

## INQUESTS 2010

### Statutes

Coroner's Acts were consolidated in the 1988 Coroner's Act.

The Coroner's rules remain those of 1984 unaffected by the consolidation act.

The Coroners and Justice Act 2009

This Act is itself only one part of an overall reform package which is also to include new regulations, rules and a charter for bereaved relatives. The content of the rules and regulations remain to be seen.

The old Government claimed that bereaved relatives are to be central to the entire system whilst the coroners are to be professionalized with full time legally qualified coroners in defined regional areas headed by a Chief Coroner - a High Court or Circuit Judge who will be appointed by the Lord Chief Justice in consultation with the Lord Chancellor and be accountable to Parliament. It will be his responsibility to set standards and consider appeals. For the first time coroners are to be trained and be subject to a proper appointments procedure. The current system of 120 or so full and part-time coroners will be replaced by a full time quota of around 60.

There is to be a system of inspection to ensure that standards are maintained and are consistent. The Chief Coroner is to be advised by a Coronial Advisory Council whilst individual coroners will be able to call upon the services of medical advisers although details about how this will work and who these people will be are scanty. Coroners will be vested with greater investigation and powers to call for evidence

The following rights appear to be the key to putting the interests of the bereaved relatives first:

- the right to ask a coroner for a second opinion on death certificates;
- the right of appeal to the Chief Coroner;
- the right to be provided by the coroner with an explanation of the rights and obligations in relation to the inquest;
- the right to be informed and consulted by the coroner who must treat relatives with sympathy and dignity;
- the right to expect that the inquest will comply with their and their community's expectations.

Under the Act there will be a duty on a coroner to investigate:

- violent or unnatural deaths, or
- where the cause of death is unknown, or
- where there is a death in custody or otherwise in state detention.

A jury would only have to be summoned where the deceased dies in custody and the death was violent, unnatural or unknown, or as a result of the act of a policemen in the execution of his duty or in cases of poisoning, and notifiable disease or accident. In any other case the coroner can call a jury at his discretion. The number of jurors ....

Clause 10 deals with the determination at the conclusion of the inquest. This broadly follows the current system. Subsection (1)(a) requires that there be a short determination as to who the deceased was and when, where, and by what means he died whilst clause (1)(b) requires that there be a short finding or verdict.

Clause 10(2) bars the coroner from making a determination which is *'framed in such a way as to appear to determine a) any question of criminal liability on the part of a named person or b) civil liability'*.

Schedule 4 clause 6 of the Act reinforces the coroners powers to make reports to persons who may have the power to prevent future similar deaths and effectively enacts the statutory instrument referred to below.

The Coroner has the new right to search and enter premises and to seize evidence.

The proposed Charter for Bereaved Relatives makes it clear that bereaved relatives are to be told by the coroner of their right to be represented but there is no guidance as to the extent of that right, for example, by suggesting that representation should be arranged by the state where there is a public interest involved, such as in preventing future deaths in similar circumstances. There is no reference in either Act or Charter to the availability of funding for representation.

The new 2009 Act regime is due to be introduced in April 2012. In the meantime the Ministry of Justice has issued a consultation on the implementation of the new provisions:

<http://www.justice.gov.uk/consultations/reform-coroner-system.htm>

## Office

The Coroner is an independent judicial officer under the Crown appointed and paid for the by the local council.

To qualify for the office of Coroner the candidate must be a qualified lawyer with five years or more experience. There are transitional provisions for existing medically qualified Coroners.

## Jurisdiction

Section 8(1) of the Coroner's Act: the Coroner has compulsory jurisdiction in cases of:-

- (a) violent or unnatural death
- (b) sudden death whose cause is unknown
- (c) death in prison

A death which appears to be due to natural causes can still be one in which the coroner's jurisdiction is invoked.

*In R v H M Coroner Inner London ex parte Touche [2001] QB 1206- an unnatural death was described as "where it was wholly unexpected and it would not have occurred but for some culpable human failing"*

Anyone can report a death to the Coroner.

