



### Judicial Review, Public Interest Immunity and Coroners

#### Is an 'interested party' automatically entitled to participate in a Judicial Review?

In the latest legal fallout from the death of the former Russian security agent, Alexander Litvinenko, the government has convinced the Administrative Court to exclude properly interested persons from participating in a Judicial Review relating to the release of documents.

#### Can State Security be used as a reason to withhold information from parties in an inquest?

When Mr Litvinenko died in an apparently bizarre, cold-war throwback assassination in London, relations between Moscow and London took a dive and journalists began poking into what the British government knew, if anything, about the spy's activities.

Meanwhile, as, under the normal legal principles, any suspicious death has to be the subject of an inquest, the Coroner duly began his investigations. The Coroner's process is supposed to be an open investigation into the facts, without directly ascribing blame, which involves any properly interested person (PIP) including, for instance, family members participating to have their point of view heard. Such PIPs can normally expect to gain access, through the process, to information about the death. In this case that would include documentation held by the Secretary of State for Foreign and Commonwealth Affairs which touched on the background to the death and potentially its investigation.

#### Public Interest Immunity

However, the Secretary of State claimed public interest immunity (PII) in respect of a number of documents relating to Mr Litvinenko, which would ordinarily have to be disclosed.

Having considered this request, the deputy Coroner partly rejected the Secretary of State's claim, meaning that disclosure of documents to the PIPs would inevitably follow. To prevent this disclosure, which the government said would cause serious harm to the public interest, the Secretary of State applied for Judicial Review of the coroner's decision.

#### Who should participate in the Judicial Review?

The essential issue before the court in the Judicial Review was whether the PIPs should be properly regarded as 'interested parties' for the purposes of the claim and therefore eligible to participate in the Judicial Review.

The role of interested party in Judicial Review is a powerful one and parties who want to influence the outcome but are a third party to the challenged decision should always consider whether they can adopt it.

The Civil Procedure Rules sets out what constitutes an 'interested party'; being any person (other than the claimant or the defendant) who is *directly affected by the claim*.

The Court found that in this case the PIPs were interested parties, which it was perhaps difficult to deny in the circumstances. However, in order to find a way to square the problem that allowing PIPs access to the very documents the Judicial Review concerned, the Court went on to decide that an interested party is not automatically entitled to participate in proceedings under the Civil Procedure Rules and this may be the case where it is not in the interests of justice.

In other words, the Court may - in its exercise of case management powers, having regard to the overriding objective and the requirement to deal with cases justly - depart from the ordinary principle that interested parties should be permitted to participate in a Judicial Review. Allowing the interested parties to participate in this Judicial Review and view the documents would have defeated the very purpose of challenging the deputy Coroner's decision. The Secretary of State submitted that this would make the decision unchallengeable in practice and so the balance of justice required that the interested parties be excluded.

#### Rights of interested parties to participate in Judicial Review

The case is a useful reminder that the right of interested parties to participate in Judicial Reviews is not automatic (and indeed that all rights in the Civil Procedure Rules are subject at all times to the Court's case management powers and the Overriding Objective).

In particular, where the decision being challenged relates to decisions on disclosure of confidential or protected information or documents, one can expect the parties and procedures to that Judicial Review to be subject to appropriate restrictions. The status of 'interested party' is intended to assist the Administrative Court's ability to determine Judicial Reviews justly, not to prevent or prejudice it.

## Public Inquiry?

For what it is worth, following this decision, the deputy Coroner wrote to the Home Secretary to request a public inquiry into Mr Litvinenko's death, after concluding that he could not otherwise consider secret intelligence evidence relating to Russia's involvement in the killing.

This request was refused by government and consequently, it is highly unlikely that the inquest into Mr Litvinenko's death will open on 2 October as planned.

## Contacts

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