

## Chapter 11: JURY INQUESTS

### KEY MATERIALS

#### Legislation:

[Coroners and Justice Act 2009](#) s.7 -9

[Coroners \(Inquest\) Rules 2013](#) r.28 – 33

[Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013](#)

#### Chief Coroner's Law Sheet

[No. 2 Galbraith plus](#)

#### Other Guidance

[HSE: A brief guide to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 \(RIDDOR\).](#)

[Office of Rail Regulation, Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013: Guidance for railways, tramways and other guided transport systems. Sept 2016.](#)

### Introduction

1. Inquests are generally held without a jury unless the provisions of [s.7](#) of the Coroners and Justice Act 2009 (the Act) are met.
2. Most cases requiring a jury will require a number of pre-inquest review hearings (PIRs). If the question of whether a jury is required is controversial, this may be determined at the first PIR. The High Court has held that, particularly in complex cases, coroners should determine the scope of the inquest before considering whether to summon a jury and consult the bereaved before making a discretionary decision.<sup>1</sup> A later PIR would be an opportunity to: determine whether the case is ready to be heard by the jury; agree any jury questions that will need to be asked of the jury pool to identify conflicts; and decide the contents of any jury bundle.

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<sup>1</sup> [Paul v Deputy Coroner of the Queen's Household](#) [2007] EWHC 408 (Admin), [2007] Inquest Law Reports 17.

### **Inquests requiring a jury**

3. Inquests that will require a jury are those where the coroner has reason to suspect that:
  - a. the deceased died a violent or unnatural death in custody or state detention;
  - b. the death resulted from an act or omission of a police officer or member of a service police force in the purported execution of their duty; or
  - c. the death was caused by a notifiable accident, poisoning or disease.
4. The coroner also has the discretion to hold an inquest with a jury if the coroner thinks there is sufficient reason for doing so.
5. There are, however, some important exceptions to the above which should be noted:
  - a. under Schedule 1 para 11(3) of the Act, where an inquest that would have required a mandatory jury has been adjourned pending a criminal trial then, on resumption of the inquest after that trial, a jury will no longer be mandatory;
  - b. section 7(5) of the Act removes the requirement for an inquest to be held with a jury if the coroner has reason to suspect the death was caused by COVID-19. This is a temporary provision that will expire on 27 June 2026, unless it is further extended.
6. There has also been some debate over whether a jury is required when COVID-19 is suspected to have been contracted at work. It is the Chief Coroner's view that a jury is currently not mandatory. However, an inquest may be held with a jury under the discretionary power in [s7\(3\)](#) of the Act if the coroner considers that to be appropriate in a particular case.<sup>2</sup>

### **Notifiable accidents**

7. [Section 7\(2\)\(c\)](#) of the Act provides that an inquest must be held with a jury if the coroner has reason to suspect that the death was caused by 'a notifiable accident'. An accident is 'notifiable' if notice is required to be given under any Act to either 'a government department' or 'an inspector or other officer of a government department': [section 7\(4\)\(a\) and \(b\)](#).

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<sup>2</sup> See CC Guidance [No 34 Covid-19](#) at §20-21

8. Once an accident is ‘notifiable’ it is a legal requirement that it must be reported. However a jury is mandatory regardless of whether the incident leading to the death was actually reported. Similarly, if the incident was reported when there was no requirement to do so a jury will not be necessary.

### **Railway deaths and reports to the Office of Rail Regulation (ORR)**

9. In relation to railways and other guided transport systems the reporting must be to the relevant health and safety enforcing authority which is the Office of Rail Regulation (ORR). This covers the mainline railway, the London Underground network, other metro systems, tramways, light rail systems and the heritage sector.
10. Under the current ‘RIDDOR’ reporting regulations<sup>3</sup> a work-related accident means ‘an accident arising out of or in connection with work’.<sup>4</sup> The current [ORR Guidance](#)<sup>5</sup> suggests that ‘The fact there is an accident at work premises does not, in itself, mean that the accident is work-related.’ The ORR Guidance suggests that an accident is work-related if the following plays a significant role in the accident
- a. the way the work was carried out;
  - b. any machinery, plant, substances or equipment used for the work, or
  - c. the condition of the site or premises where the accident happened.
11. Therefore notification will often not be needed, and hence an inquest jury not required where a member of the public dies as a result of an accident on the railways. The mere fact that the driver of the train or tram is at work does not, of itself, make the incident reportable.
12. A possible suicide on the transport system is similarly excluded from being notifiable under RIDDOR as the regulations only require reporting of a death from a ‘workplace accident’ and do not consider a workplace accident to include an act of suicide.<sup>6</sup> The current ORR guidance recognises that the cause of death may not be known until after an inquest conclusion but states that ‘if, however, there is any suspicion of a suicide, the death should not be reported’.<sup>7</sup>

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<sup>3</sup> [Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013](#) (RIDDOR 2013, SI No.1471 of 2013)

<sup>4</sup> RIDDOR 2013 reg.2(1)

<sup>5</sup> [Office of Rail Regulation, Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013: Guidance for railways, tramways and other guided transport systems. Sept 2016.](#) §1.23

<sup>6</sup> The earlier construction regarding suicides in RIDDOR 1995 has been revoked.

