INQUEST’s response to Crown Prosecution
Service Victims’ Right to Review consultation

September 2013
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INQUEST’s expertise

INQUEST is the only independent organisation in England and Wales that provides a specialist, comprehensive advice service on contentious deaths, their investigation and the inquest process to bereaved people, lawyers, other advice and support agencies, the media, parliamentarians and the wider public. It has a proven track record in delivering an award-winning, free, in-depth complex casework service on deaths in state detention or involving state agents. It works on other cases that also engage article 2, the right to life, of the European Convention on Human Rights and/or raise wider issues of state and corporate accountability. It monitors public interest inquests and inquiries into contentious deaths to ensure the issues arising inform our strategic policy and legal work.

Our specialist casework service gives INQUEST a unique perspective on how the whole system operates through the monitoring of the investigative and inquest process. We work with bereaved families from the outset, giving us a unique overview. It enables us to identify systemic and policy issues arising from avoidable deaths and the way they are investigated.

Our publications include:

- How the Inquest System Fails Bereaved People (2003) an in-depth report based on a survey of over 130 bereaved families which gives a voice to bereaved people’s observations and brings together themes emerging from INQUEST’s work with families; and

- Unlocking the Truth: Families’ Experiences of the Investigation of Deaths in Custody (2007)1, an extensively researched and referenced report which describes the experiences of families bereaved by deaths in custody from the time of death to the conclusion of the investigation and inquest and situates them within the political, recent historical and legal context.

INQUEST also co-ordinates the INQUEST Lawyers Group (“ILG”) which is a national network of over two hundred lawyers who are willing and able to provide preparation and legal

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1 Both texts are available to order through INQUEST’s website: [www.inquest.org.uk](http://www.inquest.org.uk)
INQUEST’s response to Crown Prosecution Service Victims’ Right to Review Consultation

representation for bereaved families. Membership is open to all lawyers who represent bereaved families.

INQUEST, and members of the ILG, have worked with a large number of families where their relative died following the use of force by state agents or those contracted by the state to provide detention, custody or other services (including shootings by the police and the use of restraint by police, prison officers and security guards sub-contracted to provide immigration removal services).

We are grateful to Jesse Nicholls, barrister, Tooks Chambers and Nancy Collins, solicitor, Irwin Mitchell for assisting us by preparing this response.

Response

In light of our experience, INQUEST believes that a fully functioning, properly resourced and robust Victims’ Right to Review (VRR) can provide an important role in:

(1) Ensuring state accountability where state employees and agents have committed crimes resulting in, or linked to, the deaths of people in the care of the state (e.g. in state detention or under state responsibility in the community, such as under a community treatment order), or in the deaths of those who have been in contact with the state (e.g. where a person dies shortly after leaving state detention, or where a person’s death is caused by a state body where there is no detention, such as in a police car chase).

(2) Upholding the integrity of and public confidence in, the criminal justice system, by ensuring that where an erroneous decision has been made not to prosecute in relation to a person’s death, that decision is overturned and a prosecution brought. INQUEST is particularly concerned to ensure that where a prosecution is not brought prior to an inquest into a person’s death, and that decision not to prosecute is shown to be wrong by the evidence and/or the verdict arising at the inquest, bereaved families have access to a robust and fully functioning right of review. In cases where the evidence
INQUEST’s response to Crown Prosecution Service Victims’ Right to Review Consultation

requires criminal prosecution of state agents for their conduct arising from a person’s death, public confidence in the criminal justice system itself is at stake.

1. Do you agree the guidance is clear in respect of which decisions fall within the scope of the scheme?

INQUEST are concerned that a number of decisions fall outside the VRR scheme which should properly fall to be considered as qualifying decisions.

First, we are concerned that excluding cases where some charges continue, while others are discontinued, or where charges are substantially altered, represents a worrying gap in the scheme. Such an approach risks bereaved families being denied access to the VRR because a decision has been taken, following an inquest into the death of their loved one, to proceed with only more minor charges which do not reflect the thrust of the evidence or the level of alleged criminality that has been revealed.

It is the view of INQUEST that such a situation would deprive bereaved families of the VRR to which they are entitled and would undermine the public confidence in, and effectiveness of the VRR and the criminal justice system.

Where state agents are the subject of a decision whether to prosecute, the public accountability of the state’s role in deaths will be undermined if a bereaved family is denied recourse to the VRR where state agents are prosecuted for charges of, for example, assault, where the evidence adduced at an inquest could give rise to a charge of manslaughter.

