

PARTIALLY REMOTE HEARINGS

KEY MATERIALS

Legislation

The Courts Act 2003, s.85A

Contempt of Court Act 1981

Remote Observation and Recording (Courts and Tribunals) Regulations 2022

Coroners (Inquest) Rules 2013

Other resources

Equal Treatment Bench Book

Introduction

1. A coroner must hold all inquest hearings in public (see r.11 Coroners (Inquests) Rules 2013). This means not merely open to the public but arranged in such a way that it is possible for a member of the public to attend in person.¹ The coroner must be in the publicly accessible courtroom, as must the jury if there is one.
2. It is, however, permissible to hold a ‘partially remote’ (or hybrid) hearing where the coroner is physically present in the courtroom but some or all of the other attendees participate by means of either a live video or audio link.

The law regarding remote observation

3. Section 85A of the Courts Act 2003, and the Remote Observation and Recording (Courts and Tribunals) Regulations 2022 (‘the remote observation regulations’) allow for the remote observation of proceedings in any court, tribunal or body exercising the judicial power of the State, including coroners’ courts.
4. Practice Guidance issued by the Lord Chief Justice and Senior President of Tribunals accompanies this change in the law.

¹ [Storer v British Gas plc \[2000\]](#) 1 WLR 1237

5. As a result of these provisions, it is lawful to use video/audio livestreaming to transmit proceedings to the public and/or press, either to premises designated by the Lord Chancellor, or to specific individuals.
6. The taking of photographs, including screenshots, video recordings or broadcasting images from a hearing in a coroner's court remains prohibited by s.41 of the Criminal Justice Act 1925. A coroner must therefore expressly make a direction pursuant to s.85A Courts Act 2003 to make the electronic transmission of proceedings lawful.²
7. For all participants and observers the facility to attend or watch the hearing remotely is a matter of coronial discretion. No-one has the right to observe a hearing remotely. Individuals are entitled to apply for permission, but applications should be considered on a case-by-case basis and may be refused.

Equal treatment considerations

8. In some situations, remote attendance at a hearing may be a desirable adjustment for a participant or witness, for example where an individual finds it difficult to travel because of a physical disability. However, allowing remote participation can also create challenges. Appendix E of the Equal Treatment Bench Book provides helpful guidance on equalities considerations when making decisions regarding remote attendance.

Offering a video link to participants

9. The Chief Coroner considers that it is lawful to use video/audio livestreaming for participation by interested persons (IPs) and their representatives by virtue of the coroner's inherent common law power to manage proceedings.
10. Offering facilities for remote participation at a pre-inquest review hearing will often be proportionate, as it may avoid the cost and inconvenience of travelling to court, and can reduce legal costs for represented parties, to attend what is often a short administrative

² [s.41\(1ZA\) Criminal Justice Act 1925](#).

hearing. It may also have the benefit of ensuring that those with submissions to make can be represented by their choice of representative.

11. The same position applies to documentary inquests. Where no witnesses are called then offering remote participation may enable IPs to observe the inquest without the additional cost of physical attendance.
12. However at an inquest where live witnesses are being called, remote attendance should not normally be permitted purely because a participant would prefer it. The impact of using remote live links on the inquest process and the overall administration of justice should be considered. This will include careful consideration of whether the quality of evidence will be improved with advocates and witnesses in the hearing room rather than the questioning of witnesses taking place remotely, and of the healing effect that having witnesses and the bereaved family physically present in the courtroom can have because the witnesses are able to make eye contact with the family as they give their evidence.

Remote witness evidence

13. Under r.17(1) a witness in an inquest may give evidence by video link, but r.17(2) specifies that this may only happen where to do so ‘would improve the quality of the evidence given by the witness or allow the inquest to proceed more expediently’. In *Dyer*³ the Court of Appeal held that the term ‘expediently’ (which is used similarly in r.18(2) in respect of giving evidence from behind a screen) was not limited to matters of practicality or efficiency but was equated with ‘appropriately’ and included considerations of the wider interests of justice.
14. Taking remote evidence may not be as ideal as having the witness physically present in court. Before making such a direction r.17(3) requires the coroner to take account of the views expressed by the witness and the IPs and consider whether giving evidence by video link would impede the effectiveness of the questioning of the witness.

³ [*Chief Constable W. Yorks Police v Dyer & Asst Coroner for W. Yorks & others* \[2020\] EWCA Civ 1375](#)

Consideration of all IP's views is therefore mandatory before coroners exercise their discretion to permit oral evidence to be given by video link from anywhere.

15. Whilst the views of the IPs as to the desirability of a witness physically attending will be carefully considered, ultimately the decision is one for the coroner as to whether a witness' evidence can be properly examined and tested and whether it is in the overall interests of justice that the witness' evidence is received remotely.
16. The special considerations required before taking oral evidence remotely from abroad are set out in [chapter 12 – add link].
17. When the decision is made that remote evidence will be given it may assist to send a copy of the oath/affirmation to witnesses by email in advance of the hearing. A witness giving evidence remotely may wish to take a religious oath but may not have a holy book to hand. The Judicial College (equal treatment) court guidance on *Good Practice for Remote Hearings*⁴ advises that a witness does not need to have the holy book present to be touched whilst swearing a religious oath. The primary consideration should be what binds the conscience of the individual, therefore a witness giving remote evidence should be allowed the choice of swearing a religious oath, without a holy book, rather than being required by the coroner to give an affirmation.

