could not remain Article 2 compliant if the 'preventability' issue was removed from scope and the investigations conducted by Lord Anderson QC and the Intelligence and Security Committee were relied on as a substitute.”*

Inquests, Inquiries and Public Expectations

Public Inquiry- Discharge State's investigative obligation

- The reason why a public inquiry can consider material which attracts PII is that it can include CLOSED material procedures and can produce a report relying in part on evidence from such procedures
- Generally Scope of the Inquest becomes the Terms of Reference of the Inquiry
- S19 (Restriction on public access) and s20 (restriction notices and orders) IA 2005
- Ability and extent to which information from CLOSED evidence sessions might be gisted or summarised into OPEN.
- Even if PII material would not be communicated to the bereaved family in a public inquiry, there is still a public interest in relevant material being considered and being taken into account in the conclusions of the process

Inquests, Inquiries and Public Expectations

Inquiry Overview and Essentials

- Circumstances in which a public Inquiry might be instituted are infinitely variable
- Non-statutory inquiries
- Non-statutory inquiries: Established under the executive powers of ministers
- Committees of Privy Counsellors
- Inquiries under subject specific legislation before the IA 2005
- The Inquiries Act 2005 /The Inquiry Rules 2006 – The Covid Inquiry

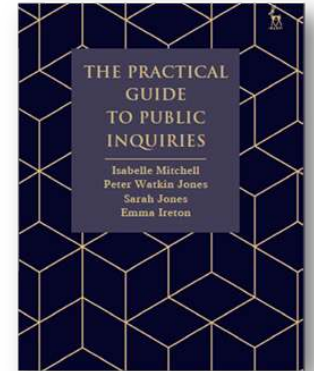
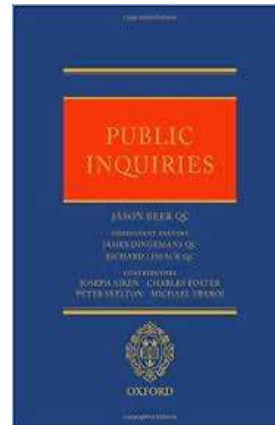
Inquests, Inquiries and Public Expectations

Essential Inquiry Reading

- Mitchell, Watkin Jones, Jones and Ireton

[The Practical Guide to Public Inquiries: : Isabelle Mitchell: Hart Publishing \(bloomsbury.com\)](https://www.bloomsbury.com)

- Public Inquiries: Jason Beer QC



Inquests, Inquiries and Public Expectations

Purpose of an Inquiry

- **Investigations into significant matters of public concern**
- What happened / Establish facts
- Why did it happen/ Ensure accountability
- What can be done to prevent it happening again
- Learn lessons to prevent recurrence of events in the future
- Restore public confidence or allay public concern
- Discharge State's investigative obligations
- Make recommendations

Inquests, Inquiries and Public Expectations

Inquiry

- Non-statutory inquiries
- No statutory impediment to prevent any person or body from setting up a non statutory inquiry into any issue or subject they wish provided they can convince people to participate/fund the inquiry/ persuade public of the authority of its conclusions
- Independent Inquiry- Telford Child Sexual Exploitation commissioned by Telford & Wrekin Council
- Non-statutory inquiries: Established under the executive powers of ministers: eg The Scott Inquiry- Arms to Iraq, BSE Inquiry, Hutton Inquiry, Bichard Inquiry, Mubarek Inquiry, Daniel Morgan Independent Panel, Sarah Everard Inquiry, Independent Inquiry into the issues raised by the David Fuller case

Inquests, Inquiries and Public Expectations

Similarities and Differences

- Holding a non-statutory public inquiry provides greater flexibility on procedure rules. This can make it easier to hear (privately if necessary) evidence that is sensitive for national security reasons. In some situations, this can better secure the cooperation and candour of core participants, such as the intelligence services, police or military. [compare s18 IA 2005 subject to s19 IA]
- However, non-statutory inquiries cannot compel witnesses:
 - (a) to give evidence under oath [s17 IA] or
 - (b) to produce other evidence relevant to the inquiry's work. [s21 IA]
- Offences s35 IA
- Enforcement by High Court s36 IA
- *MAI Saunders v Taghdi* [2021] EWHC 2878 (Admin); *MAI Saunders v Romdhan* [2021] EWHC 3274 (Admin)
- There is therefore a greater risk that uncooperative witnesses or core participants will impede a non-statutory inquiry's progress

