CHIEF CORONER

GUIDANCE No. 29

INQUESTS IN WRITING AND RULE 23 EVIDENCE

INTRODUCTION

1. On 28 June 2022, new provisions came into effect allowing inquests to be held in writing[1]. Those provisions operate in addition to the powers that coroners already had to admit written evidence at inquest hearings[2].

2. The purpose of this Guidance is to help coroners understand the new provisions and apply them, and to promote consistency of approach in relation to rule 23 and inquests in writing.

3. In this note, all references to rules are to The Coroners (Inquests) Rules 2013.

THE DIFFERENCE BETWEEN RULE 23 INQUESTS AND INQUESTS IN WRITING

4. Rule 23 allows written evidence to be admissible at an inquest hearing, if certain conditions are met.

5. Applying rule 23, coroners can conduct an inquest hearing in a courtroom[3] by admitting written evidence, summarising that evidence sufficiently to come to a reasoned decision, and after closing the inquest, informing the interested persons of the determination, findings and conclusion in writing. In suitable cases, coroners have therefore been able to conduct documentary hearings before the new provisions on inquests in writing came into effect.

[1] Section 40 of the Judicial Review and Courts Act 2022 inserted a new section 9C into Coroners and Justice Act 2009.

[2] Pursuant to rule 23 and their common law powers.

[3] A court hearing is needed to comply with the requirement under rule 11 for inquest hearings to be held in public.

6. Section 9C Coroners and Justice Act 2009 ('CJA') creates a new power for coroners to decide that an inquest will be held in writing. When conducting an inquest in writing under s9C, coroners will need to open the inquest in the usual way, but then no further hearing will be required.

INQUESTS IN WRITING

7. For an inquest to be held under s9C CJA, coroners will need to:

- invite representations from each interested person;
- have no-one represent on reasonable grounds that a hearing should take place;
- consider that there is no real prospect of disagreement as to the inquest's determinations or findings; and
- consider that no public interest would be served by a hearing.

Suitability of cases

8. There are many straightforward and uncontentious cases in which a hearing in writing might be appropriate. As Sir Brian Leveson stated in the *Mueller* decision[4], an inquest that is conducted on the papers can avoid a stressful hearing for the family. It can also save witnesses the stress and inconvenience of having to give oral evidence when their written statements are sufficiently detailed and are not disputed.

9. Some examples of cases in which inquests in writing may be appropriate are:

- Industrial disease cases with an in-life histological diagnosis with clear work history;
- Straightforward drugs deaths with no reason to suspect suicide and no concerns surrounding the role of addiction services or healthcare provision;
- 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;
- Suicides in the community where the events are clear and no actions of a third party have given rise to concern.

Before the inquest

10. If a coroner considers that an inquest in writing may be suitable in a particular case, the coroner should open the inquest in the usual way[5] and adjourn it pending consideration of the form the inquest should take.

11. The coroner should notify the interested persons that the coroner is considering holding an inquest in writing, as there is clear evidence of who the deceased is, when and where he or she died and how the death came about, and there appears to be no real prospect of disagreement as to the determination, findings or conclusion that the inquest should make. The coroner should tell the interested persons that if they are not content for the inquest to be held in writing, they need to write to the coroner requesting a hearing and explaining why one is needed.

12. To enable the interested persons to consider whether they should make representations seeking a hearing, coroners should provide them with a copy of any document relevant

[4] *Simon Mueller v HM Area Coroner for Manchester West [2017] EWHC 3000 (Admin),* relating to a documentary hearing that was held applying rule 23.

[5] in accordance with rule 11(1) and (2).

to the inquest that would be disclosed to them at their request under rule 13. Best practice is to create and share with the interested persons an electronic bundle of documents to be used at the inquest in writing, with any redactions made clear[6].

13. Although not required to do so, coroners may decide to notify interested persons of the determination, findings and conclusion they anticipate reaching at the inquest so as to check whether there is any disagreement. In so doing, they should make it clear that any views they express at that stage are provisional.

14. It is important that discussions between the coroner's officers and interested persons about the form of the inquest are accurately recorded. If any discussions take place verbally, they should always be followed up in writing, so that there is a contemporaneous record of what has been said and any misunderstandings can be identified and corrected.

15. If the coroner decides to proceed with an inquest in writing, the interested persons should be informed of that decision.

16. To satisfy the requirement for open justice, basic information about the inquest in writing should be published in advance (where possible, at least 7 days before the inquest is conducted), in the same way as for inquest hearings[7], although no place, date and time needs to be provided. This will mean members of the public and press can find out that the inquest will be taking place in writing, and can make representations and/or request copies of documents, if desired[8].

