CHIEF CORONER

GUIDANCE No.4

RECORDINGS

1. All inquest hearings must be recorded and the recording must be kept: rule 26, Coroners (Inquests) Rules 2013. This includes pre-inquest review hearings and, where practicable, openings.

2. A recording (which is a 'document' for the purposes of the rules and regulations) must be kept for at least 15 years: regulation 27(1), Coroners (Investigations) Regulations 2013. All recordings should be digital and stored with back-up (which is normal good practice with any computer system).

3. All inquest hearings, including hearings based entirely on written and documentary evidence and Public Interest Immunity (PII) hearings in private, should therefore be recorded by a court recording device as opposed to being recorded by a stenographer (or short-hand writer). Nor should there normally be any need to pay a logger to operate the device. Coroners' officers or administrative staff should be able to set-up the device for each hearing. The coroner should take reasonable steps to ensure that the device is working at all times.

4. At each inquest hearing coroners should consider informing those present that the hearing is being recorded and advise them to be careful about asides or comments which might be picked up by the microphones. Coroners (either themselves or through a coroner's officer) should also inform bereaved families, that they can request a copy of the recording after the inquest.

5. A copy of a recording will be provided to an interested person, including the family representative, in accordance with the disclosure provisions of Part 3 of the Coroners (Inquests) Rules 2013: see in particular rule 13(2)(c). The coroner must, on request, provide a copy or make the recording available for 'inspection', subject to the restrictions on disclosure in rule 15 and hearings or parts of hearings where the public was excluded (see rule 13(2)(c)).

6. But note also that, in relation to requests for information stored in archive, a copy of a recording may be provided by the coroner 'to any person who in the opinion of the coroner is a proper person to have possession of it': regulation 27(2). In such cases coroners have a discretion whether to provide a recording. They should exercise their discretion on a case by case basis; a policy to restrict groups of people would be unlawful (fettering the coroner's discretion). Solicitors

and insurance companies should normally be provided with copies of inquest recordings. Others will be considered on a case by case basis, bearing in mind a presumption of openness for court proceedings and therefore a presumption of disclosure. The coroner needs to be satisfied that there are reasonable grounds for disclosure.

7. Coroners' courts are not exceptional in providing recordings. The Senior President of Tribunals stated in May 2013:

> 'The recording of hearings in tribunals is by no means universal but, where a recording of a hearing has been made and a copy is requested, it is for the judge to decide whether the reasons for the request are sufficient to justify its release and to ensure that the restrictions on its use are understood. There is no need for a person requesting a copy of a recording to demonstrate "exceptional" circumstances.'

8. A coroner may charge for providing a copy of a recording **after** an inquest (but not before) in accordance with the Coroners Allowances, Fees and Expenses Regulations 2013 (see regulation 12). The statutory fee for a 'document' provided otherwise than by email or paper copy, and therefore including a recording, is £5 per recording: regulation 12(4). If the recording is longer than one disc, the charge is £5 per disc. If sent by email, secure where possible, no fee may be charged: regulation 12(2). Alternatively, the recording can be made available to interested persons for 'inspection' (ie listening to at the coroner's office) at a particular time and place (see rule 14(c), Coroners (Inquests) Rules 2013).

9. Where a recording is provided to any person it must be accompanied by a written notice advising that misuse of the recording may amount to contempt of court punishable by imprisonment: see, by analogy, *AG v Scarth* [2013] EWHC 194 (Admin) (Lord Judge CJ), which involved the contemnor making and publishing on the internet his own audio recording of court proceedings (section 9, Contempt of Court Act 1981). A specimen **WARNING NOTICE** is attached at Annex A.

10. The coroner should keep a written record by way of receipt that a recording has been provided and to whom and on what date. In advance of receiving a copy of the recording the receiver of the recording should sign to acknowledge receipt and understanding of the warning notice.

11. Where a recording is used by an interested or other person for the purpose of producing a transcript, the transcript must be shown to the coroner before being used for the purpose of any further proceedings. This gives the coroner the opportunity, should he or she wish, to check any part of it, if only to check whether the quality of the transcript is good enough. See specimen Warning Notice below.

12. In some cases, where there is a need for redaction, a copy of a recording should only be provided if it can be redacted. If the recording cannot be redacted a transcript should be obtained and redacted before a copy is provided, as under the old law. A fee may be charged for transcription in line with regulation 12(5) of the Coroners Allowances, Fees and Expenses Regulations 2013. Except in these circumstances, transcripts should not normally be used.

13. Cases which require redaction include, for example, where there is a risk of prejudicing law enforcement action or the administration of justice, affecting national security, putting anyone's safety at risk, identifying an anonymous

witness, naming children, breaching medical confidentiality or breaching a contempt of court order.

14. Coroners might like to consider at the end of each hearing, with a view to possible future requests for a recording, whether a note (oral or written) should be made to indicate that redaction may be necessary.

15. Recordings of PII hearings should never be released except for further court proceedings and under strict security conditions.

16. There is no longer a statutory requirement, as there was under the old law (rules 39 and 57(1), Coroners Rules 1984), for coroners to take, keep and disclose their own notes of evidence at an inquest. In distant times the coroner's notes of evidence formed part of the record of the coroner's court, being a court of record. But coroners' own notes are no longer disclosable and cannot be inspected. However, as good practice coroners will still keep their own notes for their rulings, conclusions and summing up.

17. On the rare occasions when LiveNote or similar is used there will be an electronic transcript. Payment for a copy of the transcript will be made to the providing company. The coroner should make sure that redactions take place where necessary. Coroners are advised to seek agreement from interested persons, perhaps at a pre-inquest review, as to who will pay the costs of LiveNote when daily transcripts are to be provided during a long hearing. In this way coroners may avoid unnecessary payment.

18. Coroners should also note the following two statutory provisions, both of which apply to coroners' courts:

    (1) It is a contempt of court to use in court or bring into court for use any tape recorder or other instrument for recording sound, except with the leave of the court: section 9(1), Contempt of Court Act 1981. In the digital age 'other instrument' will include a number of devices. The Home Office Circular No. 79 of 1981 encouraged coroners to treat applications for leave from interested persons, legal representatives and journalists sympathetically as there was in principle no objection to their use (see *Jervis* 12th edn. paragraph 11-28). If leave is granted, conditions may be attached: section 9(2).

    (2) It is a criminal offence, punishable with a fine, to take or attempt to take a photograph (or make a sketch) in court or in the court building or within the precincts of the court (undefined): section 41(1), Criminal Justice Act 1925. Journalists are not always aware of the wider implications of this provision. The taking of photographs on a mobile phone in court or the court building is a contempt of court and the offender may be sent to prison: see *R v D (Contempt of court: Illegal photography)*, *The Times*, May 13, 2004.

16 July 2013

ANNEX A

WARNING NOTICE

This recording is provided by the coroner with the following warnings:

1. This recording is not to be used for any purpose other than transcribing for possible legal proceedings or listening to.

2. Any other use of the recording or any part of it by copying, publishing, transmitting or broadcasting in any way (including on the internet) without the prior consent of the coroner, may be a contempt of court punishable with imprisonment.

3. If the recording is used to produce a transcript, the transcript must be shown to the coroner before being used for the purpose of any further proceedings.

Signed: Senior Coroner [NAME]

Coroner Area [NAME]

[DATE]