The first decision for the Coroner is whether to investigate the death.

If one of the Section 8 criteria for his involvement is invoked he will first order a post mortem.



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## The Post Mortem

The Coroner can insist on a post-mortem being carried out.

The Coroner has a duty to inform any person who has notified him of his or her interest that there is to be a post mortem.

Interested parties will include:

- relatives;
- the deceased's regular medical practitioner and hospital doctor;
- an enforcing panel or Government department in any relevant case
- the Chief of Police.

Any of these interested parties can be represented at the post-mortem but (apart from the Chief Constable who can be represented by a police officer) only by a qualified medical practitioner.

That medical practitioner must not interfere in the post-mortem.

The Coroner's control over a body arises as soon as he decides to hold an Inquest and lasts at common law until the Inquest itself is determined: *R v Bristol Coroner ex p Kerr* 1974 2 ALL ER 719

## The Pathologist

The Pathologist will be:

- independent:
- one with suitable facilities for the conduct of a post-mortem:
- of an appropriate discipline

## Second Post Mortem

Relatives are in turn entitled as of right to a second post-mortem. *R v HMC Greater London ex p Ridley* [1985] 1 WLR 1347

## Releasing the Body

When the pathologist has finished the Coroner will usually authorise the release of the body.

The coroner has authority to remove from the body and preserve material that has a bearing upon the cause of death: CR 9; The Coroners (Amendment) Rules 2005 S I 2005/420

The Human Tissue Act 2004 requires that the consent of relatives be obtained if organs or tissue are to be retained after the Coroner has concluded his investigation.

## The Post Mortem Report

Any person can apply to the Coroner for a copy which can be inspected free or a copy can be supplied for a fee. CA 1988, s 57(1).

The form will generally follow the form recommended by the World Health Organisation.

There will be an analysis of the body as seen on dissection followed by a conclusion, part one of which sets out the sequence of disease or conditions leading to death and part two listing other disease processes contributory to death but not directly involved.

## The Issues

There are only four questions for the Coroner to consider at an Inquest.

- (1) **Who** the deceased was?
- (2) **How** the deceased came by his death?
- (3) **When** the deceased came by his death?
- (4) **Where** the deceased came by his death?

The Inquest is a fact-finding, non-adversarial inquiry.

The Coroner is expressly forbidden to consider criminal liability on the part of a named individual (CR 42a) or civil responsibility (CR 42b).

## Opening

Formal evidence of identification is given.

The Coroner can then give an order for disposal of the body, authorising cremation or burial.

## The Resumed Hearing

The evidence to be given at the inquest is entirely within the control of the Coroner.

Any witness called by a Coroner is bound to attend and give evidence.

The witness can only refuse to give evidence by attending and electing not to give evidence on the grounds of self-incrimination.

There must be a real and appreciable risk of criminal offences and penalties (CR 22(1)).

## Documents

Documentation for the Inquest is entirely controlled by the Coroner.

## Advance Disclosure

The court's view is that it will not fetter the discretion of Coroners by being prescriptive.

At least a list of witnesses accompanied by a short summary or gist of the witnesses' evidence should be provided to interested parties: *R v HMC Lincolnshire ex p Hay* [2000] MLC 190.

Medical records should be supplied in advance of an Inquest: *Stobart v NHA* [1992] 3 MEDLR 284



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## Unused material

Home Office Circular 31/2002 gives guidance to Coroners on how to deal with unused material in an inquest into the death “of a member of the public during or following contact with the police”.

‘where disclosure of material which is not likely to be called in evidence is contemplated, it may be preferable to arrange for interested parties to view the material in advance rather than the material being copied and provided directly to them, on the grounds that such material is generally not likely to be relevant....pre-inquest disclosure ‘may remove a source of friction between interested persons’.

## Interested party

Only “interested” parties can participate in an inquest. CR 20

The term “properly interested person” might extend beyond persons who stood to gain or lose in some way as a result of the death. *R v H M Coroner for the Southern District of Greater London, ex parte Driscoll* (1993) 159 JP 45.