<sup>7</sup> [Office of Rail Regulation, Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013: Guidance for railways, tramways and other guided transport systems. Sept 2016.](#) §4.3

13. Indeed, for reporting purposes, the ORR guidance states that, even where a coroner returns an open or narrative conclusion ‘sufficient evidence of suspected suicide’, will include ‘previous suicide attempts, prolonged depression or instability; i.e. a marked emotional reaction to recent stress or evidence of failure to cope (such as a breakdown).’<sup>8</sup>

### **Summoning the jury pool**

14. An inquest jury must consist of between 7 and 11 members according to [s.8\(1\)](#) of the Act. Whilst it is acceptable to use only 7 jurors in straight-forward brief cases, lengthy or complex inquests will ideally commence with 11 jurors to avoid abandonment if jury members are unwell, absent or need to be discharged.
15. Section [8\(4\)](#) of the Act confirms that only jurors who qualify under [s.1 of the Juries Act 1974](#) can sit on a coroner’s jury. All jurors must therefore be aged between 18-75. The jury members may be summoned from outside the coroner’s area in accordance with [s.8\(2\)](#) of the Act.
16. There is no specified procedure for how large a jury pool to summon or what procedure to follow. The longer an inquest is likely to take, the larger the pool that may be needed to allow for pre-booked holidays or other important work commitments. One way to mitigate this, is to provide potential jurors with a questionnaire addressing any booked commitments. In accordance with [s.8\(5\)](#) a coroner may, through their officer, put to a person summoned any questions that appear necessary to establish whether or not the person is qualified to serve as a juror at an inquest. This can efficiently be done by the potential jury member responding to their summons by completing a questionnaire confirming they can attend the hearing and are eligible to sit. A copy of the [Jury Notice](#) should also be included with each juror’s summons.
17. It is not uncommon for coroners to request up to 15 potential jurors to attend on the day the inquest starts as part of the jury pool from which 11 jury members will be selected after appropriate conflict checks have been made. However coroners should consider that deliberately overcalling in order to have a large jury pool risks that some jurors who may have booked significant time away from work or made childcare arrangements will be sent away at the outset. Coroners should therefore ensure any potential jurors called to court but not selected understand why more than 11 members were summonsed. It might also be

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<sup>8</sup> Op cit. §4.4

appropriate in some circumstances to offer assistance with explaining the process to an employer if a potential juror's early return is likely to cause that juror difficulty.

### **Jury Bundle**

18. Before a jury inquest begins, most often at a PIR hearing, the coroner will usually agree a jury bundle with the Interested Persons (IPs) which includes those documents which will be put before the jury during the inquest. Ideally this will be a very small bundle comprising a blank copy of the Record of Inquest<sup>9</sup> and only the essential information to understand the case, such as a brief chronology, photographs or plans. It may also be helpful to include copies of a contemporaneous document or record if the contents of that document are likely to be examined in detail with witnesses and that examination will be difficult for the jury to follow without a copy of the document.
19. It may be administratively helpful if the documents for the jury bundle are copied and ready in advance, or are preloaded onto tablets. However, if the members of the jury are given the bundle at the outset of the inquest, they should be directed not to browse through it before the relevant point in the evidence has been reached, as they may be distracted from their task if they are scanning forward in the bundle while oral evidence is being given. .
20. The jury should not be given copies of the evidence to be read under r.23, as this can lead the jury to place greater weight on untested written evidence, not all of which may be accepted by all IPs.
21. It is often preferable for the jury bundle to be a dynamic document, initially containing only an incomplete Record of Inquest form and key documents that the jury will require at the outset, and adding to it as the hearing progresses. If necessary, IPs should be permitted to make submissions in the jury's absence regarding whether a document should be put before the jury.
22. The technological capabilities of some courts may make it preferable to show some documents on a screen rather than make hard copies, if a document is not likely to be referred to regularly. However if the jury ask to see a document again then they are entitled to see it and that may mean reconvening the court once the jury are in retirement if they cannot be

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<sup>9</sup> In straight-forward cases, where there is no dispute about the registration particulars, it is acceptable to complete box 5 of the Record of Inquest in advance. However at the end of the inquest the jury must confirm that they accept the information provided there.

given a hard copy. Another option might be to download relevant documents to jury iPads or other tablets. Jurors will usually be given a notebook and pen to make any notes if they wish as they hear the evidence.

23. Whether a jury are given a complete jury bundle at the outset or one that is to be added to, they should not have their jury bundle available to them in their jury room until they are in retirement considering their conclusions. The jury bundle is to be considered a working document until the conclusion of the evidence so until that time it should remain in court.. Allowing unsupervised perusal of the jury bundle would also risk the jury considering documentary evidence before it has been properly introduced to them.

### **The morning of the inquest**

24. When the potential jurors arrive at court they will usually be met by a court clerk or the coroner's officer who will be acting as the jury bailiff and directed to their retiring room where they can remain separated from other court attendees.
25. The jury pool members should be provided with a further copy of the Jury Notice and told to keep it with them at all times at court should they wish to refer to it.
26. Once the inquest starts the coroner will welcome all the IPs and check whether there are preliminary administrative matters which need to be addressed before bringing the pool of jurors into court.

