

INQUESTS AND THE CORONER'S COURT – AN OUTLINE

The Office of Coroner

The Coroner is an independent judge and the Coroner's Court a court of record.

Coroners are appointed by County Councils but, once appointed, can only be removed in the same way as other judges.

Currently Coroners may be barristers, solicitors or medical practitioners but, once the Coroners and Justice Act is in operation, only lawyers will be eligible.

Each Coroner must appoint a Deputy and may appoint one or more Assistant Deputies.

Each Coroner has a defined district. The office may be full-time or part-time but there is an increasing progression towards exclusively full-time appointments.

Organisation and Administration in Norfolk

Since 1 April 2010 there has been one Coroner for the whole of Norfolk operating from an office at 69-75 Thorpe Road, Norwich, NR1 1UA, Norfolk.

There are six Coroner's Officers and two administrative staff all operating from Norwich with the exception of one officer who is based in King's Lynn.

All deaths are assigned to an individual Coroner's Officer.

Inquests are currently held in various venues – principally in Norwich, King's Lynn and Great Yarmouth. It is anticipated in due course that there will be a permanent Coroner's Court in Norwich.

Deaths within the Jurisdiction of the Coroner

Deaths are reportable to the Coroner in the following circumstances:-

1. Under Section 8(1) of the Coroner's Act 1988 where the deceased has "died a violent or unnatural death, has died a sudden death of which the cause is unknown, or has died in prison or in such a place or in such circumstances as to require an inquest under any other Act,"
2. It is the duty of the Registrar of Deaths to report certain deaths to the Coroner as set out in Regulation 41(1) Registration of Births and Deaths Regulations 1987.
 - a. "The death of any person not attended during his last illness by a registered medical practitioner; or

- b. a death in respect of which the Registrar is unable to obtain the delivery of a duly completed certificate of cause of death; or
- c. any death with respect of which it appears to the Registrar from the certificate of cause of death that the deceased was seen by a certifying medical practitioner neither after death nor within 14 days before death; or
- d. any death the cause of which appears to be unknown; or
- e. any death which the Registrar has reason to believe to have been unnatural or caused by violence or neglect, or by abortion, or to have been attended by suspicious circumstances; or
- f. any death which appears to have occurred during an operation or before recovery from the effects of an anaesthetic; or
- g. any death which appears from the contents of any medical certificate to have been due to industrial disease or industrial poisoning".

NB:

- a. The Coroner's jurisdiction is founded upon the existence of a body "lying within his district" i.e. the issue is where the body is rather than where the death occurred.
- b. Under Section 14 an inquest can be transferred from one Coroner to another where appropriate.
- c. Even when the death has occurred abroad provided the body comes into the jurisdiction of the Coroner he is obliged to hold an inquest if there are grounds for doing so.
- d. As stated unnatural deaths have to be reported. A death results from "natural causes" when it is the result of the normal progression of a naturally occurring illness. However, in Touche¹ it was held that a "wholly unexpected death from natural causes which would not have occurred but for some culpable human failure" should be treated as unnatural.

Procedure once Death Reported

Once a death has been reported and the Coroner has accepted jurisdiction there are three possible courses of action open to him:-

¹ Rv Inner North London Coroner exp. Touche [2001] QB 1206

1. If, after enquiry, the Coroner is satisfied that there is no need for a post mortem and that the death is clearly natural he may issue the appropriate certificate to the Registrar enabling registration to take place.
2. If he cannot be satisfied that the cause of death was natural the Coroner can order a post mortem examination. If the post mortem report states the cause of death was natural then the Coroner can issue the appropriate certificate enabling the registration to proceed.
3. If the post mortem report states that the cause is unnatural or if the death has occurred in custody then the Coroner will order an inquest.

Only 13% of deaths lead to inquests.

Post Mortem Examinations

A post mortem examination is an examination of the body carried out by a pathologist instructed by and answerable to the Coroner.

The post mortem report cannot be disclosed to anyone without the Coroner's consent although he must make a copy available to properly interested persons.

There may be circumstances in which the Coroner's authority for a second post mortem examination is sought.

Where the death is suspicious the post mortem will be conducted by an accredited forensic pathologist.