A parent, child, spouse, partner (under the Civil Partnership Act), or legal personal representatives of the deceased would be an interested party.

## Jury

A jury is mandatory:

- deaths in prison or police custody;
- deaths where allegations of breach of the Health and Safety at Work Act 1974 (s.19) are considered
- where the events or their possible recurrence may be prejudicial to the health and safety of the public. CA 1988, s.8(3)d; *R v HM Coroner at Hammersmith ex parte Peach* [1980] 1 QB 211

In all other cases, whether the Coroner holds an Inquest with a jury depends whether he considers it is in the public interest to do so. CA 1988, s.8(4).

## The Extent of the Inquiry

The Coroner has to decide whether the death raises issues that would require that the inquest takes the form of an inquiry which is required to satisfy the State’s obligations to the deceased’s relatives under the ECHR.

## Article 2 ECHR

Article 2 of the ECHR provides that:

‘Everyone’s right to life shall be protected by law.’

This gives rise to a duty on the State to investigate when deaths occur where it owed such a duty to preserve life: *Osman v UK* (1998) 5 BHRC 293.



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There must be:

‘a full investigation of any death involving or possibly involving a violation of the State’s substantive obligation to protect human life arising under Article 2 (essentially whenever state agents or bodies may bear responsibility for the death)’. *R (on the application of Hurst) v Commissioner of Police for the Metropolis* [2007] 2 WLR 726 para 28

The enquiries that a Coroner has to make where Article 2 is engaged may be more extensive.

The question the Coroner has to determine of “how” the deceased came by his death is converted from

“by what means” ( *R v v HMC N Humberside ex p Jamieson* [1994] 3 ALL ER 972)

to

“by what means and in what broad circumstances did the deceased die”. *R (Middleton) v West Somerset Coroner* [2004]UKHL 10; *R v WSC ex p Middlesex* [2004] AC 182

An Article 2 inquiry conducted by the Coroner must be a full and effective inquiry otherwise deceased’s relatives may have remedies to demand a full public inquiry see Articles 2 & 3 ECHR - *McCann v UK* [1996] 21 EHRR 97; *Wright v Secretary of State for Home Dept* [2001] EWHC Admin 520

## Criteria for Compliance

*Jordan v UK* ECHR 4.5.01 sets out the criteria for such an investigation to be Article 2 compliant.

The inquiry must be

- Independent
- Effective
- Prompt
- Involve a sufficient element of public scrutiny
- Involve next of kin

## Conditions for Engagement

The conditions for engaging Article 2 are:



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- Simple negligence does not trigger the requirement for an inquiry into the State's obligation to protect life in that case.
- An effective civil action in negligence may already have satisfied the obligation.
- An inquiry or inquiries may already have satisfied the obligation but only if the bereaved relatives have been able to participate effectively in them and they have been carried out independently.

per Richards J *Goodson v HM Coroner for Bedfordshire & Luton* [2004] EWHC 2931 (Admin); [2006] 1 WLR 432

## Witnesses

The Coroner may take evidence from any witness that he and he alone thinks is relevant to his inquiry: CA 1988, s11(2)

## Examination

The questioning of witnesses during the Coroner's inquiry is entirely controlled by the Coroner.

Questions of those witnesses giving oral evidence can only be asked by an interested party or his representative CR, rule 20.

The Coroner can seek to put a written statement into evidence CR, rule 37 but only if

- the evidence is unlikely to be disputed, and
- if enquiries are made as to any objections from interested parties before the evidence is admitted into evidence

## Experts

It is for the Coroner to call witnesses and to decide which ones are appropriate.

The courts have held (*Goodson v HM Coroner for Bedfordshire & Luton* [2006]1 WLR 432 )that whether a Coroner calls an expert witness depends on:

- the circumstances of the individual case including the issues being investigated and
- the Coroner's own expertise
- the availability of other evidence.