### **Selecting jurors from the jury pool**

27. Any jury selection, including excluding potential jurors on the basis of conflict of interest or any appearance of bias should be conducted in open court.
28. There are two ways coroners can obtain the information needed to enable jury selection:
  - a. The coroner can bring the jury pool into court, and ask the members some questions to check that there are no grounds to exclude them from the jury panel.Uncontroversial questions that will generally be asked of jury pool members include: whether they knew the deceased and whether they have any close personal or professional association with any of the IPs, the key organisations involved, or any of the witnesses.<sup>10</sup>

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<sup>10</sup> As all questions regarding potential conflict will be asked in open court there should be no need to provide potential jurors with a witness list in advance of the inquest.

- b. Jury pool members can be sent a questionnaire in advance of the inquest and asked to provide written answers to the coroner. The coroner should share these written communications with the IPs and invite submissions on whether each juror should be empaneled. Any interrogation of jury pool members that is needed to clarify or expand on the information they provided in their written answers to the coroner should take place in open court.

#### Typical jury selection questions

1. Do you know any of the following people who are to be witnesses? Their names are listed on this sheet [*provide sheet; or read out slowly*].
2. Do you know the deceased [*name*] or any member of the deceased's family?
3. Do you or does a close member of your family work, or have you or they ever worked, for [IP] [*company or organisation*]?

29. In complex cases it would be appropriate to agree the questions to be asked of the jury pool with the IPs in advance in the absence of the jury, preferably at a PIR hearing.
30. If more than 11 potential jurors remain after any person with a conflict has been excluded from the jury pool then further selection of jury members should be conducted in open court by random ballot. If 11 or fewer potential jurors remain, the coroner should discuss with IPs how to proceed, as without a ballot there is the potential for concern that the selection of jury members has not been random. The coroner might decide to empanel fewer jurors than originally anticipated so that a ballot can still be used, to summons more jury pool members, or to proceed without a ballot.
31. Once the selection process has concluded, the jurors' names will be read out in open court as they are empanelled. Only in an exceptional case, where there are good grounds for doing so,<sup>11</sup> would jurors names not be revealed at the outset of the inquest, although it is unusual to

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<sup>11</sup> Such as threats of juror intimidation

need to repeat those names again during the proceedings. Jurors will usually occupy the same seats throughout the inquest, although there is no legal requirement for them to do so.

32. The jurors will be individually sworn in using either a jury oath or affirmation.

**Jury oath / affirmation**

I swear by [*Almighty God, Allah etc*] that I will diligently inquire into the death of xxxx and make findings of fact and come to a true conclusion according to the evidence.

OR

I do solemnly, sincerely and truly declare and affirm that I will diligently inquire into the death of xxxx and make findings of fact and come to a true conclusion according to the evidence.

**Coroner's opening remarks and jury warnings**

33. Once the jurors are sworn the coroner should introduce the participants in court to the jury, starting with the bereaved and identify the advocates involved in the case and their respective roles.
34. The purpose and format of an inquest can then be explained, including the jury's role.
35. The coroner might wish to include the following elements in their introduction:
- That the jury's role is to find the facts and determine how the deceased died by answering the four statutory questions.
  - That an inquest is not a trial and no conclusion can appear to determine issues of civil liability or record any criminal liability by a named person.
  - That the jury should listen carefully to the evidence and may make notes if they wish.
  - That some evidence will be read to them without the witness attending.<sup>12</sup>
  - That the coroner's role is to decide what evidence the jury will hear, make decisions regarding the law and give directions of law.
  - That upon completion of the evidence the coroner will sum up the evidence and direct the jury on the law.
  - That the jury will be required to complete the Record of Inquest form.

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<sup>12</sup> If there is evidence to be heard under r.23



- That when witnesses give evidence, the coroner will call them and ask questions of them first. IPs or their advocates will then ask questions (with the representative of the witness being last).<sup>13</sup> Finally, jurors may ask questions if they wish. A brief neutral summary of the facts of the case along with an outline of the scope of the inquest; and
- The timetable and sitting times / breaks.

### **Jury warnings**

36. The jury should be given both guidance and warnings about how to go about their task and what they must not do. It is best practice initially to provide the jurors with the warnings using the exact wording set out in the appended document, which gives a clear warning as to consequences of any failure to obey the instructions (see appendix 11.1).
37. At appropriate times throughout the inquest, usually when sending the jury home at the end of a day, the warning can be repeated more briefly, preferably including the following key points:

#### **Summary of Jury warnings**

- Decide the inquest on the evidence you see and hear in court
- Only discuss the evidence amongst yourselves when you are all together in private
- Do not discuss the inquest with anyone else
- Do not communicate with anyone or let anyone communicate with you about the inquest
- Do not do your own research or look anything up on the internet
- Ignore any publicity in the press or media, it is not evidence
- If you have concerns about anything tell the Coroner's Officer
- if the warnings are disobeyed, it may amount to a contempt of court, or a criminal offence, both of which can be punished by a fine or imprisonment

<sup>13</sup> This is the default position stipulated by rule 21 however that rule allows the coroner to exercise discretion as to the order of questioning.

### **Jury questions of witnesses**

38. There is no fixed way in which jury questions must be asked of witnesses. However, it is preferable to ask jurors to write down their questions and hand them to the coroner to ask on their behalf, as that allows the coroner to check the questions for relevance.
39. The jury should be advised that the coroner is obliged to disallow irrelevant questions or questions on matters going outside the scope of the inquest.<sup>14</sup>
40. Matters of law are to be dealt with in the absence of the jury who should be advised that such issues are for the coroner to address alone.

