Re-Opening & Challenging Inquests

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The Fiat

Section 13 of the Coroners Act 1988

- Section 13 of the Coroners Act 1988 (as amended) provides that, if the High Court is satisfied either:

- (i) that the coroner is refusing or neglecting to hold an inquest or an investigation which ought to be held; or

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(ii) where an inquest or an investigation has been held, that it is necessary or desirable in the interests of justice that an investigation or another investigation be held (whether because of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, the discovery of new facts or evidence or otherwise),

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- then the High Court may order an investigation into the death to be held by the same or another coroner, order the coroner to pay such costs as appear just, and quash the determination or finding of the original inquest, if one took place.

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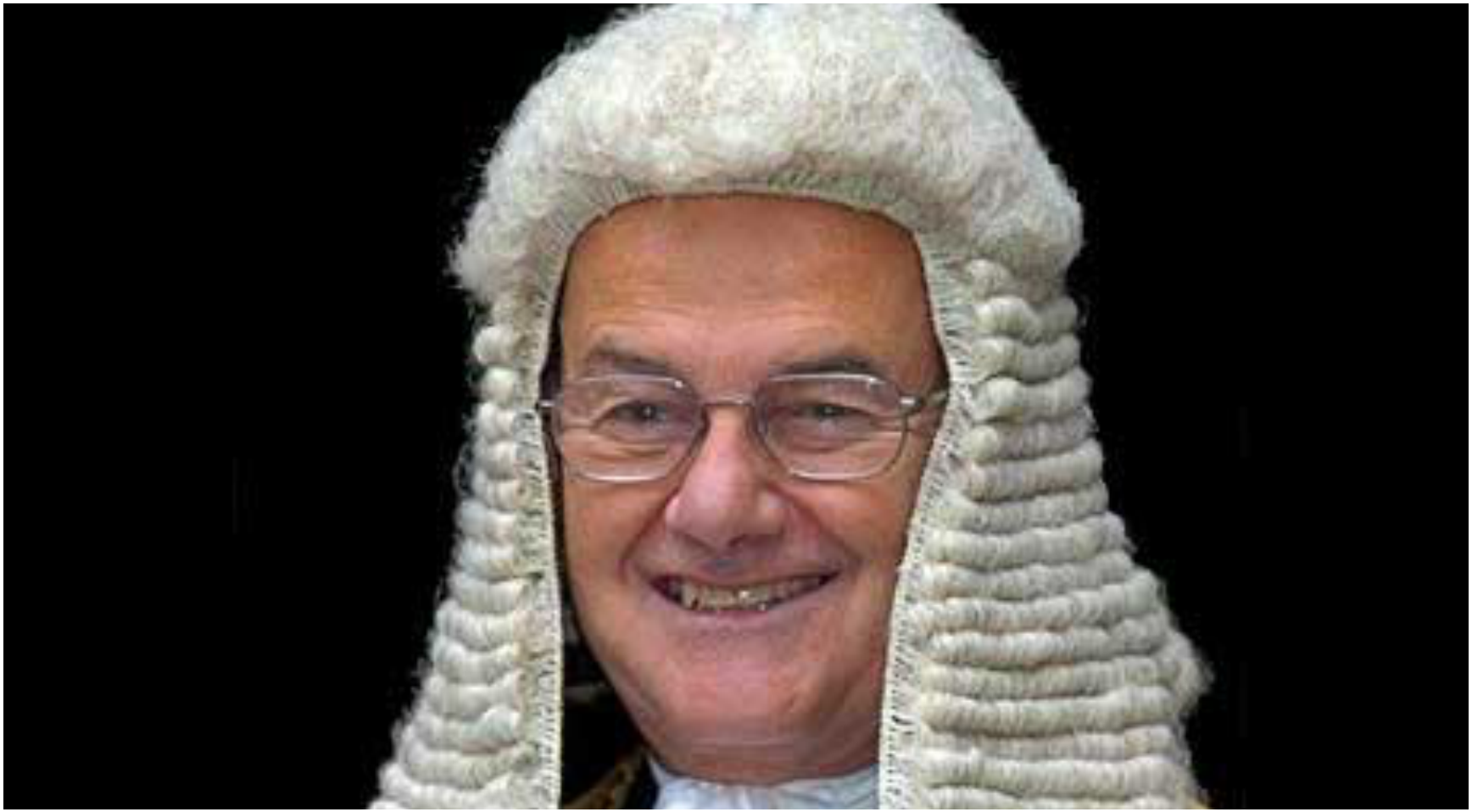
- The Attorney General must make the application to the High Court or authorise a third party, by way of a fiat (consent), to do so.
- It is the High Court, and not the Attorney General, which then makes the decision as to whether or not to order a new investigation.

