



CHIEF CORONER

## GUIDANCE No. 29

### DOCUMENTARY INQUESTS

#### (ALSO KNOWN AS SHORT FORM OR RULE 23 INQUESTS)

1. The purpose of this Guidance is to assist coroners on the law and procedures to follow with regards to documentary inquests, with a view to achieving greater consistency of approach between senior, area and assistant coroners across all of England and Wales.
2. There are many cases which coroners deal with that are straightforward and do not require witnesses to be called to give evidence. As Sir Brian Leveson stated in the Mueller decision<sup>1</sup> a documentary inquest can often avoid the stressful attendance at an inquest for the family. As with all forms of inquest, a valid consideration is also the effect on a witness of having to give oral evidence when a statement provides all the necessary evidence and is not disputed.
3. If there is likely to be a documentary inquest, the coroner must ensure that there is effective communication to the interested persons and there is a contemporaneous record of the information shared between the parties prior to the hearing. It is particularly important that what has been discussed between the coroner's officers and interested persons is communicated in writing to avoid any confusion or misunderstanding.
4. Broadly speaking, documentary inquests can arise in one of two ways. Firstly, cases that can be opened and completed in one hearing, sometimes called a "fast track" inquest; secondly, an inquest that has been opened and adjourned and is later deemed suitable for a documentary inquest after receipt and consideration of evidence.
5. Fast track inquests are often an effective and proportionate way to conduct an inquest in straightforward cases providing the necessary evidence is available sufficiently quickly to comply with the obligation within Rule 5(1) of the Coroners (Inquests) Rules (2013) to open an inquest as soon as reasonably practicable after the date on which the coroner considers that the duty under section 6<sup>2</sup> applies. This

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<sup>1</sup> Simon Mueller v HM Area Coroner for Manchester West [2017] EWHC 3000 para 25

<sup>2</sup> Coroners and Justice Act 2009

can enable quick release of the body for a funeral and ensures the inquest is concluded in a timely manner.

6. Fast track inquests can be appropriate following the initial referral or after an investigation has been opened. An example of a case suitable for fast track shortly following referral is an industrial disease case with an in-life histological diagnosis with a clear work history.
7. Following an opened investigation it may also be appropriate to consider fast track inquests for straightforward drugs deaths with no reason to suspect suicide and no concerns surrounding the role of addiction services or healthcare provision, or cases where the medical cause of death remains unascertained but there is no reason to suspect an unnatural cause or a death in state detention.
8. Fast track inquests are not suitable in circumstances in which the next of kin have expressed any concerns about the death, for example the hospital treatment the deceased received or the circumstances surrounding the death.
9. The second category where a documentary inquest should be considered are those inquests that are deemed suitable after opening of an inquest and upon receipt of written evidence, for example a suicide in the community where the events are clear and no actions of a third party have given rise to a concern.
10. In both fast track and documentary inquests, coroners and coroners' officers (and other staff) should take care not to inadvertently suggest to family members, who may be at a vulnerable time in their lives and dealing with an unfamiliar situation, that they have no option but to accept these forms of inquest.

## **The Law**

11. Rule 23 of the Coroners (Inquests) Rules 2013 says that:

“(1) Written evidence as to who the deceased was and how, when and where the deceased came by his or her death is not admissible unless the coroner is satisfied that -

- (a) it is not possible for the maker of the written evidence to give evidence at the inquest hearing at all, or within a reasonable time;
- (b) there is a good and sufficient reason why the maker of the written evidence should not attend the inquest hearing;
- (c) there is a good and sufficient reason to believe that the maker of the written evidence will not attend the inquest hearing; or
- (d) the written evidence (including evidence in admission form) is unlikely to be disputed.”

12. The effect of Rule 23 is that where certain conditions are met it is permissible to hold a documentary inquest. This can be a useful and proportionate method to conclude an inquest for certain cases and if the family and other interested persons consent.

13. The conditions that need to be met are contained in Rule 23(2) which states:

“Before admitting such written evidence the coroner must announce at the inquest hearing -

- (a) what the nature of the written evidence to be submitted is;
- (b) the full name of the maker of the written evidence to be admitted in evidence;
- (c) that any interested person may object to the admission of any such written evidence; and
- (d) that any interested person is entitled to see a copy of any written evidence if he or she so wishes.”