### **Directions to the jury**

41. At the end of the evidence the coroner must direct the jury as to the law and provide the jury with a summary of the evidence.<sup>15</sup> It is good practice for the legal directions to be provided in writing and be in accordance with the guidance given by the Chief Coroner on conclusions<sup>16</sup>. The legal directions will have been prepared after hearing submissions regarding the law from the IPs, in the absence of the jury, at the end of the evidence.
42. It is best practice for a draft of the proposed jury directions and any jury questions or list of issues that are to be used to elicit the jury's conclusions to be provided to the IPs and to allow them a reasonable period to make submissions about the proposed directions in the absence of the jury.
43. No person may address the coroner or the jury as to the facts,<sup>17</sup> but whilst closing speeches are clearly not allowed, a legitimate submission of law can rarely be made without mentioning the evidence. It can sometimes be difficult to draw the line between an address as to facts and a legitimate submission on a point of law such as a '*Galbraith*'<sup>18</sup> submission on the sufficiency of evidence in support of any particular conclusion. One way of distinguishing the two may be to consider whether the advocate is seeking to persuade the coroner which facts, evidence or opinion they should prefer where there are alternative views one might take of the evidence that has been heard.

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<sup>14</sup> See rule 19(2)

<sup>15</sup> Rule 33

<sup>16</sup> See **Chapter 15** of the Bench guidance.

<sup>17</sup> Rule 27

<sup>18</sup> See the Chief Coroners Law Sheet 2 [here](#)

### **Summing up to the jury**

44. The coroner's summary of evidence should be a succinct, account of the evidence that has been heard with reference to the scope and central issues identified during the inquest, and in particular in relation to any questions to be asked of the jury, if that is the chosen method of eliciting their conclusion.
45. It is often most helpful to deal with the evidence either chronologically or issue by issue, rather than simply reciting witness accounts in the order the witnesses attended court.
46. There is no requirement to consult the IPs about the proposed summary of the evidence in advance, and this would rarely be done. In complex cases, however, it may be helpful at the end of the summing up to invite the jury to retire and then ask the IPs whether any significant matter has been omitted, or whether there is anything they consider should be corrected. The coroner must ensure the summary is fair and balanced, but retains discretion to ignore any suggestions made by IPs. Having considered any submissions, the coroner should call the jury back into court and either provide any necessary clarifications or additions, or tell the jury that the summing up is complete.
47. A suggested template script for the coroner's summing up and legal directions is attached at Appendix 11.2.

### **Retirement of the jury**

48. Before sending the jury out to start their deliberations, the coroner should:
  - a. remind the jury that they must decide the case solely on the evidence which they have seen and heard in court and must not do their own research or look anything up on the internet;
  - b. give a unanimity direction (for example: 'You must reach, if you can, a unanimous conclusion, one with which you all agree. There may come a time when I can accept a majority conclusion and if so I shall call you back into court'.);
  - c. ask the jury to consider their findings and conclusion and enter them on the Record of Inquest;
  - d. invite the jury to elect a foreperson, if they have not already done so, to chair their discussions and to speak on their behalf when they return to court;

- e. explain that if the jury wants further directions on the law or the evidence they can send a note. The court can then reassemble for their question to be dealt with.
- f. remind the jury to take all of their documents and personal notes when they retire; and
- g. tell the jury that there is no pressure of time for their deliberations. If they do not conclude that day, that is fine and they must take as much time as they need. If they are still deliberating at the end of the day, the coroner should explain that they will be sent home as normal and will attend court the next day to continue their deliberations.

### **Jury questions during their deliberation**

- 49. A jury who are deliberating may raise questions, asking for clarification of the evidence or of a legal direction. They should be asked to put any questions in a note to the coroner that can be delivered to the coroner by the jury bailiff. The note should then be discussed with the IPs in open court, in the absence of the jury. If the note discloses details of the jury's deliberations (e.g. the number of jurors for and against a particular finding) the IPs should not be shown the note. Instead, the coroner should provide the IPs with the information they need to be able to make submissions on how to deal with the jury's query.
- 50. Where possible an agreement should be reached regarding what is to be said to the jury (often factual clarifications will require reference to the recording or the coroner's and IP's notes of evidence). When an approach has been decided, the coroner should bring the jury into court and direct them accordingly.
- 51. No fresh evidence may be put before the jury, but clarification of any evidence that has already been heard may be given.
- 52. On occasion, a jury member may ask why there has been some procedural step or legal direction in an inquest (e.g. why a statement was read, whether additional evidence might be obtained, why a particular conclusion has not been left for the jury to decide) . Generally, answering any such question with further information is not advisable. Coroners should not tell the jury that there has been legal argument on a point, or what the IPs' different positions were, or what decision was made or the reasoning for it. Rather, the jury should just be told what they are directed to do.

