

**INQUEST TOUCHING UPON THE DEATHS OF THOSE WHO DIED AT TH SHOREHAM AIRSHOW ON
22ND AUGUST 2015**

PRELIMINARY DECISION ON SCOPE OF INQUEST

1. Following the Pre Inquest Review hearing in June 2017 I requested preliminary submissions on the Scope of the Inquest with consideration as to whether or not Article 2 of ECHR is engaged. A further order for submissions was made on 8th November 2017.
2. At this stage there has been no disclosure made to any of the interested parties due to the fact that there is an ongoing criminal investigation. It is therefore accepted that there may need to be more detailed submissions following the outcome of any criminal proceedings (should there be any) and full disclosure made.
3. I want to point out that the reason for requesting these initial submissions, before disclosure was available, is in order to assist me with an assessment of the length of the final Inquest hearing and to enable planning for the Inquest to take place. The CAA has suggested in their submissions that the Scope and therefore, the length of the Inquest will not be affected whether Article 2 is engaged or not. I am afraid with that I do not agree. An Article 2 Inquest is a wider investigation by its very nature and is likely to considerably lengthen the Inquest.
4. I have delayed in providing this written decision in the hope that it may have been possible to review some of the documentation gathered by the Police in the course of their investigation. However at the time of providing my ruling the decision of the CPS, regarding whether or not there is to be any prosecution, is still under consideration. Therefore these papers are currently not available to me.

Provisional view on Scope of Inquest

5. On 2nd January 2018, in order to assist those preparing submissions, I set out my initial thoughts on the Scope of this Inquest as follows:-

To investigate the circumstances that led to the death of 11 individuals following the crashing of a Hawker Hunter T7 Registration G-BXFI onto the A27 Shoreham bypass whilst performing an air display at the Shoreham Airshow on 22nd August 2015.

This should include but is not limited to:

1. The licensing and control of Air Shows and the safety of civil display flying at such events.
 2. The organisation, planning and running of the Shoreham Airshow in 2015.
 3. The safety measures and risk assessment that were put in place to protect those attending the Shoreham Airshow, those observing the Airshow outside the perimeter and those in close proximity to the Airshow on the A27 bypass.
 4. The management and control of the flying display.
 5. The training and previous experience of the Pilot to carry out the flying display.
 6. The actions of the Pilot in the day.
6. There appears that there is very little disagreement between all the Properly Interested Persons over my initial thoughts on what should fall within the Scope of the Inquest. Some slightly different wording has been suggested but overall the content seems to be pretty much agreed.
7. However the CAA have submitted that point 1 should be amended from “The licensing of Airshows” to more specifically “The licensing of the Shoreham Airshow”. Clearly any amendment would depend on whether not Article 2 is engaged – see below.
8. Further areas may fall within the Scope of this Inquest once full disclosure has been provided so I propose to keep the Scope of this Inquest under review

Engagement Article 2 ECHR

9. The Chief Coroners Law Sheet number 3 suggests that consideration, as to the engagement of Article 2, should not occur until after disclosure has taken place. However as mentioned above there is a need to carry out a preliminary review to assist with the administration of this Inquest.
10. I am also aware that an early indication would assist the families with regards to their application for legal aid funding.
11. I am not going to repeat the arguments that have been submitted by those representing the various properly interested persons but can summarise their submissions by saying that the families represented by Stewarts and Mr Rodney Dean (Flying Display Director) conclude that Article 2 is engaged, the CAA conclude it is not and the Family represented by Ashfords and RAFA Shoreham Air Show feel it is premature to determine. Cranford Hunter Limited, Sussex Police, AAIB makes no submissions on this point.
12. Whilst I accept that it is premature to make any final decision on this point it is possible on the publically available material available to me, by way of the Air Accident Investigation report, for me to give an early indication of my view.

13. Article 2 ECHR gives rise to a positive duty to protect life in certain circumstances

This positive duty is divided into 2 aspects (see Rabone at para 12)

- (a) A general duty on the state “to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life (“the general duty”) and
- (b) The “operational duty”

14. With regards to the “general duty” there is a detailed and complex legislative framework in place for the supervision of pilots, flights, aircraft and airshows. The legislative framework, as identified in the AAIB report, is drawn up, supervised and enforced by the CAA. The inquest therefore needs to consider whether any of the legislative framework or rules were deficient in a way that may have caused the accident.

15. With regards to the “operational duty” it is not possible to form a view on this without proper consideration and testing of the evidence. However there is sufficient evidence contained within the AAIB report to suggest that there may have been system failures and to that end I am, at this stage, satisfied that Article 2 could be engaged and I therefore propose to hold an Article 2 compliant Inquest.

Penelope Schofield
Senior Coroner, West Sussex
16th March 2018

1 Rabone v Penine Care NHS Trust [2012] UKSC 2