



## CHIEF CORONER

### GUIDANCE No. 28

#### REPORT OF DEATH TO THE CORONER: DECISION MAKING AND EXPEDITED DECISIONS

##### Introduction

1. This Guidance has been issued following the judgment of the Administrative Court in *R (Adath Yisroel Burial Society) v Senior Coroner for Inner North London* [2018] EWHC 969 (Admin) (“the AYBS Case”).
2. It is intended to be a practical guide to assist coroners in situations where (a) a bereaved family has made a request to the coroner for urgent consideration of the death of a loved one and/or early release of the body or (b) the coroner or coroner’s officers otherwise become aware of features of a particular death which may justify treating it as especially urgent.
3. There will be a variety of reasons why a bereaved family may request early release of the body. For example, if the death is that of a young child, the family may ask for the body to be released as soon as possible to a dedicated room in the hospital. Alternatively, a family may have some particular reason for needing the funeral to take place quickly.
4. In other cases, requests for urgent consideration of a particular death may be made on religious grounds, as discussed in more detail below. The Chief Coroner understands and is sensitive to the fact that some faith groups, particularly Jewish and Muslim, have religious and cultural wishes about treatment of a body and burial following a death. Coroners should pay appropriate respect to those wishes, within the framework of their legal duties and in the context of their other responsibilities. Many coroners engage with local community groups to improve mutual understanding.
5. The Chief Coroner also recognises that families generally are concerned to have decisions taken by coroners without unnecessary delay, even if they have no particular wish or need for an early burial or cremation.
6. It should be noted that in many coroner areas, there is no general provision of services outside of office hours. In such areas, most decisions have to be taken during the working day. This guidance document does not address the provision of out-of-hours services, which depend on resources being made available by funding authorities.

## Coroners' Decision-Making

7. In a typical day, a coroner's office will receive a number of notifications of deaths. Some will have arrived outside working hours and will usually have to be considered after the office opens, while others will arrive during the working day. It is the practice of most coroners to have coroners' officers prepare short reports of notified deaths. The coroner will consider those reports during the working day and will make decisions. For example, the coroner may decide on the basis of the report that no coroner's investigation is required. Alternatively, the coroner may decide to order further enquiries about the death or a post-mortem examination. At a later stage in a case, the coroner may consider the results of the enquiries or examination and make decisions as to what further work is needed. All these tasks need to be arranged around a coroner's other judicial and administrative workload.
8. A coroner to whom a death has been notified has legal authority over the body for as long as is necessary for enquiries and investigation into the death. The coroner will release the body to the bereaved family for burial or cremation as soon as practicable. The time within which a body can be released will depend upon the time required for enquiries and decisions of the kinds outlined above.
9. Coroners are sometimes made aware of some reason for the consideration of a particular death to be a matter of urgency. For example, in cases of homicide investigations and organ donations, it is commonplace for coroners to take decisions as a matter of great urgency.
10. As noted above, coroners sometimes receive specific requests from bereaved families to treat particular deaths as a matter of urgency. The reasons justifying these requests are many and varied. On occasion, the request will be made on the ground that the family has a religious or cultural belief that the body should be buried on the day of death or as soon as possible thereafter. Jewish and Muslim families, or their representatives, sometimes make such requests. The AYBS Case considered the approach to be taken in this situation. The Divisional Court concluded that it was unlawful for a coroner to adopt a policy ruling out the possibility of prioritising consideration of a death on religious grounds. It is also apparent from the judgment that it would be unlawful for a coroner to adopt a policy ruling out the possibility of prioritising consideration of a death on reasonable non-religious grounds.

## Guidance

11. In its judgment at paragraph 160, the Divisional Court made the following general points:
  - “(1) A Coroner cannot lawfully exclude religious reasons for seeking expedition of decisions by that Coroner, including the Coroner's decision whether to release a body for burial.
  - (2) A Coroner is entitled to prioritise cases, for religious or other reasons, even where the consequence of prioritising one or some cases may be that other cases will have to wait for a decision. It is not necessary that all cases are treated in the same way or in strictly chronological sequence.
  - (3) Whether to accord one case priority over another or others is for the Coroner to determine. The following further points apply:

- a) It is in principle acceptable for the Coroner to implement a policy to address the circumstances when priority will or may be given, so long as that policy is flexible and enables all relevant considerations to be taken into account.
  - b) The availability of resources may be a relevant consideration in drawing up any policy or in making the decision in any individual case but limitations on resources does not justify discrimination.
- (4) It would be wrong for a Coroner to impose a rule of automatic priority for cases where there are religious reasons for seeking expedition.”

The reference in sub-paragraph (3)(b) to resource limitations not justifying discrimination means that such limitations cannot be used as a reason to rule out giving consideration to proper requests for expedition on religious grounds (see paragraph 124 of the judgment).

12. The Court also stressed that, in making individual decisions on whether to prioritise consideration of particular cases on religious or other grounds, a coroner has a “margin of judgment”. In other words, the decision is one for the individual coroner, considering all the circumstances. Such a decision may only ordinarily be challenged if it is unreasonable or if it clearly fails to strike a fair balance between rights of the particular family and the interests of other families who might be affected.
13. Decisions about enquiries to be made (including post-mortem examinations), about concluding investigations and about releasing bodies for burial are judicial decisions. They are made by a coroner under the law, exercising independent judgment and cannot be delegated. They cannot be taken by a coroner’s officer or a member of administrative staff. The exercise of that judgment may only be challenged in the High Court by way of judicial review. The Chief Coroner cannot alter, investigate, comment on or otherwise intervene in the individual judicial decisions of coroners, or in the case management of individual cases. Each judicial decision is a matter entirely for the coroner.
14. The judgment in the AYBS Case reflects two important legal considerations: (i) that a coroner should be open to representations that a particular case should be treated as a matter of urgency (whether for religious or other reasons); and (ii) that proper respect should be given to representations based on religious belief.
15. However, the decision of the Court does not require a coroner to give automatic priority to deaths from particular religious communities, nor does it require coroners to drop other important work to deal with such deaths. The Court also recognised that other deaths may require urgent handling for non-religious reasons.
16. There is no obligation for coroners to adopt formal written policies for dealing with requests for expedition or for dealing with deaths from faith communities. Practices may differ between coronial areas because of the characteristics of the areas. However, any policy or practices adopted by coroners must be sufficiently flexible to allow them to give due consideration to expediting decisions where there is good reason to do so. They should seek to strike a fair balance between the interests of those with a well-founded request for expedition (including on religious grounds) and other families who may be affected.
17. It is essential that each coroner area has sufficient coroner, coroner officer and administrative staff resource to deal with deaths reported within the coroner area.

Information technology is also important, and modern case management systems are essential in the majority of coroner areas. In the 'Model Coroner Area' document (revised 30 June 2017) the Chief Coroner has set out parameters for the working arrangements of coroners. In each coroner area, it is the responsibility of the Senior Coroner and the relevant local authority (or authorities) to work together to ensure that adequate resources (of coroners, officers and administrative staff) are available. Nevertheless, even with good co-operation and adequate resources, it is inevitable that some decisions will take time, either because of the complexity of the particular case or because of burdens on the coroner's office.

**HH JUDGE MARK LUCRAFT QC**

**CHIEF CORONER**

17 May 2018