53. A brief response to any such question might be: ‘Members of the Jury, thank you for your note, which sets out a question about [procedure/law]. I must remind you that all matters of [procedure/law] are for me as the Coroner to decide upon and you should neither concern yourself with such matters, nor speculate upon why any decision has been made.’
54. If new and potentially relevant evidence is brought to the coroner’s attention after the jury has been sent out to consider their conclusions, but before the jury return with their findings, there is no mechanism available to ask the jury to stop deliberating and hear that fresh evidence. If the situation does arise the coroner may wish to discuss with the IPs or their advocates whether the new material is not merely relevant but also material to a finding the jury might be considering making. The IPs’ views should be taken into account before making any decision. If the evidence is significant and material it may be necessary to discharge the jury and re-hear the inquest, although the pragmatic approach to evidence that arises so late in the day may be to allow the jury to come to their conclusions and then reconsider with the IPs and their advocates whether the missing information still appears to be material in the light of the jury’s conclusions.

### **Eliciting jury conclusions**

55. In complex jury cases, most often in cases where Article 2 of the European Convention on Human Rights (ECHR) procedural obligations are engaged, the jury’s conclusions will frequently be elicited by asking them to consider and respond to a list of key issues or answer a number of questions about key matters. The jury’s answers will then be used by them to complete part 3 of the Record of Inquest and/or form a narrative conclusion in part 4.
56. It is good practice for the IPs to be provided with a draft list of jury issues/questions and permitted to make submissions on the form of these, which in an Article 2 case must cover the central or key issues at the heart of the case.

### **Article 2 cases: list of issues or questions?**

57. When giving guidance to a jury on drafting their conclusion in Article 2 cases, it is often preferable to provide them with a list of issues to consider rather than setting the jury a number of binary questions to answer.

58. If a majority direction has been given (see below), no more than two jurors may disagree with a determination and if a yes/no question format is used this risks there being separate majorities for elements within a determination (e.g. for different questions within a Box 4 narrative). To force a series of binary responses to fixed questions risks the requirement for a majority to agree on the entirety of the determination being thwarted by a different split decision on the different questions unless careful thought is given to how the questions are structured. For example, a coroner could ask the jury:

‘Is it more likely than not that those who died in the disaster were unlawfully killed?  
To answer ‘yes’ to this question, you must either all agree with the following elements, or the same jurors must form a majority for each of the elements and answer ‘yes’ as a majority:

- Firstly, Mr [x] owed a duty of care to the deceased
- Secondly, he was in breach of that duty of care
- Thirdly, the breach of Mr [x]’s duty of care caused the deaths
- Finally, that the breach which caused the deaths amounted to "gross negligence."

59. Another option that might avoid difficulties arising from split decisions and would allow the jury to express their own views in the way that they choose, would be to present the jury with a list of suggested key issues.

60. The topics covered will be the same in both approaches, however the latter approach allows the jury to draft their narrative conclusion by addressing the issues as they see fit, rather than being constrained to binary answers. The ‘key issues’ approach may be more conducive to unanimity than using a questionnaire, as the jury can more easily find a form of words upon which they all agree. The example below shows how framing the document as *issues* rather than as *questions* might promote agreement by encouraging the jury to describe a finding they do agree upon in their own words:

**Issue:** *whether there were shortcomings in the decision to issue the shotgun licence.*

**Question:** *Should the shotgun licence have been issued? YES/NO*

**Issue:** *Whether the way observations were conducted were adequate*

**Question:** *Were observations properly conducted? YES/NO.*

61. On occasion the coroner may find it helpful to commence the process of creating this jury document by inviting the advocates to formulate and discuss a preliminary draft of the key issues between themselves and present a draft to the coroner for their consideration. The coroner can then hear more focused legal submissions, directed only at the areas of disagreement, before coming to their own decision on what is to be provided to the jury.

### **Majority direction**

62. It is preferable if the conclusions of the jury are unanimous and this should be the initial expectation conveyed to them. The coroner can consider giving a majority direction if it is clear from a note or answer to a question that the jury have been unable to reach a unanimous conclusion having deliberated for a reasonable period of time.
63. A reasonable time will depend upon the nature and complexity of the case. It will usually be more than two hours ten minutes in a very simple case, but will be much greater in a longer case.
64. Where a majority direction is required, a direction such as that below may be used.<sup>19</sup>

#### **Majority direction**

I shall now give you a majority direction.

I shall ask you once more to retire and to continue to reach findings and a conclusion with all of you in agreement. But if you are unable to do so, I can now accept a completed Record of Inquest upon which no more than two of you disagree with the majority.

If you are able to achieve that, all of you in the majority must sign the Record of Inquest.

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<sup>19</sup> If a jury questionnaire has been used the majority direction will instead need to say this: But if you are unable to do so, you may answer all questions with no more than 2 of you disagreeing with the majority. The numbers will have to be given out by the foreperson when you return to court. At least 9 of you [*for a jury of 11*] must agree on the answers to all questions, but it must be the same 9 or 10 of you [*for a jury of 11*] who agree on all the answers to all of the question.

65. Coroners will bear in mind that the direction should be tailored, where appropriate, to any note from the jury explaining their specific difficulties (for example, whether they are split on individual questions or on some aspect of their conclusions as a whole). Coroners should also invite submissions from IPs before giving the direction.

### **Watson direction**

66. Although it is still lawful to give a Watson ‘give or take’ direction, it should usually be avoided. Two criminal cases suggested that it should be given ‘only in exceptional circumstances’, but no example of ‘exceptional’ was suggested and doubt has been cast upon this gloss to Watson itself. If given, a Watson direction should only be given some considerable time after a majority conclusion direction has been given and the precise words of Watson must always be used. The coroner must avoid putting the jury under any pressure or creating any perception that he/she is doing so.

