Chapter 13: Witnesses

KEY MATERIALS

Legislation / Rules

Children and Young Persons Act 1933 s.34A, s.39
Coroners and Justice Act 2009 s.47
Oaths Act 1978
Coroners (Inquests) Rules 2013 r.11, r.20, r.23

Practice Guidance

Equal Treatment Bench Book, Chp.8

Chief Coroner's Law Sheets and Guidance

Law Sheet No. 5: The Discretion of the Coroner

The legal position

1. It is the coroner's responsibility to identify those witnesses who are to give evidence at an inquest. The coroner must call enough witnesses to ensure there is sufficiency of inquiry.[1] But the courts have repeatedly emphasised that although the coroner must investigate the death 'fully, fairly and fearlessly'[2] it is the coroner who sets the bounds of their inquiry and the court will be 'unwilling' to 'fetter the discretion of a coroner by being at all prescriptive about the procedures he should adopt in order to achieve a full, fair and thorough hearing.'[3]

2. The coroner is not required to call as a witness every person who might be able to give relevant evidence, but sufficient witnesses to undertake a proper inquiry.[4] The coronial

[1] *Doris Shafi v HM Coroner for E. London* [2015] EWHC 2106 (Admin) QB. See also *R (Le Page) v HM Assistant Deputy Coroner for Inner South London* 2012 EWHC 1485 and *R (Bentley) v HM Coroner for the District of Avon* [2001] EWHC 170 (Admin) at para 85.
[2] *Jamieson* at [26B]
[3] *R v Coroner for Lincolnshire, ex parte Hay* [2000] Inquest LR 1
[4] *R (Ahmed) v South and East Cumbria Coroner* [2009] EWHC 1653 (Admin); *Mack v HM Coroner for Birmingham* [2011] EWCA Civ 712 (CA), *per* Toulson LJ at [8].

discretion as to who should be called should be exercised by reference to the scope of the investigation and the statutory questions to be answered.[5]

Identifying witnesses

3. The calling of witnesses and the order in which they are called is a matter for the discretion of the coroner, however, the coroner should consider any representations put forward by the interested persons (IPs) or their legal representatives. The choice of witnesses and the discretion to call oral evidence must be exercised reasonably and fairly and will be judged by the Higher Courts on the basis of *Wednesbury* reasonableness.[6]

4. In large or complex cases, the coroner will generally have prepared the witness list well in advance of the inquest hearing and shared this with all IPs so that any representations about the need to call witnesses are made in sufficient time to avoid the need for adjournment. It is helpful to give early indications of which witnesses will be expected to give oral evidence and which evidence it is proposed to read pursuant to rule 23 of the Coroners (Inquests) Rules 2013 (the Inquests Rules). Any points of contention can then be dealt with by submissions at the pre-inquest review hearing (PIR) .

5. Even in short cases it remains good practice to share the proposed witness list in advance with the IPs and indicate who it is intended to call in person. Any issues regarding the witness list and running order may be dealt with through written submissions or correspondence if the case does not require a PIR hearing.

Calling of witnesses

6. At common law every person who is able to give evidence as to a death is bound to attend the coroner's court. In the majority of cases an informal notification by letter or email will be sufficient for a witness to attend as requested and a formal witness summons will not be required.

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[5] See Chief Coroner's Law Sheet No. 5 : The discretion of the coroner at §9-17.
[6] *R (Le Page) v HM Assistant Deputy Coroner for Inner South London* 2012 EWHC 1485

7. If it is thought that the witness is unlikely to comply with an informal request to attend then the Coroners and Justice Act 2009 (the Act) provides a statutory route to secure compliance by issuing a formal 'notice' requiring a person to 'attend and give evidence at an inquest' under schedule 5 part 1 para 1(a) of the Act.

8. By issuing what is known as a 'schedule 5 notice' the coroner can require a person to attend the inquest at a stated time and place and to produce relevant documents. Although witnesses who do attend court will be entitled to claim related expenses from the coroner, there is no requirement for 'conduct money'[7] to be have been paid in advance for a schedule 5 notice to be effective.