### **Process before the inquest**

14. Under Rule 23 before a coroner can admit written evidence, he/she must clearly announce at the inquest hearing that families and other interested persons are entitled to copies of the relevant written or documentary evidence upon request and that they can object to the admission of any of the said evidence. Of course in a documentary inquest it is anticipated that the family will not be present to hear the announcement and therefore, to ensure compliance with Rule 23, coroners should make sure that families, and where appropriate other interested persons, are provided with sufficient information in advance of the inquest to enable them to decide if they can consent to a documentary inquest.
15. The family should therefore be notified that the coroner has directed the case is suitable for a documentary inquest; that the evidence is uncontroversial and there is clear evidence of who the deceased is, when and where he or she died and how the death came about. The coroner should also state that the evidence (with the appropriate details given to the families) will be read out, and whether they (the family) wish any of the witnesses to attend.
16. The judgment in Mueller makes it clear that it is important in advance of the inquest to explain to interested persons which statements and documents are likely to be read aloud or summarised at the public hearing, and which parts (if any) of the statements or documents are not to be read aloud<sup>3</sup>. It is of particular importance to make clear that an interested person can object to the admission of any written evidence<sup>4</sup>. This information should be given to the interested person using clear and non-legal language who can then consent or object.
17. Although this is not a requirement of Rule 23, in order that the family (or other interested person) can properly consider and respond to the evidence, in all cases, unless impossible to do so, coroners should provide (orally or preferably in writing) disclosure to interested persons when planning a documentary hearing. Regulation 13 of the Coroners (Investigations) Regulations 2013 confirms that where an interested person asks for disclosure they must be provided with a copy of any document relevant to the inquest.

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<sup>3</sup> Mueller, para 31

<sup>4</sup> Mueller, para 25

18. Where disclosure is being made, best practice is to create an electronic bundle of documents to be used at the documentary inquest with any redactions made clear. This approach will also assist to identify the documentary evidence used at inquest for the purposes of giving disclosure to proper persons after the conclusion of the investigation in accordance with regulation 27(2) of the Coroners (Investigations) Regulations. As with all cases, it is important that disclosure is provided to all interested persons in good time before the proposed date of a hearing.
19. Once the family (and where appropriate, other interested persons) has consented to a documentary inquest, usually a letter should be sent confirming that the inquest will be heard without oral evidence – i.e. no witnesses giving live evidence. If a fast track inquest is being undertaken or the decision to proceed with a documentary inquest following opening has been made close to the final inquest hearing, it may be appropriate for this information to be provided verbally by an officer but a clear contemporaneous record should be made by the officer of what information was given and how it was provided.
20. Some coroners also notify interested persons of the conclusions they anticipate reaching at the documentary inquest. Although not required under Rule 23 this is also acceptable, providing it is clear that the conclusions may change, and this practice will help the interested person to decide whether they want disclosure and/or can agree to the documentary hearing.

### **The inquest hearing**

21. The coroner should introduce the inquest by saying that it is an appropriate inquest to hear without the attendance of witnesses because the coroner is satisfied that the statements are not contentious and that there is good and sufficient reason why the makers of the statements should not attend and so s/he will accept the statements into the evidence under Rule 23 of the Coroners (Inquests) Rules 2013.
22. The statements do not need to be read in full but should be carefully summarised so that the coroner has sufficient evidence read into the record of inquest to come to a reasoned determination and conclusion.
23. After the close of the inquest, the family and other interested persons should be informed of the coroner's findings and conclusions in writing and should also be informed about how to obtain a copy of the death certificate.

### **Suicide notes and other documents or messages made by the deceased**

24. Rule 23(3) of the Coroners (Inquests) Rules 2013 states that:

“A coroner must admit as evidence at an inquest hearing any document made by a deceased person if the coroner is of the opinion that the contents of the document are relevant to the purposes of the inquest.”

25. This will include documents clearly intended to be a 'suicide note' but also documents that implicitly or expressly support or undermine a conclusion of suicide.
26. Over the years many coroners have adopted the practice of referring to suicide notes rather than introducing them as evidence in court at the inquest. The basis for this

was that any note was personal to the deceased's family and may contain sensitivities, and often contained information that required redaction.

27. The Mueller decision was a case concerning a suicide. At the inquest the suicide note was not read out and a summary from a police report was used instead, which misinterpreted the suicide note. This led to the media reporting false information about the reasons for the suicide.
28. The High Court made it clear that in a situation when there is such a note, "It is unarguable that the content of the note clearly written contemporaneously with the suicide was relevant to the purposes of the inquest and, if that be so, it was mandatory that it be admitted as evidence."<sup>5</sup>
29. Paragraph 31 of the Mueller decision confirms that in cases involving suicide it is particularly important to indicate to all:
  - a. whether any note was found;
  - b. what the note says;
  - c. whether there is any other evidence connected to the note which may shed light on its contents.

In addition, the case made clear that the family should be alerted to the contents of any statement or document that may cause them concern.

30. In the light of what the High Court said in Mueller, if the coroner considers that the suicide note, or part of it, is relevant to the inquest, then all or part of the note should be introduced in accordance with R23(3). If the coroner is considering redaction of the note, and the family wish that part to be included, the coroner should have regard to the family's wishes<sup>6</sup>. If there are circumstances in which the coroner does not admit the note into evidence, he or she should take great care to ensure that any gist or paraphrase of the note is completely accurate, and is satisfied that the family agrees.
31. Although voice, video and electronic communications are not considered within the current statutory provisions, a coroner may be criticised for not taking a similar approach to other, non-documentary, forms of relevant message or communication.

**HH JUDGE MARK LUCRAFT QC**

**CHIEF CORONER**

**20 November 2018**

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<sup>5</sup> Mueller, para 26

<sup>6</sup> Mueller, para 31