



CHIEF CORONER

## Law Sheet No. 4

### HEARSAY EVIDENCE

#### The general rule

1. Hearsay evidence is admissible in the coroner's court, so long as it is relevant. Once admitted the value of the hearsay evidence will be a matter of weight in all the circumstances.

#### Coroners not bound by the strict law of evidence

2. 'Again it is clear that a coroner's inquest is not bound by the strict law of evidence': *R v Divine, ex parte Walton* [1930] 2 KB 29, 36 *per* Talbot J, reading the judgment of the court (Talbot, Charles and Humphreys JJ).
3. '... there is no general prohibition against admission of hearsay evidence, either in the Coroners Act 1887 or in the Rules. Indeed there is authority that it is clear that a coroner's inquest is not bound by the strict laws of evidence': *R v Manchester Coroner, ex parte Tal* [1985] 1 QB 67, 84-85 (DC), *per* Robert Goff LJ, citing *Ex parte Walton* above.
4. 'Although that evidence would have been hearsay, it is clear that there is no rule of law which precludes a coroner from admitting hearsay evidence': *R v HM Coroner for Lincoln, ex parte Hay* (1999) 163 JP 666, citing, *Ex parte Tal* above.

#### Weight of hearsay evidence

5. Hearsay evidence, whether oral or documentary, cannot be excluded if the evidence is relevant. The real question is how much weight should be attached to it. In making that assessment the coroner (or the jury) must consider all the circumstances and act fairly.
6. 'The court is to be trusted to give the [hearsay] statement such weight as it is worth in all the circumstances of the case': *Polanski v Conde Nast Publications Ltd* [2005] UKHL 10, at [74] *per* Baroness Hale, endorsed in *Welsh v Stokes* [2008] 1 WLR 1224 (both civil cases).
7. The court may attach any or no weight to the hearsay evidence, so long as there is good reason to do so: *Welsh v Stokes* above (see also *TSB (Scotland) plc v*

*James Mills (Montrose) Ltd* [1992] SLT 519, a decision under the Civil Evidence (Scotland) Act 1988).

8. Although it was said by Mance LJ in *Solon South West Housing Association Ltd. V James* [2004] EWCA Civ 1846 that there was certainly power in civil proceedings under the CPR to exclude hearsay evidence, he went on to observe that there is very little, if any, difference between a judge excluding evidence and a judge not relying on the evidence because it was not worthy of any weight after being admitted. In the coroner's court there is no equivalent to the CPR procedure. Hearsay evidence should therefore be admitted subject to weight.
9. Even anonymous hearsay witness statements may be admitted: *Boyd v Incommunities Ltd.* [2013] EWCA Civ 756 (witness statements alleging anti-social behaviour in possession proceedings were anonymised because witnesses were in fear). In *Welsh v Stokes* above the only evidence about the accident, which involved a horse rearing and throwing its rider, came second hand from an unidentified motorist who had given his account to another motorist (who had not seen the accident) and then driven off without leaving his name or address. The Court of Appeal held the evidence admissible. The question of the weight to be given to hearsay evidence involved 'an exercise of judgment'. The court had to reach a conclusion as to the reliability of the evidence 'as best it can on all the available material'. But in both cases the Court of Appeal made it clear that because it was difficult to assess absent and anonymous witnesses care should be taken in the assessment of such evidence.
10. The coroner should therefore admit hearsay evidence and the coroner (or jury) should consider its reliability and attach what weight is appropriate in all the circumstances.

### **In practice**

11. Coroners are familiar with the admission of hearsay evidence whether in witness statements or documents. Most of the time no point will arise about it and it can be quietly admitted. But occasionally a piece of hearsay evidence is noticeably significant, perhaps controversial, and therefore requires special scrutiny. When that arises the coroner should take care with the evidence and give directions where there is a jury (see below).
12. Hearsay (or multiple hearsay) evidence which is controversial may vary to a considerable degree. The provenance of a document, for example, may be obscure and its author unknown, and yet the content of the document may be of considerable weight looking at all the circumstances of the case. Other evidence may be so tinged with false motives that giving it much weight would be dangerous. These are matters for the coroner (or the jury) with an important piece of hearsay evidence, especially where it may be controversial.
13. In such cases an assessment must be made of the reliability of the evidence and the worth of its content. Coroners may derive assistance from the statutory provisions applying to civil proceedings.
14. In civil proceedings hearsay evidence is admissible by statute by virtue of section 1 of the Civil Evidence Act 1995. Section 4 of the 1995 Act sets out 'Considerations relevant to weighing of hearsay evidence':

4(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(2) Regard may be had, in particular, to the following—

(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;

(b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;

(c) whether the evidence involves multiple hearsay;

(d) whether any person involved had any motive to conceal or misrepresent matters;

(e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;

(f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

15. In civil proceedings these factors are considered 'to point the way, but will not necessarily be determinative': *Welsh v Stokes* [2008] 1 WLR 1224 at [22].