9. There is no prescribed form for a schedule 5 notice, but it generally should include details of the specific power under which it is issued, precise details of what is being required of the recipient and also set out the punishment for disobedience. The recipient should also be made aware that they are entitled to claim that they are unable to comply with the notice, or that it is not reasonable to require them to comply.[8] An example notice is Appendix 10.1 in Chapter 10 of this Bench guidance on contempt).

10. If a claim to amend or set aside a schedule 5 notice is made the matter will be determined by the coroner, who may revoke or vary the notice. The determination may be made on the basis of written submissions. If oral submissions are required these should be heard in public in open court. Where a coroner determines a claim to set aside a schedule 5 notice a formal ruling should usually be provided.

11. If a witness does not attend an inquest having been issued a schedule 5 notice the coroner may, under their common law powers, issue a 'bench warrant' to secure their attendance. The bench warrant is addressed to the police requesting that the absent witness is brought to court.[9] An example bench warrant is appended in Appendix 13.1.

12. A coroner can also summarily punish disobedience to a schedule 5 notice by means of a fine not exceeding £1000 which may be imposed on any person who fails without

[7] As would be required for an effective common law witness summons to be issued.
[8] A coroner may also choose to add a section to the schedule 5 notice asking the witness to respond to confirm receipt, although providing a response cannot be compelled.
[9] The coroner cannot 'back' the warrant with bail – as the bail provisions contained in the Bail Act 1976 and s.117 of the Magistrates' Court Act 1980 do not apply to the coroners' courts. See further in chapter 10 of this Bench guidance'.

reasonable excuse to do anything required by such a notice. [10] Before any fine is issued the person should be given an opportunity to receive legal advice and explain their failure to attend. Any fine will be collected and enforced by the local Magistrates Court.[11]

13. The 2009 Act does not remove or alter the powers of a coroner under the common law to summon witnesses and punish for contempt in the face of the court. However, there are several requirements for an effective common law summons that make it a far less efficient tool than a schedule 5 notice. First, to be effective there must be formal proof of service of the summons, second, conduct money must be offered or provided in advance and be a reasonable amount to cover the witnesses expenses[12] and third, there is no common law power to summon a witness who is outside the coroner's area. Furthermore, a coroner can only commit a person for contempt of court if they express that contempt in the face of the court (such as failing to give evidence on having attended at court) and not for wholly disregarding a summons. Previously if a civil court had issued the witness summons then that court (and not the coroner) would punish for the contempt of failing to appear,[13] however, with the advent of schedule 5 powers the civil courts can no longer issue a summons on behalf of a coroner.[14] In any event, the issuing of a bench warrant to bring the person to court is usually a more effective way of advancing the inquest proceedings and a bench warrant is also available under common law powers if the witness disregards a schedule 5 notice. The common law witness summons procedure will, therefore, rarely be used.

Oaths

[10] Schedule 6 part 2 para 6.
[11] See further Chapter 10 of the Bench Book on 'Contempt of Court'.
[12] *HM Coroner for Kent v Terrill* [2000] Inquest LR 16
[13] Which was the situation in *Terrill* ibid.
[14] Previously a summons outside the coroner area could be issued by the High Court (under the Civil Procedure Rules 34.4) 'in aid of an inferior court or of a tribunal' who had no power to issue their own summons, but with the creation of the Schedule 5 powers under 2009 Act has now closed this route by virtue of the Civil Procedure Rules 34.4(3).

14. Evidence given in a coroner's court by a person over the age of 14 is to be given on oath or affirmation.[15]

15. A child under the age of 14, or a child aged 14 or over who is considered by the coroner to be unable to understand the nature of an oath or affirmation, may, on promising to tell the truth, be permitted to give unsworn evidence.[16]

16. The Oaths Act 1978 makes provision for the forms in which oaths may be administered and provides that a solemn affirmation shall have the same force and effect as an oath. There is no requirement under the act for a witness taking an oath to lift a holy book in their hand, although they may choose to do so.