Hillsborough

- A high profile example was the AG application in December 2012 for new inquests into the deaths of the 96 victims of the Hillsborough tragedy.
- The application was based on the discovery of new facts, evidence, new medical evidence, alteration to police and emergency services evidence, stadium safety - and that it was necessary or desirable in the interests of justice that new inquests should be held

Lord Judge



Lord Judge

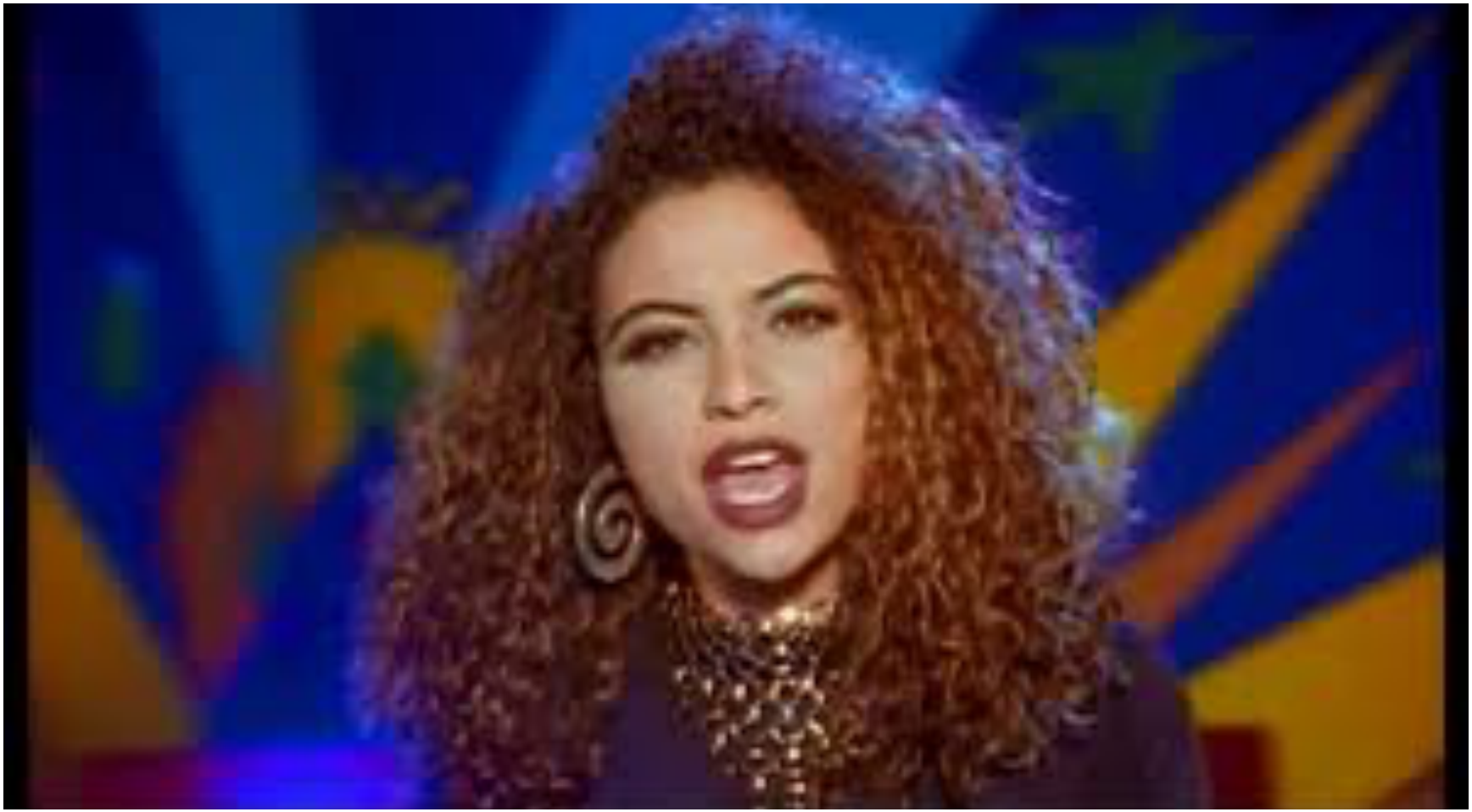
- *The single question is whether the interests of justice make a further Inquest either necessary or desirable*
- *it seems to us elementary that the emergence of fresh evidence which may reasonably lead to the conclusion that the substantial truth about how an individual met his death was not revealed at the first Inquest, will normally make it both desirable and necessary in the interests of justice for a fresh Inquest to be ordered.*