Opening of the Inquest and Disposal of the Body

The inquest will be formally opened by the Coroner as soon as possible after the death has occurred, once identification has taken place and the general circumstances established.

The Coroner will decide when the body can be released for burial or cremation and issue the appropriate Burial Order or Cremation Certificate.

Where it is intended to remove the body from the jurisdiction then the Coroner's written authority must be granted.

Adjournment of the Inquest in the event of Criminal Proceedings

Section Rule 16 states:- (of Coroner's Act)

1. "If on an inquest into a death the coroner before the conclusion of the inquest –
 - a. is informed by the [justices' chief executive for] a magistrates' court under section 17(1) below that some person has been charged before a magistrates' court with –

- i. the murder, manslaughter or infanticide of the deceased;
 - ii. [an offence under sections 2B 3A or 3ZB of the Road Traffic Act 1988]
 - iii. an offence under section 2(1) of the Suicide Act 1961 consisting of aiding, abetting, counselling or procuring the suicide of the deceased; or
- b. is informed by the Director of Public Prosecutions that some person has been charged before examining justices with an offence (whether or not involving the death of a person other than the deceased) alleged to have been committed in circumstances connected with the death of the deceased, not being an offence within paragraph (a) above, and is requested by, the Director to adjourn the inquest,

then, subject to subsection (2) below, the coroner shall, in the absence of reason to the contrary, adjourn the inquest until after the conclusion of the relevant criminal proceedings and, if a jury has been summoned, may, if he thinks fit, discharge them.

2. The Coroner –

- a. need not adjourn the inquest in a case within subsection (1)(a) above if, before he has done so, the Director of Public Prosecutions notifies him that adjournment is unnecessary; and
- b. may in any case resume the adjourned inquest before the conclusion of the relevant criminal proceedings if notified by the Director that it is open to him to do so.

1. After the conclusion of the relevant criminal proceedings, or on being notified under paragraph (b) of subsection (2) above before their conclusion, the coroner may, subject to the following provisions of this section, resume the adjourned inquest if in his opinion there is sufficient cause to do so.
2. Where a coroner adjourns an inquest in compliance with subsection (1) above, he shall send to the registrar of deaths a certificate under his hand stating, so far as they have been ascertained at the date of the certificate, the particulars which under the 1953 Act are required to be registered concerning the death.
3. Where a coroner does not resume an inquest which he has adjourned in compliance with subsection (1) above, he shall (without prejudice to subsection (4) above) send to the registrar of deaths a certificate under his hand stating the result of the relevant criminal proceedings.”

NB:-

Where an inquest has been adjourned under Section 16 and the proceedings before the criminal court concluded then the Coroner has a discretion as to whether or not to re-open the inquest.

Under Section 17A where a public enquiry is held and the Lord Chancellor considers the cause of death is likely to be adequately investigated by the enquiry the Coroner, in the absence of any exceptional reason to the contrary, is obliged to adjourn the inquest and can only resume it if there is "exceptional reason for doing so".

Preparation for the Inquest

The Coroner's Officer, under the direction of the Coroner, will make the necessary enquiries, assemble the necessary evidence, liaise with all concerned and prepare the matter for inquest.

Although it is for the Coroner to determine the ambit for the inquest and decide which witnesses are to be called solicitors acting on behalf of properly interested persons should indicate to the Coroner in advance of the hearing the issues which their clients wish to raise at the inquest, seek information and evidence in advance of the hearing and, where appropriate, make submissions as to what additional evidence may be appropriate.

There are no rules requiring the Coroner to disclose witness statements or material prior to the inquest but, in recent years, many Coroners have adopted a liberal approach to providing information in advance of the inquest.

In an inquest where Article 2 is engaged then, in order to ensure that the inquest is Article 2 compliant, the Coroner will be obliged to assist the family by providing full disclosure – even where it is not specifically sought.

Notification of the Inquest

Under Rule 19 the Coroner is obliged to notify the following persons of inquest arrangements:-

"The coroner shall notify the date, hour and place of an inquest to –

- a. The spouse or a near relative or personal representative of the deceased whose name and address are known to the coroner; and
- b. any other person who –
 - i. In the opinion of the coroner is within Rule 20(2); and
 - ii. has asked the coroner to notify him of the aforesaid particulars of the inquest; and
 - iii. has supplied the coroner with a telephone number or address for the purpose of so notifying him

Under Rule 24

Any person whose conduct is likely in the opinion of the coroner to be called in question at an inquest shall, if not duly summoned to give evidence at the inquest, be given reasonable notice of the date, hour and place at which the inquest will be held."