17. Although courts should ensure there is a selection of appropriate holy books available, the Judicial College Equal Treatment Bench Book guidance on *Good Practice for Remote Hearings*[17] advises that a witness need not have the holy book present to be touched whilst swearing a religious oath. Therefore a coroner should not require a witness who wishes to swear a religious oath to instead affirm merely because the relevant holy book is not present.

18. No assumptions should be made that any individual will automatically prefer to swear an oath rather than affirm, or vice versa. The question of whether a witness wishes to affirm or takes an oath (and if so using which particular holy book) should be asked of the witness in an open manner, usually by court staff. The primary consideration should be what binds the conscience of the individual.

19. The most common wording of the oath is:

> I swear by {*insert as appropriate - Almighty God/Name of God or /name of the holy book}* that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.[18]

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[15] Coroners (Inquests) Rules 2013 r.20(1).
[16] r.20(2).
[17] The guidance states: A witness may wish to take a religious oath but not have a holy book because they are at home or they may be unable safely to touch it if in court at this time. They should be allowed the choice of taking the oath without the book or affirming. See also the Oaths Act 1978 at s.4(1) which supports the validity of an oath given in the absence of a holy book.

[18] Those of Jewish faith might use the oath above although some may wish to affirm. Those of Hindu faith will omit the words "I swear by Almighty God" and substitute the words "I swear by Gita". Those of Muslim faith

20. The most common wording of the affirmation is:

> I do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.

21. For further guidance on Holy Books and ritual purity see the Equal Treatment Bench Book at chapter 8.

Admitting written evidence

22. Written evidence in the form of documents, witness statements or reports can be admitted into evidence under rule 23(1) without requiring a witness to prove that evidence. This rule states:

> 23(1) Written evidence as to who the deceased was and how, when and where the deceased came by his 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 good and sufficient reason why the maker of the written evidence should not attend the inquest hearing
>
> (c) there is 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.

23. Evidence may therefore be admitted if any one of the four conditions above are satisfied. Therefore even where the evidence is disputed by an IP under r.23(1)(d) it can still be admitted if another of the r.23(1) conditions is met.

24. Before admitting such evidence (whether in full or redacted form) the coroner must announce at the hearing (although not necessarily at the outset)[19]

- the nature of the evidence,
- the full name of the maker,

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will substitute the words "I swear by Allah". Those of Sikh faith will substitute the words "I swear by Guru Nanak".

[19] Rule 23(2)

- that the IPs may see a copy and
- that IPs may object to the admission of the evidence.

25. Where an objection is raised by an IP who disputes the evidence it is suggested that this objection can be over-ridden if one of the other qualifying criteria in r.23(1)(a) to (c) is met.[20] The reasons for any objection should still be taken into account by the coroner when deciding whether to admit of the written evidence under r.23(1)(a) to (c).

26. In some cases redaction of the disputed part of the evidence may provide a solution, or the issue may be addressed through other evidence. However, it should also be remembered that in an inquisitorial jurisdiction there is no requirement for any IP to traverse via questioning any evidence with which they do not agree. That disputed evidence is admitted under r.23(1)(d) does not mean that it should or will be accepted by the coroner or jury. If the disputed part of the evidence is relevant to the eventual determinations/conclusions to be made it will usually be necessary to remind the jury when summing up that this documentary evidence is disputed and has not been tested in examination.

27. Rule 23(3) provides that any document made by a deceased person must be admitted into evidence at an inquest hearing if the coroner is of the opinion that the document is relevant to the purposes of the inquest. Clearly in a case of fatal self-harm this will include a final letter[21] written by the deceased that might clarify their intent. Whilst the mandatory phrasing of this rule means there is no residual discretion to decline to read out the relevant content of a final letter at a public hearing, rule 23(4) allows for sensitive editing of documentary evidence, so only those parts of a final letter that are relevant to the inquest determinations need be made public. [22]

28. The wide definition of 'document' under s.48 of the Act to include 'information stored in an electronic form' and in rule 2 to mean 'any medium in which information of any description is recorded and stored' will encompass final notes or statements left by

[20] as was the position under the earlier 1984 rules

[21] Although such letters are often colloquially known as 'suicide notes' coroners and their officers should avoid that term, as it can appear from using such terminology that the conclusion of the inquest has been pre-determined. Using a neutral term such as 'final letter' of 'letter of intent' is to be preferred. See *HM Senior Coroner Sarah Ormond-Walshe v Sherren (2024) EWHC 2332*.