Second, INQUEST is concerned that the proposed VRR scheme excludes cases where the police exercise their independent discretion not to investigate or not to investigate a case further (whether in consultation with the CPS or not) where a full file of evidence has not been provided with a view to the CPS taking a formal prosecution decision.

This proposal is particularly concerning as there will be cases where, following an inquest verdict, the police have chosen not to investigate other state bodies and agents, including
INQUEST’s response to Crown Prosecution Service Victims’ Right to Review Consultation

the police themselves. In those circumstances, it is vital that bereaved families have access to the VRR as a refusal by the police to investigate or provide a file to the CPS will, for the bereaved family, amount to a decision not to prosecute.

Finally, INQUEST is eager to ensure that the VRR scheme has the resources needed to be effective in practice. The decisions covered by the VRR will be rendered meaningless if the CPS do not take steps to ensure that the evidence and verdict provided at an inquest are preserved and properly considered. This includes the attendance of the CPS at inquests where the VRR may be activated following the inquest, and the preservation of transcript and other evidence from the inquest by the CPS. This will ensure that fully informed prosecutorial decisions can be made at the conclusion of an inquest.

2. Do you agree that the guidance clearly sets out how victims can exercise their right to review?

INQUEST wishes to ensure that the definition of “victim” within the current proposed scheme includes bereaved family members in relation to all criminal conduct linked to the death of their loved one and/or revealed by an inquest into their death. This requires consideration of two issues.

First, a victim must include the full range of bereaved relatives covered by article 2 ECHR, including parents, siblings, cousins, uncles, and step-relatives.

Second, paragraph 16 states that the definition of “victim” includes bereaved relatives or partners in homicide cases, which are defined in the footnote to paragraph 16. INQUEST is very concerned that the current scheme does not appear to include bereaved relatives in prosecution decisions that relate to all criminal conduct linked to the death of their loved one and/or revealed by an inquest into their death, rather than merely prosecution decisions concerning homicide (as defined in the scheme).

The evidence and verdict at an inquest can often reveal possible criminal charges that do not amount to homicide, e.g. allegations of misconduct in public office by state agents. The
evidence may relate to acts, but also omissions on the part of state agents or those commissioned to provide public services (for example, private healthcare providers in prison and police custody). INQUEST is concerned to ensure that all such decisions are included in the definition of “victim” for these purposes.

Finally, paragraph 18 suggests that some information on the decision not to prosecute will be provided to victims, who will also be told how to access other information about the decision should they wish. It is our view that bereaved families following an inquest should be provided with all the relevant information on the decision not to prosecute as a matter of right. Such families may be struggling with unbearable grief and they should automatically be provided with all the relevant information in order to make an informed decision on whether to utilise the VRR.

3. **Do you agree the guidance clearly sets out the basis of the victims’ right to review, reflecting existing principles for reconsidering a prosecution decision?**

INQUEST would seek to stress the need for very clear guidance to be provided to bereaved families to enable them to fully understand the circumstances in which prosecution decisions will be revisited. It is important that bereaved families understand when prosecution decisions will be revisited, in what circumstances and the role their views will play in prosecution decisions. The guidance is silent on the circumstances in which prosecution decisions will be revisited following inquests, and we would suggest that specific guidance be provided for bereaved families.

4. **Do you consider that the proposed time limits are appropriate?**

The proposed time limits appear to be acceptable. However, it is unclear whether the time limits will be extended in exceptional cases. Thus where a decision not to prosecute is made in advance of an inquest and evidence comes to light during an inquest which calls into question the reasonableness of the decision not to prosecute a bereaved family should not be precluded from exercising their right to exercise the VRR.
INQUEST’s response to Crown Prosecution Service Victims’ Right to Review Consultation

5. Are there any other issues you think should be considered an addressed in the guidance.

The guidance sets out those who will be entitled to an enhanced service under the Victims’ Code. We consider that further guidance or clarification of the following terms would assist in enabling victims to understand whether they are entitled to an enhanced service: ‘serious crime’ and ‘vulnerable’.

The guidance specifies at paragraph 33 who will carry out the review. We consider that it may be appropriate to review the need to assign particularly complex or contentious cases, such as police shootings, to reviewers with particular expertise.

If you require further information please contact INQUEST on 02072631111