Pre-Inquest Hearings

In complex cases the Coroner will normally order a pre-inquest hearing.

See attached pre-inquest hearing checklist used in the Norfolk jurisdiction.

The Inquest – Function and Purpose

Rule 36 states:-

1. "The proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely –
 - a. who the deceased was;
 - b. how, when and where the deceased came by his death;
 - c. the particulars for the time being required by the Registration Acts to be registered concerning the death."
2. Neither the coroner nor the jury shall express any opinion on any other matters."

In R the South London Coroner, exp.Thompson², Lord Lane C.J. said, "it should not be forgotten that an inquest is a fact-finding exercise and not a method of apportioning guilt. It is an inquisitorial process, a process of investigation quite unlike a trial where the prosecutor accuses and the accused defends, the judge holding the balance or the ring, whichever metaphor one chooses to use."

In R the HM Coroner for North Humberside exp.Jamieson³, Sir Thomas Bingham M.R, as he then was, said, "it is the duty of the Coroner ... to ensure that the relevant facts are fully, fairly and fearlessly investigated ... he must ensure that the relevant facts are exposed to public scrutiny ... he fails in his duty if his investigation is superficial, slipshod or perfunctory. But the responsibility is his, he must set the bounds of the enquiry."

The word "how" in Rule 36 means "by what means".

² (1982) 126 SJ 625

³ (1995) QB1

Where the deceased may have been in the care of the State or the State may bear some responsibility for the death then, in order to comply with Article 2 of the ECHR, the State has a duty to ensure that a full and comprehensive investigation into the death is carried out in accordance with the procedural duty under Article 2.

In an Article 2 inquest the scope of the inquest will be considerably broader and more comprehensive than domestic inquests and, in accordance with R on the application of Middleton v HM Coroner for West Somerset⁴ the word "how" must be read as meaning "by what means and in what circumstances".

Inquest Procedure – Questioning of Witnesses

All the witnesses are the Coroner's witnesses. No-one has any right to "call" witnesses but obviously submissions can be made to the Coroner on which witnesses he should call.

Properly interested persons are entitled to ask questions by themselves or through a legal representative in accordance with Rule 20 which states:-

1. "Without prejudice to any enactment with regard to the examination of witnesses at an inquest, any person who satisfies the coroner that he is within paragraph (2) shall be entitled to examine any witness at an inquest either in person or by [an authorised advocate as defined by section 119(1) of the Courts and Legal Services Act 1990];

Provided that –

- a. The chief officer of police, unless interested otherwise than in that capacity, shall only be entitled to examine a witness by [such an advocate];
 - b. The coroner shall disallow any question which in his opinion is not relevant or is otherwise not a proper question.
2. Each of the following persons shall have the rights conferred by paragraph (1) –
 - a. a parent, child, spouse [civil partner] [,partner] and any personal representative of the deceased;
 - b. any beneficiary under a policy of insurance issued on the life of the deceased;

⁴ [2004] 2AC 182

- c. the insurer who issued such a policy of insurance;
- d. any person whose act or omission or that of his agent or servant may in the opinion of the coroner have caused, or contributed to, the death of the deceased;
- e. any person appointed by a trade union to which the deceased at the time of his death belonged, if the death of the deceased may have been caused by an injury received in the course of his employment or by an industrial disease;
- f. an inspector appointed by, or a representative of, an enforcing authority, or any person appointed by a government department to attend the inquest;
- g. the chief officer of police;
- h. any other person who, in the opinion of the coroner, is a properly interested person.

Rule 22 deals with self-incrimination and states:-

1. No witness at an inquest shall be obliged to answer any question tending to incriminate himself.
2. Where it appears to the coroner that a witness has been asked such a question, the coroner shall inform the witness that he may refuse to answer.

Order of questioning – Rule 21 states:-

Unless the coroner otherwise determines, a witness at an inquest shall be examined first by the coroner and, if the witness is represented at the inquest, lastly by his representative.