16. Section 4 therefore provides good guidance for coroners, although there may be other factors particular to the case in hand which also need to be taken into account in assessing weight.

### **Duty to act fairly**

17. The duty of coroners to act fairly has been repeatedly emphasised by the courts. For example, the coroner's discretion whether to call evidence or leave conclusions must be exercised 'reasonably and fairly': *per* Lord Woolf MR in *R v Inner South London Coroner, ex parte Douglas-Williams* [1999] 1 All ER 344.

18. In *Re McKerr's Application (No 2)* [1993] NI 249 ( a memory refreshing case) the Court of Appeal in Northern Ireland held that whilst a coroner was not bound by the strict rules of evidence, a coroner's inquest, like any other tribunal, had to act in a manner which was fair.

19. In the context of hearsay evidence the coroner should, where appropriate:

- identify the hearsay evidence
- identify any controversy with the evidence,
- hear submissions on the evidence, if necessary, with the point flagged up at a pre-inquest review hearing
- consider whether any additional witness is necessary, and
- throughout the process act fairly to all concerned.

20. Where the evidence is important and controversial, the coroner should not rely upon hearsay as a short-cut where a relevant witness is available to be called and questioned.

### **Coroner alone (no jury)**

21. Where a piece of hearsay evidence is particularly important, the coroner would be wise to refer in his/her findings to the basic principles outlined above and the

application of those principles ('I remind myself ...'). The coroner must show that he/she is acting fairly and has not given disproportionate weight to the evidence.

### **Directing the jury**

22. When directing a jury about a particular piece of hearsay evidence it may be helpful to give general directions as well as directions on the particular piece of evidence. For example:

*'Members of the jury, you will need to consider the document which is said to be an email from a family well-wisher. It is hearsay evidence so I shall now give you directions about that.'*

*'Hearsay evidence is what a witness hears from somebody else, such as a witness saying in evidence 'Gavin told me that he saw the accident and explained what happened'. Or, as in this case, a witness (Elena) produces a document which is not written by her but is written on a computer by somebody else. These are examples of hearsay evidence and the law says they can be put before you as evidence.'*

*Such a piece of evidence must be considered by you very carefully, particularly where the writer has chosen to remain anonymous and cannot therefore be called as a witness and cross-examined before you.*

*'In this case the hearsay evidence is a document said to be an email from a family well-wisher. As you have heard from the questioning of witnesses it is also somewhat contentious. It has been suggested that there never was such an email or, if there was, that the anonymous well-wisher was trying to distort the truth. It is therefore your task to consider how reliable the document is.'*

*'Your job is to look at the document and decide what weight should be given to it in all the circumstances. Look at the origin of the document as far as you can. Elena said in evidence that she received it not as an email or a copy of an email but as the content of an email which was cut and pasted then sent to her. There were therefore, she said, no headings to the document, no detail of the sender or receiver or of the date and time. Consider what Elena said about receiving the document.'*

*'You may also wish to consider who may have sent the document. It is signed 'a family well-wisher'. Who might that be? What steps have been taken to identify that person? Why has this person decided to remain anonymous? Is this document from somebody reliable, who just chose to remain anonymous for good reason or is it from somebody acting mischievously, trying to distort the truth, whether in a well-meaning way or not. These are matters for you to decide.'*

*'You must also consider the contents of the document to see how they help you about its reliability. Has the document been edited? Do the contents fit with other facts given in evidence (particularly those facts not in dispute)? Can you tell from the contents when the writer of the document wrote the document? How long was it after the events in question? Were the events still fresh in the writer's mind?'*

*'This evidence therefore requires careful scrutiny by you, being fair and sensible about it. In the end you must decide what weight, what value, you can give to this piece of evidence. You may give it considerable weight, or some modest weight, or little weight, or no weight at all. That is for you to decide.'*

**HH JUDGE PETER THORNTON QC**

**CHIEF CORONER**

**15 September 2014**