#### **Watson Direction**

Each of you has taken an oath [*or affirmation*] to return a true conclusion according to the evidence. No one must be false to that oath [*or affirmation*], but you have a duty not only as individuals but collectively.

That is the strength of the jury system. Each of you takes into the jury box with you your individual experience and wisdom. Your task is to pool that experience and wisdom. You do that by giving your views and listening to the views of others. There must necessarily be discussion, argument and give and take within the scope of your oath. That is the way in which agreement is reached. If, unhappily, nine, [*or the jury number less two*] of you cannot reach agreement you must say so.

### **Finality of the jury’s decision**

67. Once the jury have reached a decision, the completed but yet unsigned Record of Inquest might be provided to the coroner to check for any typographical errors before the jury’s determinations and conclusion are presented to the IPs in court.



68. If at that stage the coroner identifies any legal difficulty with the jury's findings, such as having ignored a direction of law, then the issue should be dealt with in open court. Often this can be done by first, without the jury present, outlining the difficulty that has arisen to the IPs (but without stating the conclusion the jury have reached), then if necessary hearing submissions on how this might be dealt with and then bringing the jury back into court for further directions before sending them out again to reconsider their findings or conclusion.
69. Should the jury return a conclusion that appears incongruous or which is unlawful, having ignored a direction on the law, it is permissible to re-direct the jury on the law or to ask the foreperson to explain the meaning of a conclusion. If the latter approach is taken, it is good practice to ask the foreperson to provide the explanation in writing, to avoid them inadvertently disclosing the jury's private deliberations.
70. It must be remembered, however, that a coroner cannot require a jury to change their conclusion, but must accept whatever conclusion is finally returned.<sup>20</sup> In *Clements*<sup>21</sup> the coroner interrogated the foreman on the terms of the inquisition produced by the jury, because he considered that the jury's findings were unclear. The Court considered that this procedure although not standard, 'was nevertheless sensible and designed to facilitate that which was his duty and that of the jury, namely, the completion of the form of inquisition. He was simply receiving the jury's answers to specific questions and where necessary interrogating the jury for the purpose of removing ambiguity and uncertainty.'. A coroner can, therefore, invite clarification from a jury and whilst the jury might be invited to consider corrections, they cannot be compelled to make these.

### **Signing the Record of Inquest**

71. The jury should all sign the Record of Inquest when it is completed but in the case of a majority conclusion only those agreeing should sign. The coroner is also required to sign the Record of Inquest once the jury has completed its inquiry.
72. If a copy of the Record of Inquest is requested by a member of the public or the press, the jurors' signatures should be redacted before a copy is provided. The same approach should be taken with copies of the Record of Inquest provided to IPs. If any objection to redaction is

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<sup>20</sup> Smith's case (1696) Comberbach 286

<sup>21</sup> [\*R\(Clements\) v HM Coroner West Yorkshire \(Eastern District\)\*](#) (1993) 158 JP 17

raised, the coroner should consider representations on the point. One of the factors that the coroner should consider where there has been a majority decision is the extent to which the signatures disclose information about the jury's deliberations.

73. If the jury are unable to reach conclusions then they must be discharged in accordance with s.9(3) and a new jury summoned.

### **Jury irregularities**

74. A jury irregularity is anything that may prevent one or more jurors from remaining faithful to their oath. 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.
75. The primary concern of the coroner should be the impact on the inquest.
76. When something is brought to the coroner's attention, the first thing to consider is whether the juror(s) concerned should be isolated from the rest of the jury (and if there is more than one juror involved, from each other). The coroner should then take the following steps:
- a. consult with the advocates (if there are any);
  - b. consider appropriate provisional measures;
  - c. seek to establish basic facts of jury irregularity – this can either be through evidence from the coroner's officer or from the juror depending on the circumstances;
  - d. further consult with advocates (if there are any);
  - e. decide what to do in relation to conduct of inquest;
  - f. consider ancillary matters.
77. Establishing the basic facts of what has occurred may involve questioning the juror(s) involved individually. Unless there is good reason, this should be in open court. 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.
78. 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. 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 IPs 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 what 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.

79. Having followed the necessary steps, the options available to the coroner are to take no action and carry on, to continue but remind the jury of their role and duties, discharge the individual juror or discharge the whole jury and relist the case.
80. If continuing, the coroner should consider giving some explanation to the jurors to reassure them that nothing untoward has happened that need concern them.
81. If discharging the juror(s) concerned and at least 7 jurors remain then, if continuing with the inquest, consideration must be given as to what to say to the remaining jury members. It may be helpful to seek views of the IPs' advocates regarding what is said.
82. A potential jury irregularity may come to the attention of the coroner after an inquest has ended. 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.
83. 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 a communication from a juror, the coroner who receives such a communication should impress upon the juror that they should not speak about the deliberations in the jury room.
84. If there is legal significance to the communication, the coroner should notify the Chief Coroner promptly and consideration should also be given to notifying the IPs, particularly if the communication gives rise to the possibility of action in the High Court by way of judicial review.
85. Coroners may be assisted by the Criminal Practice Direction in relation to jury irregularities, as although the Practice Direction does not apply to inquests, many of the principles will be relevant to ensuring a just process<sup>22</sup>.