Note Rule 20(1)(b) "the Coroner shall disallow any question which in his opinion is not relevant or is otherwise not a proper question".

Role of Legal Representatives

The role of lawyers at inquests is limited to:-

- a. asking questions
- b. making legal submissions

NB Rule 40 states:-

"No person shall be allowed to address the coroner or the jury as to the facts."

Documentary Evidence

Documentary evidence may be admitted at an inquest but only in the circumstances set out in Rule 37 which states:-

1. "Subject to the provisions of paragraphs (2) to (4), the coroner may admit at an inquest documentary evidence relevant to the purposes of the inquest from any living person which in his opinion is unlikely to be disputed, unless a person who in the opinion of the coroner is within Rule 20(2) objects to the documentary evidence being admitted.
2. Documentary evidence so objected to may be admitted if in the opinion of the coroner the maker of the document is unable to give oral evidence within a reasonable period.
3. Subject to paragraph (4), before admitting such documentary evidence the coroner shall at the beginning of the inquest announce publicly –
 - a. that the documentary evidence may be admitted, and
 - b. (i) the full name of the maker of the document to be admitted in evidence, and

(ii) a brief account of such document, and
 - c. that any person who in the opinion of the coroner is within Rule 20(2) may object to the admission of any such documentary evidence, and
 - d. that any person who in the opinion of the coroner is within Rule 20(2) is entitled to see a copy of any such documentary evidence if he so wishes.
4. If during the course of an inquest it appears that there is available at the inquest documentary evidence which in the opinion of the coroner is relevant to the purposes of the inquest but the maker of the document is not present and in the opinion of the coroner the content of the documentary evidence is unlikely to be disputed, the coroner shall at the earliest opportunity during the course of the inquest comply with the provisions of paragraph (3).
5. A coroner may admit as evidence at any inquest any document made by a deceased person if he is of the opinion that the contents of the document are relevant to the purposes of the inquest.
6. Any documentary evidence admitted under this rule shall, unless the coroner otherwise directs, be read aloud at the inquest."

Juries

The Coroner is required to sit with a jury in certain circumstances and has a discretion to sit with a jury in any case.

Section 8 states:-

1. "If it appears to a coroner, either before he proceeds to hold an inquest or in the course of an inquest begun without a jury, that there is reason to suspect –
 - a. that the death occurred in prison or in a place or in such circumstances as to require an inquest under any other Act;
 - b. that the death occurred while the deceased was in police custody, or resulted from an injury caused by a police officer in the purported execution of his duty;
 - c. that the death was caused by an accident, poisoning or disease notice of which is required to be given under any Act to a government department, to any inspector or other officer of a government department or to an inspector appointed under section 19 of the Health and Safety at Work etc. Act 1974; or
 - d. that the death occurred in circumstances the continuance or possible recurrence of which is prejudicial to the health or safety of the public or any section of the public,

he shall proceed to summon a jury in the manner required by subsection (2) above.

2. If it appears to a coroner, [before he proceeds to hold an inquest, on resuming an inquest begun with a jury after the inquest has been adjourned and the jury discharged] or in the course of an inquest begun without a jury, that there is any reason for summoning a jury, he may proceed to summon a jury in the manner required by subsection (2) above.
3. In the case of an inquest or any part of an inquest held without a jury, anything done by or before the coroner alone shall be as validly done as if it had been done by or before the coroner and a jury.
4. Where an inquest is held into the death of a prisoner who dies within a prison, neither a prisoner in the prison nor any person engaged in any sort of trade or dealing with the prison shall serve as a juror at the inquest."

Where a Coroner is sitting with a jury then Rule 41 applies. The Rule states:-

"Where the coroner sits with a jury, he shall sum up the evidence to the jury and direct them as to the law before they consider their verdict and shall draw their attention to Rules 36(2) and 42."

The Inquisition and Verdict

Rule 42 states:-

"No verdict shall be framed in such a way as to appear to determine any question of –

- a. criminal liability on the part of a named person, or
- b. civil liability"

The Inquisition Form must be completed in full. (See attached).

