Amending Decisions and Overturning Inquest Conclusions

KEY MATERIALS

Legislation

Coroners Act 1988 s.13

Civil Procedure Rules part 8

CPR Practice Direction 8A: Alternative Procedure for Claims

Chief Coroners Guidance

No 33: Suspension, Adjournment and resumption of Investigations and Inquests

Introduction

1. Coroners' decisions or conclusions can only be challenged by way of Judicial Review or under s.13 Coroners Act 1988.[1] However, this chapter is not concerned with challenges to coroners' decisions or determinations by others, but with circumstances where the coroner seeks to amend their own determinations or to have their own (or a fellow coroner's) inquest quashed.

Decisions before an inquest has concluded

[1] The Coroners and Justice Act 2009 as originally enacted also provided for a new route of appeal to the Chief Coroner against a coroner's decision in s.40 but this has never been brought into force.

2. Once a coroner has performed and completed all the duties and functions of their office in relation to a case the coroner lacks any power to re-open, re-examine or re-make any decision. This is termed *functus officio* and is the doctrine by which the law gives expression to the principle of finality. It means that the coroner ceases to have any further jurisdiction in relation to the decided case once a coroner (or a coroner's jury) has delivered an inquest's conclusion.

3. However, a coroner only becomes *functus officio* once an inquest has been held and concluded. Before this point a coroner has general discretion to amend or change any procedural decision that has already been made during an investigation and inquest that has not yet been concluded, including a decision that has been made by another coroner at an earlier stage in the same investigation.

4. This general discretion covers reversing a decision not to resume an inquest after a criminal trial. In *Flower v HMC Devon*[2] the coroner was not considered *functus officio* when he suspended an investigation pending homicide proceedings and decided not to resume the investigation following the murder convictions. An inquest or an investigation has not been 'held' (for the purposes of s.13(1)(b) of the Coroners Act 1988) until an inquest has been conducted and completed. In *Flower* an investigation had been commenced under s.1 Coroners and Justice Act 2009 (the 2009 Act), but completion of that investigation required an inquest as a constituent part, and this had not been done. The discretion to resume could, therefore, be reconsidered.

5. A coroner who (before 9 September 2024) has notified the local Registrar of Births and Deaths that there will be no investigation, either by way of Form 100A (indicating that preliminary inquiries have established that the duty to investigate the death under s.1 does not arise) or Form 100B (discontinuance under s.4 after a post-mortem examination) or who (since 9 September 2024) has issued a form CN2, will not be *functus officio,* as no inquest has been held, and so the coroner may commence an investigation if new information arises. Indeed an inquest must be held if it later becomes apparent that the s.1(1) duty is triggered.

[2] *Flower v HMC Devon* [2015] EWHC 3666 (Admin)

6. Generally the duty of investigation under s.1(1) of the 2009 Act only arises when a body is within the coroner's area. It may be that a coroner has issued a Form 100A, 100B or CN2 to the Registrar, and then, after the deceased has been cremated, further information comes to light that would trigger the coroner's duty to conduct an investigation. In such circumstances, it is the view of the Chief Coroner that the destruction of the body causes no difficulty. As the cremation occurred after the coroner was already seized of the matter and had conducted their preliminary inquiries (i.e. those which led to the original decision that the s.1 duty did not arise), the investigation can be re-opened without the need to seek a direction from the Chief Coroner under s1(4) of the 2009 Act.

7. If a fresh referral to a coroner is made after a body has already been destroyed lost or is absent and where the coroner was not previously notified of the death, then this will require a s1(5) direction from the Chief Coroner before a coroner can commence an investigation and hold any inquest.

After an inquest has concluded

8. Once an inquest has concluded, even if all interested persons (IPs) agree that an error of fact or law has been made, the coroner is *functus officio* and has no power to change an inquest conclusion (beyond making minor amendments to official forms, such as amending the Record of Inquest if necessary to correct an accidental slip, or typographical error or omission).

9. An error made in the formal registration particulars (other than one related to the cause of death) recorded in the coroner's certificate after inquest can also be corrected, by means of an entry in the margin of the register of deaths, if a coroner certifies in writing the nature of the error and the true facts of the case, after having been themselves satisfied by evidence on oath or a statutory declaration that such an error exists.[3]

10. Otherwise, once an inquest conclusion has been returned there are only two routes to correct errors of fact or law in the inquest's conclusion:

[3] Births and Deaths Registration Act 1953 s.29

(i) by judicial review brought against the coroner by another party within 3 months of the inquest conclusion (which is not discussed further here), or

(ii) an application under s.13 Coroners Act 1988, which may be brought by a coroner themselves or can be brought by another party (most often this will be an IP in the inquest).

11. Where the coroner is making the application under s.13 they appear as the Claimant but, if correcting a shortcoming in their own inquest a defendant need not be named. A coroner should not be expected to conduct their own legal work in respect of such applications and so will generally instruct solicitors or counsel to assist with preparation of the relevant documents. Whilst this can often be managed via the relevant Local Authority's legal team at times the Local Authority will also be an IP in the inquest and therefore external assistance may be required.

12. When bringing s.13 proceedings as the Claimant a coroner will only be entitled to be indemnified for their legal costs by their relevant Local Authority if the coroner has complied with regulation 17(2) of the Coroners Allowances, Fees and Expenses Regulations 2013. The effect of this regulation is that a coroner who wishes to be indemnified for legal costs reasonably incurred in connection with proceedings that are initiated by the coroner must have obtained the relevant local authority's agreement to that indemnity *in advance of* the proceedings being brought.