## Submissions

At the conclusion of the evidence, the Coroner or the jury has to decide on the verdict.

Before doing so, it is open to the representatives of interested parties to make submissions.



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Those submissions

- can only relate to the verdict.
- can only be made by an interested party;
- have to be made to the Coroner in the absence of the jury and not to the jury and
- must be made prior to his summing up.
- must be of law and not as to the facts of the inquiry.

## The Verdict

The verdict cannot be framed to determine criminal liability on the part of a named person (CR 42a) or civil liability on behalf of any person or organisation (CR 42b).

Common verdicts which may be considered include:

- Natural causes
- Suicide
- Accidental or misadventure
- Unlawful killing
- Open verdict

## Unlawful Killing

An unlawful killing verdict is unlikely unless criminal proceedings are out of the question.

The standard of proof is the criminal standard. *R v West London Coroner ex p Gray* [1988] 1 QB 467

In all other verdicts to be reviewed the requisite standard of proof required is the civil standard - a balance of probabilities.

## Accidental Death

Accidental death and misadventure are the same verdict.

## Neglect

Verdicts can carry the rider “aggravated” or “contributed to” by “lack of care” or “neglect”.

This rider does not describe carelessness or negligence.

Lack of care denotes neglect - the opposite of self-neglect.

It is not clear whether the causal connection between the act of neglect and the death obliges a Coroner to find that the death would have been avoided on a balance of probabilities or simply might have been.



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The test is probably whether an opportunity to give potentially life saving treatment or care was missed *R v HM Coroner Coventry ex p Chief Constable of Staffs* (2000) 164 JP 665 or that measures may have been taken which arguably would have prevented the death. *R (Sacker)*

In an Article 2 inquest the Coroner is entitled to find a breach of Article 2 where a failure increased the risk of death to a material extent *Van Colle v Chief Constable of Hertfordshire* [2007] EWCA Civ 325 paras 78-83 even if the failure did not cause the particular death being investigated. *R v HM Coroner for Coventry ex parte Chief Constable for Staffordshire* [2000] 164 JP 665;

## Narrative verdict

There can be no objection to a verdict which incorporates a brief neutral and factual statement. *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182.

This applies whether or not the inquest is Article 2 compliant. *R(on the application of Longfield Care Homes) v HM Coroner for Blackburn* [2004] EWHC 2467 (Admin) para 28-32

## Recommendations

A Coroner can announce at the Inquest that he is going to report the matter in writing, to a person or authority which has power to take action. CR 43 .The following changes took effect from 17 July 2008 via SI: 2008 No. 1652 The Coroners (Amendment) Rules 2008

- coroners have a wider remit to make reports to prevent future deaths. It does not have to be a similar death;

- a person who receives a report must send the coroner a written response;

- coroners must provide interested persons to the inquest and the Lord Chancellor with a copy of the report and the response;

- coroners may send a copy of the report and the response to any other person or organisation with an interest;

- the Lord Chancellor may publish the report and response, or a summary of them; and

- the Lord Chancellor may send a copy of the report and the response to any other person or organisation with an interest.

See also Schedule 4 clause 6 of the new act.

## Public Funding

If attendance at the inquest is part of the preparation work for a potential civil action; the client is financially eligible for legal aid and the merits and cost/benefit tests are passed legal aid will be available to franchised firms;

If the inquest is to be the way in which the State complies with its Article 2 obligation then in cases of serious misconduct/gross negligence by an employee of the State exceptional funding may be available from the scheme administered for the Ministry of Justice by the LSC.



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This funding is available even if the traditional legal aid funding eligibility tests are not satisfied. Access to Justice Act 1999, S6(8)b; CLS (Financial)(Amendment No.2) Regulations 2003, SI No. 2003/2838.

The discretion to waive the financial eligibility criteria involves a consideration of:

- whether it is reasonable to expect the bereaved family to bear the full costs of representation;
- the nature and seriousness of the issues under investigation; and
- The view of the Coroner.