[22] The relevance and use of final letters is discussed in more detail in Chapter 4: Documentary Inquests and Inquests in Writing.

means of text messages, on social media platforms, and in voice or visual digital communications.

Examination of witnesses

29. Rule 19(1) requires a coroner to allow any IP who so requests to examine any witnesses either in person or through their representative. There is no requirement that this must be a legally qualified representative, just as there is no requirement to have a particular legal qualification or training to have 'rights of audience' in a coroner's court. Therefore, an IP can nominate another person who is not a lawyer to represent them and to ask questions and/or make submissions on their behalf. Such nomination should usually be permitted, subject only to the coroner's general discretion to control and curtail any inappropriate behaviour in their court room and the requirement of rule 19(2) that a coroner must disallow irrelevant questions. It would breach rule 19(1) for a coroner to have a blanket rule that IPs must either ask questions themselves or do so through a lawyer.

30. Unless the coroner determines otherwise, a witness will be examined by the coroner first (or where relevant, Counsel to the Inquest on the coroner's behalf). Thereafter, there is no set order of questioning, save that where the witness is represented the person representing them will usually ask their questions last.[23] There is no requirement for the witness to be an IP to have representation. The coroner's powers to control their own proceedings means a coroner has the discretion to permit any witness to be accompanied by and assisted by a legal representative in court.

31. In large or complex inquests it may be most efficient to ask the IPs' advocates to discuss the order of questioning between themselves and then put their proposals to the coroner for approval.

Questioning by non-IPs

[23] Rule 21(c)

32. Neither the Inquests Rules nor the common law limit the categories of person whom a coroner may, in their discretion, permit to make submissions to the court or to question witnesses. Rule 19 requires a coroner to permit IPs to ask (relevant) questions of witnesses, but it does not prevent a coroner from allowing others to do so. Therefore in some cases it may be appropriate for the coroner to use their discretion to allow the representative of a person who does not have IP status to also ask questions of witnesses. Before allowing this unusual step the coroner should take any relevant views of the IPs into account.

33. This approach has been usefully employed in some lengthy and complex inquests where the person wishing to ask questions only had a very limited involvement in a discrete or peripheral aspect of the case. In such circumstances their interests can be met by them requesting permission to attend and ask questions themselves or through a representative only during that limited part of the inquest proceedings that concerns them. Where such permission is granted, the person will often not have IP status and so cannot assert any right to disclosure of the entirety of the inquest evidence, although the coroner may exercise their discretion to permit disclosure of any relevant documents to a witness who is not an IP.

Self-incrimination

34. By rule 22(1) a witness at an inquest is not obliged to answer any question where the answer would tend to incriminate them. The privilege may not however be relied upon to refuse to attend an inquest or refuse to enter the witness box altogether. Where a coroner believes there is some relevant evidence a witness can give, the coroner will be entitled to call them to court, using legal compulsion if necessary, even where the privilege has been claimed.[24] To be in a position to claim the privilege the witness must be sworn and enter the witness box, hear the question and then state on oath that they believe the answer will tend to incriminate them.

[24] See: *M4 v The Coroner's Service for Northern Ireland*, [2022] NICA 6

35. It is insufficient to activate the privilege that an answer may assist civil proceedings to be brought against the witness.[25]

36. When it appears to a coroner that a potentially incriminating answer could be given to a question the duty falls on the coroner to warn the witness before or when the question is asked that they may refuse to answer it.[26] An example of a warning is attached at Appendix 13.2. There is further discussion in Chapter 10 regarding rule 22 and contempt by a witness refusing to answer a question.