17. One way to publish the information would be to post at regular intervals a notice on the area's listings webpage saying something like: 'During the week commencing [date] the following inquests will be dealt with in writing (i.e. without a hearing in court) unless representations are made to [contact details] no later than [date].'

18. If the coroner ultimately decides in a particular case that there should be a hearing instead of an inquest in writing, the coroner may consider whether there is any evidence that could be admitted in writing under rule 23.

Conducting the inquest

19. The coroner does not have to be in court when conducting an inquest in writing, so there will be flexibility to work on these inquests efficiently around other duties.

20. There are no additional requirements in relation to the format of the coroner's determination, findings and conclusion by virtue of the inquest being held in writing.

[6] This will also assist the coroner to identify the evidence used at inquest should disclosure be requested by proper persons after the conclusion of the investigation in accordance with regulation 27(2) of the Coroners (Investigations) Regulations 2013.

[7] See paragraph 6 of the Chief Coroner's Guidance Note 25 on Coroners and the Media.

[8] Such documents can be requested pursuant to regulation 27 of The Coroners (Investigations) Regulations 2013.

21. Coroners should follow the same process in reaching their decision that they would when conducting any sort of inquest. As Guidance Note 17 sets out, this is a 3-stage process:

    (a) Findings of fact need to be made based upon the evidence

    When a coroner sits alone, the key findings of fact are stated orally in open court, usually after the evidence has been summarised. With an inquest in writing, this can either be done in writing, or via an oral recording method. If recorded orally, the recording should be treated in the same way as a recording of inquest proceedings[9].

    (b) To distil from the findings of fact 'how' the deceased came by his or her death

    This should be recorded briefly on the Record of Inquest in Box 3.

    (c) To state the conclusion

    This must flow from and be consistent with (a) and (b) above, and be recorded on the Record of Inquest in Box 4.

22. After the close of the inquest, the interested persons should be informed in writing of the coroner's determination, findings and conclusion, and the family should be told how to obtain a copy of the death certificate. An example of a possible ruling in an inquest in writing is provided at Annex A below.

ADMITTING WRITTEN EVIDENCE UNDER RULE 23

23. In good time before the proposed date of the hearing, the coroner should provide the interested persons with copies of any witness statements or documents that the coroner intends to admit in writing under rule 23. The coroner should explain to the interested persons that that evidence (or specified parts of that evidence) will be read aloud at the hearing and that the relevant witness will not attend[10]. The coroner should ask whether any interested persons object to the evidence being admitted in that way.

24. At the hearing, the coroner should announce that interested persons are entitled to copies of the written evidence upon request and that they can object to the admission of any of the evidence[11].

25. The coroner should introduce the evidence by saying that it is appropriate for the evidence to be admitted without the attendance of the witness because the coroner is satisfied that it is not contentious and that there is good and sufficient reason why the maker of the statement should not attend and so the coroner will accept the statement into the evidence under rule 23.

[9] See the Chief Coroner's Guidance Note No. 4 on Recordings.

[10] 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 (see para 31).

[11] *Mueller*, para 25

26. The statement does 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 decision.

MESSAGES FROM THE DECEASED

27. 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."

28. 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.

29. Over the years some coroners adopted the practice of referring to suicide notes rather than introducing them as evidence at the inquest, on the basis that any note was personal to the deceased's family, may contain sensitivities, and often contained information that required redaction.

30. 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. 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."[12]

31. Paragraph 31 of the *Mueller* decision confirms that in cases involving suicide it is particularly important to indicate:

    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.

32. 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.

33. In the light of what the High Court said in *Mueller*, if a coroner considers that a suicide note, or part of it, is relevant to an inquest, then all or part of the note should be introduced in accordance with rule 23(3). If the coroner is considering redacting the note, and the family wish the redacted part to be included, the coroner should have regard to the family's wishes[13]. 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 be satisfied that the family agrees.

34. 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.

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[12] *Mueller,* para 26

[13] *Mueller,* para 31

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CHIEF CORONER

20 November 2018 (entitled: 'Documentary inquests')
Revised 28 June 2022

Annex A
Example of a ruling in an inquest in writing

[Insert Heading]

The Interest Persons are: [provide details]

[The Interest Persons are in agreement] OR [Having received no representations on reasonable grounds that a hearing should take place, I have decided] that the Inquest into the death of [deceased's name] can be concluded under s9C Coroners and Justice Act 2009.

[Deceased's name] was identified as confirmed by [insert details, e.g. an identity statement of [name] dated [date]]

I have had regard to: [insert details of evidence considered, e.g. a post mortem report of [name] dated [date], Statements of [names] etc].

I make the following findings of fact: [insert details].

Based upon those facts, I make the determination, findings and conclusion set out in the Record of Inquest attached.

[I would like to express condolences to [deceased's name]'s family.]

[Signed and dated]

Copied to the Interested Persons