Considering an application to observe remotely

18. Coroners must ensure that there is appropriate public access to all hearings, but this does not require remote access to be given. As coroners must be physically present in a courtroom when conducting hearings, public and media will always have the option of observing hearings in person. A refusal to make a direction for remote attendance is therefore not the same as denying public access to the proceedings.
19. When deciding an application to observe a hearing remotely, coroners should refer directly to the relevant provisions of the Courts Act 2003 and the Remote Observation Regulations. Regulation 3 requires the court to be satisfied that (a) it would be in the

⁴ See also the [Oaths Act 1978 at s.4\(1\)](#) which supports the binding validity of an oath given in the absence of a holy book.

interests of justice to permit remote attendance and (b) there is the capacity and technological capability to enable it, and it would not create an unreasonable administrative burden.

20. Individuals seeking remote attendance will specifically need to explain why it is in the interests of justice to allow them to observe a hearing remotely when there is the option to attend in person.
21. When deciding whether to permit remote attendance the coroner must also take into account the mandatory considerations in regulation 4 which, in summary, are:
 - the need for open justice;
 - the timing of the application and its impact on court business;
 - the technical, human and other resources necessary to facilitate remote observation;
 - any issues which might arise if broadcast to persons outside the UK;
 - any impact which the making or withholding of such a direction might have on: the quality of the evidence; public understanding of coronial law and process; the ability of the public, including the media, to observe and scrutinise the proceedings; and the safety and right to privacy of any person involved with the proceedings.
22. Coroners should also consider the Lord Chief Justice's Practice Guidance, which provides a summary of the main features of the legislation and advice on applying it.
23. It is unlikely that coroners will need to consult IPs before deciding remote observation applications, unless there is an obvious reason in a particular case why an IP might justifiably object to the coroner's decision. If consultation is necessary, this could be done in writing.
24. One of the underlying principles of the Regulations and Practice Guidance is that the interests of justice are very broad, being wider than the circumstances of the individual case and holding an effective hearing. They include the efficient despatch of business overall and the availability of coroners, coroner's officers, additional staff, technical equipment, and other resources. As the coroner service is locally funded, there is a wide variation in resources between coroner areas. There may also be times where a

particular coroner area has temporary resourcing difficulties, for example because of high staff turnover, or IT challenges. The relevant circumstances that may properly be considered when deciding remote observation applications may therefore vary widely between different coroner areas, and within the same area at different times.

Practicalities for partially remote hearings

25. All IPs and their representatives should be notified well in advance that it is proposed for a hearing to be partially remote. The coroner may wish to emphasise that the mode of hearing will not affect the determination of issues and conclusions reached.
26. There is no obligation upon a coroner to offer a hybrid hearing. It may be appropriate to determine the mode of inquest hearing in advance at a PIR, with a ruling given about how the hearing will be held if objections are raised to the coroner's proposal.
27. Experience during the pandemic has been that jury inquests can be run effectively on a partially remote basis with some or all participants attending remotely and with the jury and coroner in the courtroom. However, longer and more frequent breaks in proceedings will generally be needed.
28. If any IP or witness requests to attend the partially remote hearing in person, they should be permitted to be present in the court. A coroner's court can only be 'closed' to attendees if attendance has exceeded the numbers reasonably permitted in the particular room being used. This will be subject to the court's risk assessment.
29. Press and public access to the courtroom must be permitted, although again the numbers of such persons permitted to attend the hearing in person may be limited, subject to the court's risk assessment.

Matters to address in advance of a partially remote hearing

30. Coroners should be mindful of the difficulties that individuals may face when accessing hearings remotely. Do not assume access to technology: there is a disparity of such access and access to the internet based upon socio-economic factors, age, and disability.

Technology may give rise to specific difficulties for those with sensory impairments. Those living alone may not have assistance. The Equal Treatment Bench Book has a useful appendix on remote hearings at Annex E (page 485).

31. A remote hearing taking place at home might occur alongside distractions which inhibit evidence or participation. IPs may not have a quiet private room, and there may be demands on their attention from children, pets, or a partner. Changing the date or time of the hearing at short notice may cause extra difficulty with arrangements made to avoid interruptions.
32. Where a video-link will be used, participants should be asked to provide a list of email addresses to which the hearing link should be distributed. Where an IP or witness does not have internet access, then details of a telephone link should be supplied.
33. An electronic bundle, preferably indexed and bookmarked,⁵ should be prepared and circulated to all IPs in advance of the hearing so that everyone has the same set of documents with the same pagination for use at the hearing.
34. A running order of witnesses should have been provided to IPs in advance of the hearing including an indication of whether each witness will be attending court in person or will be giving evidence remotely under r.17(4).
35. The fact of the hearing should be published on the coroner's website, noting it as a partially remote hearing, and with details given of how the press and public can apply to access the hearing remotely.
36. It is good practice for the coroner to have a protocol in place for remote hearings with a simple user guide for families and witnesses. Examples are appended.