Lord Judge

- *What is more, it is not a pre-condition to an order for a further Inquest that this court should anticipate that a different verdict to the one already reached will be returned*

- *HM Attorney General v HM Coroner for South Yorkshire (West) [2012] EWHC 3783 (Admin),* at paragraph 10

No Limits



Time Limit

- Section 13 does not specify any time limit. In *Frost v HM Coroner for West Yorkshire (Eastern District)* [2019] EWHC 1100, 8 May 2019, the High Court ordered that a fresh inquest should be held, even after the passage of 53 years

Frost v HM Coroner for West Yorkshire (Eastern District)

- The Coroner questioned the value of a fresh Inquest both in terms of the public interest and the interests of the families, and so left it to the bereaved family to go through the process of seeking a *fiat* and making an application for a fresh inquest.

Frost v HM Coroner for West Yorkshire (Eastern District)

- The issue of whether 53 years should render the further investigation into the tragic case unnecessary did not trouble the court,
- The importance of revealing the truth and setting the record straight for the bereaved was emphasised.
- It was, said the court, "*beyond any doubt that the resolution of this case, to the extent that it may ever be resolved, remains extremely important for the families".*

R (Lyttle) v (1) Attorney General (2) HM Senior Coroner for Preston [2018] EWHC, 25 May 2018

- But what happens if Attorney General wont put the fiat in gear!

R (Lyttle) v (1) Attorney General

- The Claimant's mother had died in hospital as a consequence of metastasised carcinoma. She had received palliative care. At her inquest the Claimant asserted that his mother had been unlawfully killed by an overdose of morphine; the Senior Coroner returned a conclusion of 'natural causes'. There was a wealth of medical evidence that morphine doses given to the deceased were at the low end of the range that can be prescribed in palliative care

R (Lyttle) v (1) Attorney General

- Dissatisfied with the conduct and outcome of the inquest the Claimant (a litigant in person) sought a *fiat* of the Attorney General to permit him to bring a s.13 challenge in the High Court.
- The AG, declined to give his fiat. When the Claimant then sought to Judicially Review that decision Mr Justice Lane resoundly dismissed his application as “hopeless” + awarded costs against the Claimant

R (Lyttle) v (1) Attorney General

- *"The Attorney General's decision [to refuse a fiat] is not susceptible to Judicial Review. He is answerable in this regard to Parliament, not the Administrative Court".*

***Jones v HM Coroner for Gwent and others* [2015] EWHC 3178 (Admin) 5 Nov.15**

- Perhaps the aggrieved should though bring a Judicial Review

Jones v HM Coroner for Gwent

- Where Judicial Review is the correct vehicle to challenge the decision of a Coroner then the failure to bring such a claim in good time should not be circumvented by an application for a fresh inquest under s.13.