Special measures for vulnerable witnesses

37. All courts have a safeguarding responsibility to children and vulnerable adults. A series of special measures are available that may help vulnerable or intimidated witnesses to give their best evidence in the coroner's court and help to relieve some of the stress associated with giving evidence.

38. A witness' vulnerability may not always be the result of immaturity or a formal medical or mental condition. On occasion the emotional trauma experienced by a witness from being involved in the circumstances of the death and then being asked to recount their role in a public hearing can lead the inquest process itself to further traumatise the witness and so impair the quality of the evidence they are able to give. For such witnesses, spending lengthy periods in the witness box answering repetitive or oppressive questions is likely to be counterproductive and may significantly impact upon their ability to assist the court.

39. Witnesses where the coroner should be alert to the potential need to consider special measures will include:

- witnesses under 18 at the time of the hearing;
- vulnerable witnesses affected by a mental or physical impairment;
- a witness who has been traumatised by the events they have witnessed or been involved in;
- witness in fear or in genuine distress about testifying;

[25] See s.14 Civil Evidence Act 1968 and *R v Institute of Chartered Accountants exp Nawaz* (1977) COD 111.
[26] Rule 22(2).

- adult complainants of sexual offences, or trafficking/exploitation offences;
- witnesses potentially at risk because of others' response to their involvement in the events.

40. Coroners should take reasonable steps to ensure the effective participation of any vulnerable IP or witness. However, coroners must always balance the need for special measures against the need for open justice.

41. Evidence based guidance on communicating with vulnerable witnesses or parties is available on the Advocate's Gateway, where a number of specialist toolkits are provided.

Ground Rules Hearings

42. Holding a Ground Rules Hearing may be particularly useful where a coroner can consider the needs of a vulnerable witness and hear representations from IPs before making directions for the fair treatment and effective participation of the vulnerable person. Such a hearing should be held sufficiently in advance of the inquest to give advocates time to adapt their questions to the needs of the witness.

43. The Ground Rules Hearing usually will be conducted as part of the PIR and should, like any other inquest hearing, normally take place in public. However, should it be necessary to discuss sensitive or private material regarding the witness (such as their medical or mental health condition), the Ground Rules Hearing as part of a PIR can take place in the absence of the public if the interests of justice so require.[27]

44. If considering excluding the public and media from any part of a PIR it will usually be necessary to have first heard any representation a potentially excluded person wishes to make and to give a brief ruling explaining the decision then made.

45. At a Ground Rules Hearing the coroner may consider making directions or setting ground rules about:
    - the use of screens or video links;

[27] Rule 11(5).

- witness anonymity;[28]
- the manner of questioning;
- the duration of questioning;
- the scheduling of appropriate breaks during the evidence;
- topics that may be covered and questions that may or may not be asked;
- the use of signposting and simple language during the questioning;
- whether questions are to be posed only in writing in advance of the hearing, so the witness might avoid the need to be orally examined;
- whether questions are to be submitted to the coroner in writing to then be posed by the coroner at the hearing (or Counsel to the Inquest if available);
- the use of models, plans, body maps or similar aids to help communicate a question or an answer;
- whether to require, under s.34A Children and Young Persons Act 1933, that a parent or guardian attends with a child or young person appearing before the court;
- any relevant reporting restrictions.[29]

46. Coroners will often receive applications for special measures or anonymity from those who have been involved in a death in custody or during police contact. Anonymity applications are discussed in more detail in Chapter 9 of the Bench guidance.

Screening a witness

47. Rule 18 governs the use of screens which may only be used if the coroner has determined that giving evidence in that way would be likely to improve the quality of the evidence given by the witness or allow the inquest to proceed more expediently. In *Dyer*[30] the Court of Appeal held that the word 'expediently' was not limited to entailing only matters of practicality or efficiency but was to be equated with 'appropriately' and so includes considerations of the wider interests of justice. The Court noted that open

[28] see further Chapter 9.
[29] see further Chapter 9. Section 39 of the Children's and Young Persons Act 1933 gives the coroner power to prohibit publication of the name or any other particulars that could lead to the identification of a witness who is a child or young person (this cannot apply to the deceased).
[30] *Chief Constable of West Yorkshire Police & Ors v Dyer & Ors [2020] EWCA Civ 1375*

justice was an important facet of the interests of justice. Any restriction on open justice, including orders for anonymity or screens, required cogent justification.