Note the following:-

1. Suicide and unlawful killing must be proved beyond reasonable doubt in terms of intention. For other verdicts the standard of proof is balance of probabilities.
2. The distinction between accident and misadventure is largely historic and semantic – there is no effective distinction.
3. In many situations a short form verdict will appropriate.
4. Where it is claimed that the death may have resulted from simple negligence on the part of a practitioner or practitioners then the full procedural obligation under Article 2 will not be engaged. The Coroner's Court does not make findings on matters of negligence or suggested inappropriate exercise of clinical discretion. It will be otherwise of course of there have been fundamental systemic failures without which the death may not have occurred.
5. An ~~Article 2~~ inquest will always be necessary in the case of a person who has died in custody. The Court of Appeal has held that the Article 2 procedural duty will also arise in the case of a patient detained under the Mental Health Act where it is possible that there has been a failure to take measures to save the deceased from dying or there has been a breach of the operational obligation to take all reasonable steps to protect the person from a real and immediate risk to life⁵.

⁵ See R (Allen) v HM Coroner for Inner North London etc. (2009) EWCA CIV 623

6. Where a Coroner is sitting with a jury and he has decided to instruct the jury to return a narrative verdict then he must decide how to elicit the appropriate findings from the jury – either by asking them to answer particular questions or requiring them to compile a narrative dealing with issues which he has set out for them.
7. Lawyers are of course entitled to address the Coroner (in the absence of the jury where there is one) on the range of verdicts that should be considered and the issues that should be dealt with in the verdict.

Rule 43 – Prevention of Future Deaths

Rule 43 (as amended) states:-

1. Where –
 - a. a coroner is holding an inquest into a person's death;
 - b. the evidence gives rise to a concern that circumstances creating a risk of other deaths will occur, or will continue to exist, in the future; and
 - c. in the coroner's opinion, action should be taken to prevent the occurrence or continuation of such circumstances, or to eliminate or reduce the risk of death created by such circumstances,

the coroner may report the circumstances to a person who the coroner believes may have power to take such action.

Note the following:-

1. This is not a power to make recommendations as such.
2. The recipient of a Rule 43 report is obliged to respond within 56 days.
3. Rule 43 reports and responses are copied to the Lord Chancellor and summaries are produced periodically describing the issues that have been raised and addressed.
4. In an Article 2 inquest the use of Rule 43 is an important part of the Article 2 obligation and, whilst this power is generally discretionary, it can effectively become mandatory on the Coroner where, during the course of the inquest, it is clear there have been fundamental failings which require addressing.

William Armstrong
 HM Coroner
 County of Norfolk

References

Coroners Act 1988

The Coroners Rules 1984

Jervis on Coroners (Twelfth Edition)

Coroners' Courts (Christopher Dorries) (Second Edition)

Inquests, a Practitioners Guide, Thomas, Straw and Friedman (Second Edition)

Articles in Legal Action Group Bulletin

Inquest Law – Journal Published by "Inquest".

Inquest Law Reports



INQUISITION

An Inquisition taken for our Sovereign Lady the Queen

Before and by me
for Norfolk District
The following matters were found

1. Name of Deceased

2. Injury or disease causing death

la

b

c

ll

3. Time, place and circumstances at or in which injury was sustained

4. Conclusion of the as to the death

5. Particulars for the time being required by the Registration Acts to be registered concerning the death

(a) Date and place of birth Date of birth not known	
(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	

SOCKS
CUMEN

Signature of

Signature of Jurors (if present)

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Pre-Inquest Hearing Check List

- Who are the properly interested persons?
- Are there any others who need to be notified of hearing?
- Legal representation for family, public funding
- Any further inquiries necessary?
- Witnesses to be called
 - have they all been identified and located?
 - have they made statements?
 - availability?
 - any witnesses who may need to be summonsed
 - any outside the jurisdiction?
- Any statements agreed to be read under Rule 37
- Expert evidence, experts to be instructed, issues to be addressed
- Disclosure
- Scope of Inquest
 - family's issues
 - Article 2 engaged
 - Need for preliminary hearing
- jury required
- time estimate
- order of witnesses
- interpreter required?
- video or audio facilities required?
- any exhibits to be produced
- any public interest immunity applications
- bundle(s)
 - who to prepare
 - core bundle required for jury
- skeleton arguments
- directions