Jones v HM Coroner for Gwent

- Mason Jones was just five years old when he died after having eaten cooked meat infected with E.coli in 2005.
- The CPS considered the case but decided that there was insufficient evidence to provide a realistic prospect of a conviction for manslaughter.

Jones v HM Coroner for Gwent

- At Mason's inquest in 2010 the Coroner concluded that although the catering business manager's disregard for good hygiene practices meant that there had been a serious and obvious risk of illness,
- he was not satisfied that that a reasonably prudent person would have foreseen a serious and obvious risk of death.
- As such an essential element of gross negligence manslaughter was absent, hence an unlawful killing verdict could not be considered. A narrative verdict was given

Jones v HM Coroner for Gwent

- Over 2 yrs later the DPP accepted that there had been an error in the original charging decision
- and that there had been sufficient evidence to charge the manager with gross negligence manslaughter.
- However, it was now several years since the death and was far too late to charge

Jones v HM Coroner for Gwent

- In the light of the decision not to bring charges the family then sought to re-open the inquest under s.13.
- The Court noted that the real complaint now being made was that the Coroner had reached a conclusion that was not properly open to him on the evidence.

Jones v HM Coroner for Gwent

- It was held that the Coroner's decision could have been challenged by Judicial Review at the time.
- What the applicant was really seeking to pursue was in substance a Judicial Review application that was now five years out of time.
- It was therefore not appropriate to re-open the inquest under s.13.

Judicial Review

- There are grounds, based upon public law principles. These are concerned with the fairness of the procedure and whether the coroner properly exercised his/her powers.
- If a coroner has acted unreasonably, outside his/her powers or by not doing something which (s)he was obliged to do, it may be possible to seek judicial review of the coroner's actions (or inactions). Judicial review is a discretionary remedy.
- 3 Months!

Judicial Review

- Beware of the case management JR challenge.
- The decision of Mr Justice Holroyde in *R oao Donald Maguire and ors v The Assistant Coroner for West Yorkshire (Eastern Area)* [2017] EWHC 2039 provides a salutary reminder of just how difficult it is successfully to **JR** the 'case management' decisions of a coroner – in this case a decision as to which witnesses to call at an inquest

Judicial Review

- More fruitful is a Question of Law JR

- R (Maughan) v Senior Coroner for Oxfordshire [2019]
- This case concerns the standard of proof applicable in inquest proceedings in cases of alleged suicide.
- C of A Held, the application of the civil standard of proof would best facilitate a proper investigation.

Public Inquiry

- In some circumstances it will not be possible to hold an inquest and a public inquiry will be more appropriate.
- A Coroner must suspend an investigation if the Lord Chancellor requests the same on the ground that the cause of death is likely to be adequately investigated by an inquiry under the Inquiries Act 2005 that is being or is to be held (the CJA, Schedule 1, para. 3);