## Thanking the jury

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<sup>22</sup> <https://www.judiciary.uk/wp-content/uploads/2023/04/Criminal-Practice-Directions-2023-1.pdf> see section 8.7.

86. At the end of the inquest, the jury should be thanked for their service. They should also be reminded that although they can now speak generally about the inquest, they must not disclose their deliberations to anyone, as to do so is a criminal offence.

## **Appendix 11.1 - Jury Warnings**

1. Members of the jury, you will decide the questions that arise in this inquest on the evidence which you see and hear in court, and on nothing else.
2. Do not discuss the evidence except amongst yourselves when you are all together in private. Do not discuss the inquest with family or friends when you go home, tempting though that may be, because it will be you and not they who hear the evidence in court, and you and not they who will come to conclusions in due course.
3. Do not communicate with anyone about the inquest in any way at any time; that includes by phone or text, chat lines, twitter or blogs.
4. During the case, if you happen to travel to court with a fellow juror, or you happen to bump into one another away from court, please do not discuss the evidence you have heard. Any discussions you have about this inquest should be whilst in the privacy of the jury room.
5. Do not be tempted to do your own research; just listen to the evidence. Do not go to the scene or make your own inquiries. Do not look anything up on the internet or on social networking sites such as Facebook. None of that is evidence. Why is this rule so important? Because our whole system of justice relies on open justice. All of those involved in this inquest and the public are entitled to know and hear all the evidence on which you have reached your conclusions. If you were to introduce into the jury room the fruits of your own investigations be they on the Internet, Facebook or X then they would not have been tested in open court for all to see and hear. We all know how wonderful the Internet is and how useful search engines such as Google can be. We also all know how unreliable they can sometimes be. Seemingly authoritative pages on the Internet can turn out to be completely false. The simple rule is: do not make your own investigations. Of course this does not mean you cannot use the Internet for your personal affairs. It simply means do not use it to investigate this inquest.

6. These are important directions, given by me the coroner, and you must follow them. If you disobey them, any of them, it may amount to contempt of court or even a criminal offence, both of which can be punished by a fine or imprisonment.
7. That is why I must warn you about these things. And if any of it does happen it may bring the inquest grinding to a halt. That might mean having to start all over again with another jury, which would not be good.
8. Do not let anybody talk to you about the inquest. If anyone tries to, tell the coroner's officer, who will tell me.
9. If you have any serious concerns about anything which takes place outside the jury room, or even inside it, do not hesitate to tell the coroner's officer straightaway, so that I get to know about it.
10. [*In an inquest likely to attract publicity.*] [It is possible that there will be some publicity about this inquest and reporting of it in the press. The press are entitled to publish reports of legal proceedings that are held in public. There are rules governing those reports. It is possible you may see, or hear some of those reports. However good the press reports are, they are unlikely to report all of the evidence that is given in court. Publicity or press reporting is not evidence. Each of you has taken an oath or affirmation to consider the issues and your conclusion in the inquest on the evidence, and it is on the evidence that you hear in court that you will make your decisions. To ensure fairness to all can I ask each of you makes sure that your focus is on what is said in court in your presence and that you ignore any publicity or press reporting the inquest may attract.]
11. At the end of the evidence I will give you directions on the law and provide you with a summary of the evidence that has been given in court. Please keep an open mind. The evidence will be presented to you over the coming hours/days/weeks. Do not jump to conclusions. The time to come to conclusions is once you have heard all

of the evidence and the directions I will give to you and you are in the privacy of your jury room.

## **Appendix 11.2 – Summing up and legal directions**

[NB/ A summing up must always be tailored to the particular facts and circumstances of the individual case].

### **Introduction**

1. I am now going to sum up to you.
2. I shall give you directions on the law which you must take from me and apply to the evidence.
3. I shall also remind you of the evidence to enable you to make factual findings that will support your conclusion.
4. You have heard all the evidence in this case. The evidence includes the evidence of witnesses from the witness box, statements of witnesses that were read, other documentary evidence, [items of property, photographs, CCTV, etc].
5. Your findings must be based solely on the evidence you have heard or seen in court. You must ignore anything else, such as media coverage of the case. It is irrelevant.
6. If I appear to express a particular view about the evidence, you must ignore it, unless you agree with it. It is your view of the evidence that matters.
7. This is not a trial; it is an inquest into a death, a fact-finding inquiry to find out how [name] died. It is not concerned with attributing blame. It is simply a way of establishing facts.
8. In order for you to decide the facts, you must make an assessment of the evidence. It is up to you what you make of each witness, in terms of their credibility and reliability. What evidence do you accept and what evidence do you reject? That is a matter for you. It is open to you to accept one part and reject another part of a witness's testimony.

### **The four questions**

9. The evidence has been directed towards answering four questions. Who was the deceased? When, where and how did [name] come by his/her/their death? You must also reach an overall conclusion about the death. You must not express an opinion about other matters or make recommendations.



## **The Record of Inquest**

10. Once you have made your findings in relation to the four questions and reached a conclusion you must record these and sign one copy of the Record of Inquest. You have copies of this form in front of you and must complete all the sections. I shall give guidance as to how you approach individual sections.