48. There can be a variety of reasons for screening the witness from the view of court attendees. In some cases a vulnerable or intimidated witness might be better facilitated to feel less scared or anxious and so will give their best evidence if they are screened from public view. Screening may also occasionally be used along with other measures[31] to preserve the anonymity of the witness.

49. Where use of a screen has been ordered the screen should prevent the witness from being viewed by the media and members of the public, but usually not from the coroner or jury. In some cases legal representatives or IPs may be prevented seeing the witness but this rare circumstance will require cogent justification taking into account the wider interests of justice in accordance with rules 18(2) and 18(3)[32].

Evidence by live link

50. The use of a live link to allow witnesses to give their evidence is permitted under rule 17 but only if to do so will 'improve the quality of the evidence given by the witness or allow the inquest to proceed more expediently' in accordance with rule 17(2). This wording is similar to the justification under rule 18 for screening a witness, and in relation to rule 18 the Court of Appeal found 'expediently' is equated with 'appropriately' and includes considerations of the wider interests of justice[33].

51. When determining whether to permit remote evidence, rule 17(3) should not be overlooked. This provides that before giving a direction that a witness may give evidence at an inquest hearing through a live link the coroner *must* consider all the circumstances of the case, including in particular any views expressed by the witness or any IP. IPs should be invited to express their view on taking evidence remotely before any coroner exercises their discretion to permit evidence to be given by live link from anywhere.

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[31] See Chapter 9 of the Bench guidance on anonymity of witnesses and reporting restrictions.
[32] *Dyer* ibid.
[33] *Dyer* ibid.

52. More information on partially remote hearings can be found in chapter 6 of this Bench guidance [link].

Taking evidence from abroad

53. On occasion the coroner may wish to rely upon oral evidence given by remote live visual or audio-only link by a person (including an IP) who is abroad i.e. in the territory of a Nation State other than the United Kingdom.[34] Such evidence can only be taken by the coroner if there is no legal or diplomatic barrier.

54. Not all foreign governments are willing to allow their nationals, or others within their jurisdiction, to give evidence before a court in England and Wales via remote links or by telephone. A coroner who wishes to take evidence from abroad should be careful not to breach the principle as stated in *Agbabiaka*[35] that:

> "There has long been an understanding among Nation States that one State should not seek to exercise the powers of its courts within the territory of another, without having the permission of that other State to do so. Any breach of that understanding by a court or tribunal in the United Kingdom risks damaging this country's diplomatic relations with other States and is, thus, contrary to the public interest [§12]…Whenever the issue arises in a tribunal about the taking of evidence from outside the United Kingdom… what the Tribunal needs to know is whether it may take such evidence without damaging the United Kingdom's diplomatic relationship with the other country. [§19]…it is not for this (or any other) tribunal to form its own view of what may, or may not, damage the United Kingdom's relations with a foreign State." [§23]

55. Coroner should therefore note that the giving of oral evidence from another Nation State (the 'foreign State') requires the permission of that State.

How to seek permission to take evidence from abroad

[34] Permission is not required where persons wish to give oral evidence by live link or telephone from England, Scotland, Wales, Northern Ireland, the Isle of Man, the Channel Islands, or from British Overseas Territories such as Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena, Ascension and Tristan da Cunha, South Georgia and the South Sandwich Islands, The Sovereign Base Areas of Akrotiri and Dhekelia, Turks and Caicos Islands, Virgin Islands.

[35] *Agbabiaka (evidence from abroad; Nare guidance)* [2021] UKUT 286 (IAC) here

56. The Foreign and Commonwealth Development Office (FCDO) has established a Taking of Evidence Unit (ToE Unit) which can assist the coroner to ascertain the stance of different overseas governments to the taking of oral evidence from individuals within their territory.