Alexander Litvinenko

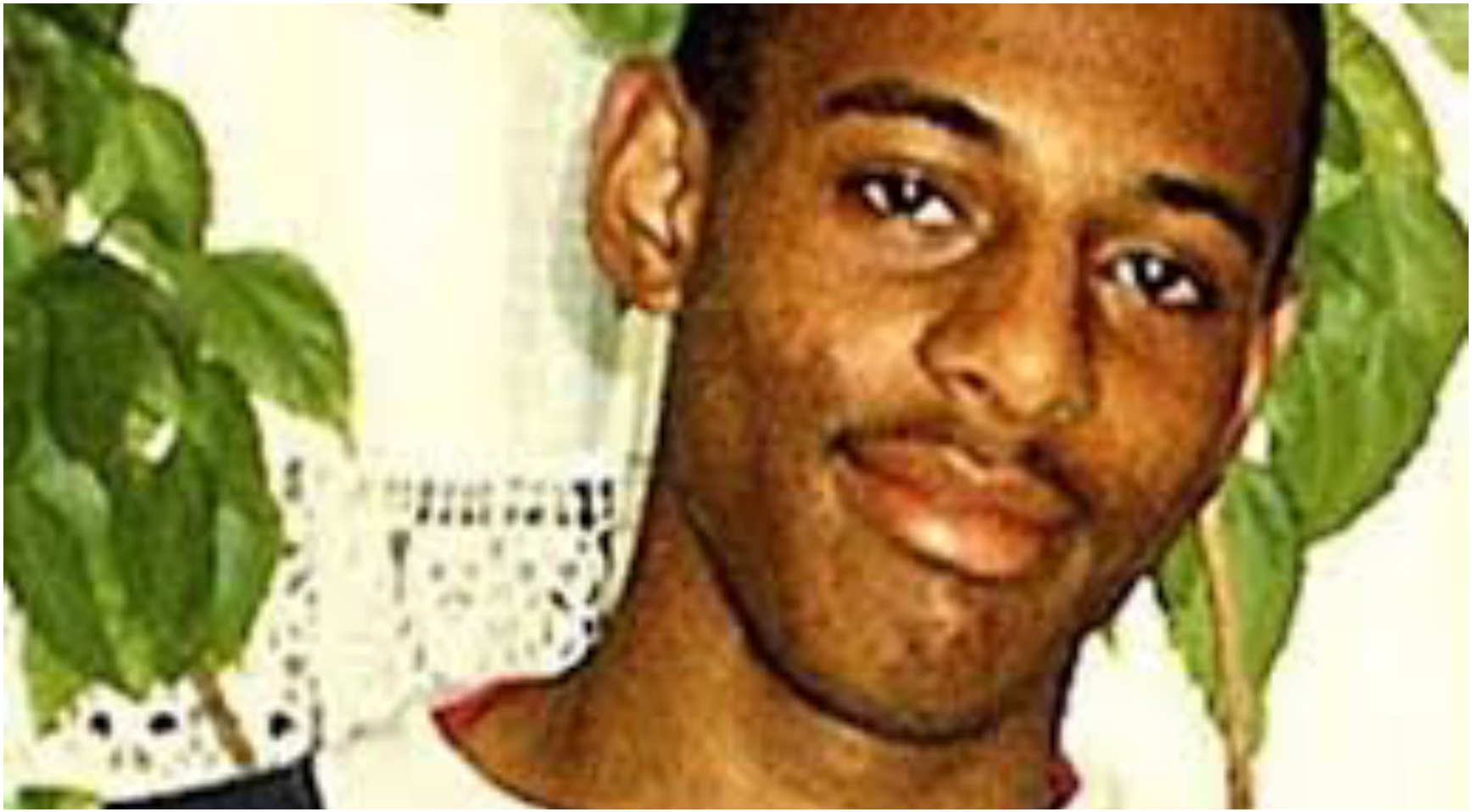
Alexander Litvinenko

- A public inquiry can replace an inquest, where an inquest is required but where it is clear that the inquest will not be able to inquire properly into the death.
- This occurred in the Alexander Litvinenko case where the scale of material to which public interest immunity had been held to apply meant that a fair inquest hearing could not take place ,given a Coroner's inability to consider "closed" evidence.

Public Inquiry

- A public inquiry can also be appropriate in addition to an inquest, where, for example, an inquest has been concluded but there remains an argument that additional issues require investigation that is beyond the scope of the inquest process,

Stephen Lawrence



Stephen Lawrence

- Another example is where there is a historic case
- in which an inquest may have taken place,
- but where there is a need to investigate the case afresh
- for example, the McPherson Inquiry which followed the inquest into the death of Stephen Lawrence);

Public Inquiry

- In 2014, the House of Lords Select Committee on the Inquiries Act 2005 concluded that, where public concern extends significantly beyond a death itself to wider related issues, an inquiry may be preferable to an inquest

- THANK YOU