### Section 5

11. I shall deal with this first. These are the details which are required for the death to be formally registered. [In this case there is no dispute about them and I therefore direct you to enter the following [details]]. *[Alternatively, if there is conflicting evidence, state that it will be covered later and is for the jury to determine].*

### Section 1

12. I direct you to enter the full name of the deceased.

### Section 2

13. You are required to determine the medical cause of death. You will recall from [the evidence of the pathologist] that the correct format for recording this is to show the disease or condition directly leading to death i.e. the immediate cause of death, under 1(a), with underlying conditions in sequence under 1(b), 1(c) and 1(d) [if appropriate].

14. This has not been a subject of dispute in this case and I therefore direct you to record the following [details]. *[Alternatively, if there is conflicting evidence, state that it will be covered later and is for the jury to determine.]*

### Section 3

15. This is where you should record when, where and how the deceased came by his/her/their death. You will see from the wording on the form that you should include the wider circumstances of the death where section 5(2) of the Coroners and Justice Act 2009 applies. [It applies/does not apply in this case].

16. What you write down in section 3 is a matter for you. It should be brief, neutral and factual, expressing no judgment or opinion, without naming individuals.

17. Restrict your findings to answering the three key questions: when, where and how did he/she/they come by his/her/their death. Add a separate piece of paper if you need more space.
18. [As this is a case where the wider circumstances should be recorded, you should include factual findings on relevant issues specific to this case, about which you have heard evidence. I suggest that this includes the following issues [list issues]. You may include other issues that you consider important provided they are relevant to the circumstances of the death]. [Examples may be given: ‘No night-time cell checks were carried out’ rather than ‘Officer A should have checked the cell’, ‘Prescribed drugs were not administered’, not ‘Nurse B was negligent and forgot to give the drugs’.]

#### Section 4

19. Finally, you are required to record your conclusion in section 4. This should not be considered until you have agreed the factual foundation for it in section 3. I shall now direct you as to what conclusions you should consider, and in what order.
20. In this case, there are [three] possible conclusions. They are alternatives and I shall deal with each of them in turn.

#### Conclusions

21. [List available conclusions, preferably in writing. Indicate the essential elements about which the jury must be satisfied and the level of certainty required (i.e. whether it is more likely than not).
22. Indicate the order in which conclusions should be considered. Identify the evidence capable of supporting each conclusion.]
23. Those are the [three] alternative conclusions. One of those [three] conclusions must be entered in Section 4.

#### **Other directions**

#### Expert evidence

24. Let me say a word or two about expert evidence. In this case you heard the evidence of [name(s)], which I will summarise shortly.

25. Expert evidence is designed to help you with things which are likely to be outside your own experience. An expert should be independent and neutral, trying to assist the court. As with all evidence you are entitled to accept the expert evidence or reject it or any part of it as you see fit, [although in this case there is no dispute about it].

### Hearsay

26. Let me also say a word about hearsay evidence. You will need to consider the evidence of witness [name] who gave what is called hearsay evidence. This is evidence of what a witness hears from someone else about an event that they themselves have not seen or heard. [*Alternatively, the jury may be dealing with a document produced by a witness who did not write it – include details*].

27. You must be cautious about this kind of evidence. It is still evidence in the inquest but it comes from someone who is not here and cannot be asked questions about it.

28. You should consider the circumstances in which it was given. Is it good reliable evidence or could it be from someone who has a reason to distort the truth?

29. It is for you to consider how reliable it is and how much weight should be given to it. It is evidence that requires careful scrutiny by you, being fair and sensible about it. You must decide what weight, what value, you can give to it. You may give it considerable weight, or some modest weight, or little weight, or no weight at all. That is for you to decide.

### **Evidence**

30. I shall now review the evidence in the inquest.

31. [Summarise the evidence in a logical order, sometimes chronological, but not necessarily in the same as the order of witnesses. Have a clear plan. Outline the approach you intend to take. Group together evidence relating to particular issues e.g. chronology (day, date, time and place), medical cause of death, evidence as to state of mind, systems. Indicate where there has been no dispute and where the evidence has been a subject of challenge. Indicate where evidence supports other evidence and where there are inconsistencies. Cross-reference to pages in the jury's bundle of documents. Try not to be too lengthy.]

## **Final remarks**

32. Before you retire to consider your findings, I must give you these further legal directions.
33. First, you may not express any opinion on any matter other than giving answers to the four questions and providing details for registration.
34. Second, your conclusion must not be framed in such a way as to appear to determine any question of criminal liability on the part of a named person or civil liability.
35. I must also repeat the warning I gave you before. You decide this case solely on the evidence which you see and hear in this court. Do not do your own research or look anything up on the internet. This is most important.
36. You must reach if you can a unanimous conclusion, one with which you all agree.  
There may come a time when I can accept a majority decision and if so I shall call you back into court and give you further directions.
37. You are under no pressure of time. You must take as long as you need to discuss the issues, reach your findings of fact and determine your conclusion(s).
38. When you have completed the Record of Inquest, I shall check to make sure there are no errors or inconsistencies. Then you will be called back to court and asked to read it out.
39. If you have not already done so, please elect a foreperson to chair your discussions and to speak on your behalf when you return to court.
40. If you want further directions, on the law or the evidence, send a note. The court will reassemble so I can provide them.
41. Members of the jury, when the jury bailiff/usher/coroner's officer is sworn I shall ask you to retire to consider your findings and conclusion and enter them on the Record of Inquest.
42. Please take all your documents and personal notes with you.