Matters to address before a partially remote hearing begins

37. Well in advance of the start time of the hearing, in the absence of the coroner, the court officer should admit all the participants and observers to the remote hearing platform and ensure their link is functioning. This ensures that everyone has good access and

⁵ In larger cases one of the legal representatives of the IPs may accept an invitation to assist the court by preparing that electronic bundle, although this cannot be required of an IP.

can be informed in advance of the rules of the court. It may be appropriate for the court staff to run a test call with the bereaved before the day of the hearing, particularly if they are not being assisted by their own legal team.

38. Attendees should be orally advised of the court expected etiquette for the hearing by a court officer or alternatively, using the screen-share facility, the participants may be shown some introductory slides⁶ setting out the expected etiquette.
39. Attendees should be informed at the outset of the risk of IT failing and what to do, including who to contact, if their link fails.
40. Attendees should be advised that the remote platform's chat function (if available) is only to be used for making essential contact with the court officer and not for communicating with the coroner nor for discussions between participants. Alternatively, a mobile number for the court officer who is co-ordinating the remote link may be given, and the use of the chat function completely banned.
41. Once all the participants and observers are on the remote platform the court officer will notify the coroner who will then join the hearing.

At the outset of a partially remote hearing

42. At the outset of the hearing the coroner will need to make the following formal orders to allow the partially remote hearing to proceed lawfully

To participants attending via video link:

"I give permission for the use of live video to enable participants to access these proceedings. It is a contempt of court to record, play, or publish a recording of the proceedings, or to dispose of a recording with a view to its publication. That means that if you record or broadcast any part of these proceedings, you will be committing a criminal offence."

To observers attending via video link:

⁶ Sample introductory slides with a list of court etiquette are appended.

“I give permission for the use of live video to enable observers to access these proceedings. It is a summary offence and a contempt of court to record or transmit these proceedings, or images of any people who are attending them. That means that if you record or broadcast any part of these proceedings, you will be committing a criminal offence.”

43. The coroner may then:

- introduce the hearing, identifying all participants on the remote platform;
- enquire as to the needs of those appearing, so that any necessary accommodations can be made and the hearing managed accordingly;
- establish at the outset whether there will be any unavoidable interruptions as those who are the only adult in the home may be worrying about these;
- briefly explain the protocol to be followed at the hearing;
- ask video participants to confirm that their screen cannot be viewed by a non-participant;
- emphasise that this is a formal court hearing and should be treated as such;
- remind attendees that when their camera is on they are visible to everyone including the bereaved and so they should not behave in any way that might cause avoidable distress;
- advise witnesses who are giving evidence by video link that they must not consult with anyone whilst giving their evidence and that if they should need to refer to any documents during their evidence, they should make the coroner aware of what it is they are looking at;
- if appropriate, ask all those who are not currently speaking to switch off their camera unless and until they need to speak.

44. On some video platforms the ‘pin’ function can be used to ensure that the image of those persons the coroner wishes to be able to see will stay visible on the coroner’s and/or the court’s screen throughout the hearing.

Matters during a partially remote hearing

45. Where technology permits, documents from the pre-prepared electronic bundle can be shown by the coroner's officer or court officer using the 'screen share facility'.
46. The coroner should bear in mind that remote hearings may take longer, because of technical difficulties, slower communication and the need for more breaks due to the increased concentration required.

Matters to address at the conclusion of a partially remote hearing

47. The family and their representative might be advised that they should stay on the link after all others have left so that the court officer or coroner's officer can inform them of future administrative steps, for example how to obtain the death certificate.
48. The coroner should be careful to ensure the coroner's own link is closed off at the end of the hearing.

Other matters to consider

49. Virtual hearings can take longer, because of technical difficulties, slower communication and the need for more breaks due to the increased concentration required, as well as often unsuitable seating arrangements and posture. Allow more time when fixing hearings.
50. Do not be tempted to extend court hours to get remote hearings completed. This will be exhausting for everyone, and may be particularly problematic for unrepresented IPs or witnesses and people with a range of mental or physical impairments who find the court process particularly tiring.
51. Remember that people in difficulty may say they are willing to continue with giving evidence out of a sense of deference, unassertiveness, or anxiety to get the hearing over with, when in reality their ability to give or absorb evidence has become impaired by tiredness.
52. Make no assumptions about people's behaviour. It may be different from what one would expect in court: they are at home. They may not dress smartly. They may be

more relaxed. It may be some comfort for a bereaved family to be in their own home with people around them to provide support, alternatively, they may feel worried because a process which comes inside their home feels like an invasion of their personal space.

53. A remote hearing being broadcast into a witness's home might be occurring alongside distractions which could inhibit their evidence. They may be sitting somewhere apparently unsuitable, but it may be the only place that they have; alternatively, they may be sharing space with another household member who needs it for work.
54. Video hearings require focus and concentration from the coroner, the advocates the IPs and any witnesses. Take regular breaks.