Inquests, Inquiries and Public Expectations

Statutory & Non-Statutory Inquiries – Key Differences

- Powers of compulsion
- s18 Inquiries Act obligation and duty to make evidence available to the public
- Role of Core Participants/interested parties
- r13 Inquiry Rules and maxwellisation
- Flexibility of Inquiry's procedure

Inquests, Inquiries and Public Expectations

Non Statutory to Statutory

- Recent examples of non-statutory inquiries or reviews being converted to statutory inquiries in order to strengthen their evidence powers.
- The Independent Inquiry into Child Sexual Abuse;
- The Brook House Inquiry;
- The Post Office Horizon Inquiry.

Inquests, Inquiries and Public Expectations

UK Covid-19 Inquiry

- Announced on 12th May 2021
- Largest public inquiry in British history
- Statutory inquiry - Inquiries Act 2005 and Inquiry Rules 2006
- s18 – evidence in public
- s21 – powers of compulsion
- s27 and devolved administrations



Inquests, Inquiries and Public Expectations

UK Covid-19 Inquiry

"This Inquiry is unlike any other previous UK statutory inquiry. It is not looking into a single event or series of events, or why it or they happened. Instead, it will be investigating how a pandemic struck an entire country (in fact, four countries), and how the UK Government, Devolved Administrations, local government, and many other parts of the state responded, across almost the entire range of their decision-making and public functions."

UK Covid-19 Inquiry's Terms of Reference Consultation, Summary Report
May 2022

Inquests, Inquiries and Public Expectations

UK Covid-19 Inquiry: Core Participants – Inquiry Rules, rule 5

- 5.—(1) *The chairman may designate a person as a core participant at any time during the course of the inquiry, provided that person consents to being so designated.*
- (2) *In deciding whether to designate a person as a core participant, the chairman must in particular consider whether—*
 - (a) *the person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;*
 - (b) *the person has a significant interest in an important aspect of the matters to which the inquiry relates; or*
 - (c) *the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.*

Inquests, Inquiries and Public Expectations

UK Covid-19 Inquiry: Core Participants

— Pros

- Opening and closing statements (rule 11)
- Permission to propose questions (rule 10)
- Advanced sight of inquiry report (rule 17)
- Usually provided with advanced access to evidence
- Better placed to predict and influence direction of inquiry
- Better placed to anticipate, deflect and manage any criticism - reputation management

— Cons

- Investment - cost and resources
- Can increase profile/importance and increase scrutiny
- Greater expectations of cooperation

Inquests, Inquiries and Public Expectations

UK Covid-19 Inquiry: Terms of Reference

— A few issues the Inquiry is likely to cover...

- The public health response in a variety of settings, including: prisons and other places of detention; education & early years provision; hospitality, retail, sport & leisure; immigration & asylum; the justice system.
- Management of the pandemic in hospitals, including infection prevention & control, triage, critical care capacity, discharge of patients, approach to palliative care, workforce testing, changes to inspection and the impact on staff.
- Management of the pandemic in care homes and other care settings, including infection prevention & control, transfer of residents to & from homes, treatment of residents, workforce testing and changes to inspection.
- The procurement & distribution of key equipment & supplies, including PPE and ventilators.



Inquests, Inquiries and Public Expectations

UK Covid-19 Inquiry: Terms of Reference cont...

- A few issues the Inquiry is likely to cover...
 - The consequences of the pandemic on provision for non-COVID related conditions & needs.
 - Disproportionate impact on BAME community & vulnerable communities; and impact on children & young people.
 - Funding cuts to H&S regulators and local authorities whose role it was to carry out workplace safety assessments.
 - The use of non-pharmaceutical interventions such as lockdowns.
 - The role of experts and advisers, and the use of data and science, in the Government's decisions
 - Unequal impact of the pandemic to run throughout the ToR.



Inquests, Inquiries and Public Expectations

UK Covid-19 Inquiry: What's next?

- Likely timescales, framework & next steps for the Inquiry
- Potential impact of Inquiry on those affected/involved
- How can clients prepare now:
 - Get documents in good order
 - Understand IT systems & prepare resources
 - Consider if CP application appropriate
 - Are internal investigations needed – “no surprises” approach
 - Reputation/media management



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