



CHIEF CORONER

GUIDANCE No. 27

JURY IRREGULARITIES

Introduction

1. This Guidance is intended to be a practical guide to assist coroners on the recommended process and procedures for dealing with any form of jury irregularity. It is designed to be used in conjunction with The Coroner Bench Book (June 2015).¹
2. A jury irregularity is anything that may prevent one or more jurors from remaining faithful to their oath or affirmation to “diligently inquire into the death of [the deceased] and make findings of fact and come to a true conclusion according to the evidence.”²
3. The coroner should give warnings to every jury at the beginning of the inquest, after they are sworn in. Professor Cheryl Thomas has adapted a juror notice for use in the Crown Court for use in all coroners’ courts. This notice sets out the various warnings in a clear format. Each juror once sworn should be given a copy of the notice to keep with them for the duration of the inquest. They should be invited to keep the notice with them when at court and when away from the court. The warnings may be repeated, usually in shorter form, at the end of each day, if required, and particularly towards the close of a long inquest.³ The main points the jurors must abide by are as follows –
 - Only decide the inquest on the evidence which you see and hear in court;
 - Do not discuss the inquest with anyone else;
 - Do not communicate with anyone about the inquest (including using electronic communication);
 - Do not do your own research;
 - Do not let anybody talk to you about the inquest.
4. The warnings given by the coroner should include the information that if the warnings are disobeyed, then it may amount to a contempt of court, or even a criminal offence,

¹ The Bench Book can be found online on the Judicial College website - <https://intranet.judiciary.gov.uk/wp-content/uploads/2015/06/coroner-bench-book-jury-inquests-revised-june-2016.pdf>

² The Juror Oath (or affirmation) is set out on page 5 of The Coroner Bench Book

³ See the Chief Coroner’s Guidance No. 10: Warnings to Juries (23 October 2013, revised 28 April 2015)

both of which can be punished by a fine or imprisonment.⁴ Many coroners will have their own 'homily' they provide at the start of any jury inquest which will include these warnings as well as other remarks about the evidence they are likely to hear, separating emotions from an analysis of the evidence, what to do if they are upset about any evidence they hear and sitting times.

5. The coroner must also warn the jury to bring any such matter to light as soon as it becomes known.

What are juror irregularities?

6. Irregularities can take many forms: some may clearly appear to be contempt by a juror, for example, searching for material about the inquest on the internet; others may appear to be an attempt by a third party to intimidate or suborn a juror; on other occasions it may not be clear whether it may be a contempt or an attempt at intimidation. The coroner may also be made aware of friction between individual jurors.
7. The primary concern of the coroner should be the impact on the inquest.

Juror irregularity during the inquest or during deliberations

8. When the coroner becomes aware of a jury irregularity, they should follow the procedure set out below:
 - STEP 1: Consider isolating the juror(s)
 - STEP 2: Consult with the advocates (if there are any)
 - STEP 3: Consider appropriate provisional measures
 - STEP 4: Seek to establish basic facts of jury irregularity
 - STEP 5: Further consult with advocates (if there are any)
 - STEP 6: Decide what to do in relation to conduct of inquest
 - STEP 7: Consider ancillary matters⁵
9. When an irregularity is drawn to the attention of the coroner, the coroner should consider whether the juror(s) concerned should be isolated from the rest of the jury. If it appears that a juror has improperly obtained information, consideration should be given as to the risk that the information has already been shared with other members of the jury or that the information could be shared if the jury remain together.
10. The coroner should consult with the advocates (if there are any) and invite submissions. If there are no advocates instructed, then with the parties direct. This should be in open court unless there is good reason not to do so.

⁴ See the Schedule 13 of the Criminal Justice and Courts Act 2015 which amends s9 and Schedule 6 Coroners and Justice Act 2009

⁵ This has been adapted from the Practice Direction for Criminal Courts which contains comprehensive guidance on the approach to take where there is alleged wrongdoing by one or more jurors: CrimPD VI Trial 26M: Juries: Jury Irregularities. <http://www.justice.gov.uk/courts/procedure-rules/criminal/practice-direction/2015/crim-practice-directions-VI-trial-2015.pdf>

11. The coroner should try to establish the basic facts of what has occurred. This may involve questioning individually the juror(s) involved. Unless there is good reason, again this should be in open court.
12. The coroner's inquiries should be directed towards ascertaining whether the juror(s) can remain faithful to their oath or affirmation; the coroner should not inquire into the deliberations of the jury. The inquiry should only be to ascertain what has occurred and what steps should be taken next. It may be appropriate for the coroner to ask the juror(s) whether they feel able to continue and remain faithful to their oath or affirmation.
13. In the light of the basic facts as they appear to be, the coroner may invite further submissions from the advocates (if there are any, or the parties direct if not), including on what should be said to the jurors, and take time to reflect on the appropriate course of action. The coroner may consider the stage the inquest has reached and in cases of potential bias whether a fair minded and informed observer would conclude that there was a real possibility that the juror or jury would be biased.

The conduct of the inquest

14. In relation to the conduct of the inquest, the coroner may:

14.1 Take no action and continue the inquest. If so, the coroner should consider giving some explanation to the jurors to reassure them that nothing untoward has happened that need concern them.

14.2 Continue the inquest but, if appropriate, give a reminder to the jury, tailored to the requirements of the case, that their finding/conclusion is a decision of the whole jury as a body and that they should give and take and try to work together. It is, in every case, essential that no undue pressure is exerted on the jury.

14.3 Discharge the juror(s) concerned and continue the inquest if sufficient jurors remain. Section 8(1) CJA 2009 requires a minimum of 7 jurors. Consideration must be given as to what to say to the remaining jury members when one or more have been discharged and to the juror(s) on discharge. The juror(s) must be warned not to discuss the circumstances with anyone and it may be necessary to discharge the juror(s) from current jury service.

14.4 Discharge the whole jury and re-list the inquest. Again the jury should be warned not to discuss the circumstances with anyone. Consideration should be given to discharging jurors then from current jury service. Whether this is necessary will depend on the nature and extent of any irregularity.

Contempt proceedings

15. Contempt proceedings cannot be instituted without the consent of the Attorney General.

16. The Chief Coroner must be informed if a coroner is seeking the Attorney General's permission.

Jury irregularity after the inquest has concluded

17. In practice a potential jury irregularity may come to the attention of the coroner after a jury has been discharged, when a former juror sends a communication to the coroner or court. Jurors may raise issues after an inquest has ended, for example they may have second thoughts regarding the conclusion of the inquest, or that they felt pressured into a decision.
18. In the absence of any disclosure of a possible juror offence, it is important to maintain the confidentiality of the jury deliberations. If there is no legal significance to the communication, the coroner who receives such a letter or email should impress upon the juror that they should not speak about the deliberations in the jury room.
19. Once an inquest has ended and the jury has been discharged, the coroner *is functus officio* and therefore does not have any powers in relation to the inquest itself.
20. If there is legal significance to the communication, the coroner must notify the Chief Coroner immediately as it is possible that the communication gives rise to the possibility of action in the High Court by way of judicial review.

**HH JUDGE MARK LUCRAFT QC
CHIEF CORONER**

8 February 2018