57. There is no available list of countries that do and do not object to evidence being given from their state. This is because the diplomatic position regarding whether a particular foreign State will object to the UK courts taking oral evidence from an individual within their jurisdiction is fluid. Therefore permission will be required for every case and in every hearing affected.

58. If wishing to rely on oral evidence from a witness in a foreign State, the coroner must contact the ToE Unit[36] and provide details of the country the person will be giving evidence from and the date of the inquest hearing. There is no need to provide the name of the witness to the ToE Unit.

59. Generally, where the ToE Unit is aware from previous recent enquiries of the stance of the state in question, it will be able to promptly confirm whether the state has any objection to evidence being given orally from within its territory.

60. Otherwise, the ToE Unit will need to make a specific enquiry of the state via the British Embassy or British High Commission in that country.[37] Whilst many states are signatories to the Hague Convention of 18 March 1970 on the 'Taking of Evidence Abroad in Civil or Commercial Matters' this does not of itself mean there will be agreement by those foreign states to a coroner taking evidence from those in their territory.[38]

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[36] at TOE.Enquiries@fco.gov.uk

[37] A response from the FCDO received in March 2023 stated: "FCDO has historically provided a service where enquirers can check if other countries have diplomatic objections to their citizens/residents providing evidence by video link to Civil, Commercial and Family courts in the UK. This process involves our Missions overseas writing to the host government seeking confirmation that they have no objection to evidence being given in this way. The response has a statue limit of 5 years after which we are required to seek approval again from the host government to confirm their response…..Your enquiry may need to be sent to an Embassy or High Commission for guidance, and this can take time. You should contact us about video link enquiries before arranging hearing or court dates. If the hearing date has already been set, you should aim to make the enquiry a minimum of 8 weeks before the hearing date. Please allow a minimum of 8 weeks for us to get a response from the host country."

[38] Specific details of the position for Hague Convention signatories as to whether the internal law and practice in each convention state can allow for a foreign court to directly take evidence by live link are available here. However much of the data is from 2017 and the picture is extremely complex. In the USA there is legalisation

61. Several Hague Convention signatories require the UK authorities to issue an International Letter of Request (ILOR) to the state concerned.[39] There can be a significant delay in receiving a response. Enquiries of the ToE Unit should, therefore, be made well in advance of the inquest date.

62. It will be a matter for coronial discretion as to whether the listing of a hearing should be delayed pending such enquiries being concluded. If delay becomes an issue, or permission is refused, or the country in question places conditions on consent that are not achievable (whether due to time constraints or otherwise) the coroner will need to consider alternatives to oral evidence being given from that country. This may include asking questions of the witness in writing, as permission is not needed to receive written evidence.[40] Alternatively the witness may be asked to travel back to the UK or to a third country where it is known there are no diplomatic objections to the giving of oral evidence. There is however no power to compel evidence from a person who is outside the jurisdiction of England and Wales.

63. Refusal of permission by the foreign State means that the individual should not be asked to give live visual or audio-only evidence from that State.

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permitting 'a person within the United States voluntarily giving testimony or a statement, or producing a document or other thing, for use in a proceeding in a foreign or international tribunal in any manner acceptable to him', similarly in New South Wales, (Australia) there is no bar to a person voluntarily giving evidence by live link in proceedings in a foreign court if the request is arranged privately between the parties, although the picture in other states of Australia in 2017 was more complex. Some states (such as Turkey & Mexico) record that they do not allow foreign courts to directly take evidence through electronic media. Therefore, the FCDO has in 2022 indicated diplomatic objections to a coroner taking evidence from Turkey whilst this objection remains in place. Many other states will give permission, but only following an ILOR request.

[39] See Presidential Guidance for employment tribunals here and also *R v Kadir* [2022] EWCA Crim 1244, here §33

[40] nor is permission required to receive legal submissions (whether oral or written)