## Obtaining Exceptional Funding

Applications on CLSAPP1 and appropriate MEANS forms for every interested relative to the LSC Special Cases Unit.

Key considerations will be where there have been:

- allegations of gross negligence, criminal conduct or attempts to conceal facts;
- issues of medical, legal or factual complexity;
- no family involvement in other investigations
- doubts whether the family could effectively participate without representation
- other represented agencies who might be able to present the same point of view as that of the relatives.

‘An effective Article 2 inquiry must ensure that dangerous practices and procedures are identified and rectified and the risk of future like deaths minimised.’ Funding should be granted to ensure the bereaved relatives ‘may at least have the satisfaction of knowing that lessons learnt from the death....may save the lives of others’ (Keith J in *R v Minister for Legal Aid ex p Main* [2007] EWHC 742).

If funding refused: reconsideration by a LSC Senior Policy Adviser after which challenge by judicial review.

## Extent of Funding

Funding is for inquest advocacy against a budget submitted.

The budget should cover advocacy and immediate inquest preparation only.

Other investigative work has to be financed separately possibly under the Legal Help Scheme.

Unlike legal aid for normal case work no funding certificate is issued.

Payment is made on submission in a letter setting out the finalised details of the claim.

Paid as a one-off grant less contribution assessed from relatives.

Contribution is for the solicitor to collect.



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## Payment Rates

Current LSC exceptional funding payment rates:

Solicitors (hourly rate)

	London	elsewhere
Preparation (inc 50% uplift) -		
Senior Solicitor	83.63	79.50
Other Solicitor	70.88	67.50
Trainee	51.00	44.63

Preparation is only to draft instructions to counsel (2 hrs) and a conference immediately prior to the hearing

Hearing attendance (inc 50% uplift)

Senior Solicitor	63.38
Other Solicitor	51.00
Trainee	30.75

Advocacy (inc 100% uplift)

QC	2000 + 700 per day
Junior counsel	1000 + 500 per day
Senior Solicitor	96.75 per hour
Other Solicitor	84.00 per hour

## Contribution

The LSC is required by the Legal Aid Regulations to obtain a contribution towards representation costs from relatives.

The contribution requirement can be waived by the LSC.

The factors influencing waiver are:



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- expenses already incurred;
- applicants financial circumstances;
- the level of the proposed contribution;
- hardship to applicant
- the identity and interests of the relatives

Contribution is collected by the interested party's solicitor and deducted from the payment to that solicitor made by the LSC.

## Recovering Inquest Costs

Costs of representing relatives are recoverable from a tortfeasor as costs of a subsequent successful civil action: *King v Milton Keynes General NHS Trust* 13 May 2004 Gage J; *Stewart v Medway NHS Trust* 2004 EWHC 9013 . *Roach v Home Office, Matthews v Home Office* [2009] EWHC 312 (QB).

## After the Inquest

The Coroner is obliged to take notes or tape recording of the evidence CR 39 .

The Coroner is entitled to charge for the provision of copy notes of evidence. The Coroners' Records (Fees for Copies) Rules 2002, SI 2002/2401 rule 2.

The Coroner will issue the final death certificate at which stage the relatives will finally be able to register the death.

## Complaining

An affected party has the right to complain to the Office for Judicial Complaints (OJC) within 12 months.

If the complaint is not dealt with properly a further complaint lies to the Judicial Appointments and Conduct Ombudsman within 28 days.

## Challenging the Coroner

There is no right of appeal from an inquest.

The Coroner's decision may be challenged by

- judicial review,
- an application to the Divisional Court under Section 13 of the Coroners Act 1988; or
- an application to the High Court under the Human Rights Act 1988.



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## Costs of a Challenge

[R \(Davies\) v Birmingham Deputy Coroner \(No 2\)](#) [2004] EWCA (Civ) 207

The established practice is to make no order for costs if the Coroner adopts a neutral stance unless there are special circumstances eg successful applicant has to finance application himself (cf Touche).