13. In some cases the error to be corrected through the s.13 application has been due to actions or omissions of an IP (such as an omission in disclosure). In those circumstances it may be appropriate for the coroner to invite that IP to make the *fiat* application, albeit indicating that the coroner will provide a letter in support of their application to the Attorney General. The coroner will then be named as the defendant when any s.13 application is made to the High Court, but will indicate their consent to holding a fresh inquest in their response to the claim form and it will usually not be necessary to attend the hearing.

Quashing an inquest under s.13 Coroners Act 1988

14. There are no time limits upon a s.13 application so this process may be used to overturn an inquest even decades after its conclusion.[4]

15. There are two pre-requisites for an application made by a coroner under s.13:
    (a) That an inquest has already been held;
    (b) That permission (known as a *fiat*) of the Attorney General to bring the proceedings has been obtained;

16. Once a *fiat* is obtained from the Attorney General, the s.13 application to the High Court should follow the procedure under Part 8 of the Civil Procedure Rules.

17. There are no exceptions to the need to seek a *fiat*. Even a senior coroner who believes that the interests of justice require a fresh inquest must obtain leave before they can make an application to the High Court, although it is rare for a *fiat* requested by a coroner to be refused.

The grounds for quashing an inquest under s.13(1)(b)

18. The statutory grounds for quashing an inquest under s.13(1)(b) are that, where an inquest has been held then (whether by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, the discovery of new facts or evidence or otherwise) it is necessary or desirable in the interests of justice that another investigation should be held.

19. The power in s13(1)(b) is stated to be in very broad terms. 'New' facts or evidence within s13(1)(b) has been held to encompass evidence that was not available at the time of the original inquest as well as evidence that was available but was not provided to the coroner and which would have been relevant and admissible had it been made available. There must however be fresh evidence and not merely speculation about evidence that may become available.[5]

[4] See for example Earl v Senior Coroner for East Sussex [2021] EWHC 3468 (Admin) - a successful s.13 application 32 years after an inquest challenging an open verdict where homicide had been indicated.
[5] See *Bell v Senior Coroner for South Yorkshire* [2023] EWHC, 3 WLUK 342; *HM Coroner for Cornwall and the Scilly Isles* [2024] EWHC 2673 (Admin)

20. The leading authority is the decision regarding quashing the initial Hillsborough Inquests. Lord Judge, Lord Chief Justice, summarised the approach to be taken by the High Court when he stated: [6]

> 'The single question is whether the interests of justice make a further inquest either necessary or desirable. The interests of justice, as they arise in the coronial process, are undefined, but, dealing with it broadly, it seems to us elementary that the emergence of fresh evidence which may reasonably lead to the conclusion that the substantial truth about how an individual met his death was not revealed at the first inquest, will normally make it both desirable and necessary in the interests of justice for a fresh inquest to be ordered. The decision is not based on problems with process, unless the process adopted at the original inquest has caused justice to be diverted or for the inquiry to be insufficient. What is more, it is not a pre-condition to an order for a further inquest that this court should anticipate that a different verdict to the one already reached will be returned. If a different verdict is likely, then the interests of justice will make it necessary for a fresh inquest to be ordered, but even when significant fresh evidence may serve to confirm the correctness of the earlier verdict, it may sometimes nevertheless be desirable for the full extent of the evidence which tends to confirm the correctness of the verdict to be publicly revealed.'

21. As was made clear, it is not a necessary pre-condition that a different conclusion will be returned at the fresh inquest, but if it can be shown that a different conclusion is likely to be returned it will be a powerful indication that justice has not, to date, been done.

Available remedies under s.13(2)

22. Section 13(1) is to be seen as a gateway provision to the remedies available under s.13(2) which include: (a) ordering a fresh inquest by the same or a different coroner;

[6] *HM Attorney General v HM Coroner of South Yorkshire (West) & Anor* [2012] EWHC 3783 (Admin), [2012] Inquest LR 143 at [10]:

(b) ordering the coroner to pay costs[7]; and (c) quashing all or part of the inquisition[8], or any determination[9] or finding[10].

23. A fresh inquest will not always be necessary if after the quashing (by deleting) of part of a determination or finding the Record of Inquest would not be left in a misleading or incomplete state[11]. However, if the remedy sought is an amendment of the inquest's determinations or findings by replacing text and substituting in new words then the High Court cannot make such a change under s.13 and the case must be remitted back to a Coroner[12].

24. Where the substantial truth of how the deceased died has been established at the first inquest then the High Court may be reluctant to order a fresh inquest to correct a minor inaccuracy regarding a non-causative matter.[13]

The procedure for seeking a *fiat*

25. Neither the statute nor any rules of court prescribe how an application for a *fiat* is to be drafted and there is no standard form. The formal approach is to draft a 'memorial' petition (with the coroner applicant known as the memorialist) supported by a statutory declaration verifying the memorial.[14] However fiat applications can also made far more simply, by setting out in a letter to the Attorney General the reasons why a fresh inquest is being requested.

26. Whilst the request to the Attorney General need not take any particular form, ideal practice is for the document to record the applicant's details, the deceased's details, the grounds of the application, and the position of the other interested parties if known. It is helpful for this to be set out in numbered paragraphs. The application should also be accompanied by all the documents intended to support the application in a paginated bundle. This will normally include the Record of Inquest, any relevant parts of the

[7] Which is not likely to be in issue when it is the coroner's own application.
[8] i.e. Form 2, the Record of Inquest.
[9] i.e. the questions required to be answered under CJA 2009, sections 5(1) and (2).
[10] i.e. the particulars required by the Births and Deaths Registration Act 1953 to be registered concerning the death (CJA: section 10(1)(b)).
[11] *Shipsey & Shipsey v HM Senior Coroner Worcestershire* [2025] EWHC 605 (Admin) at §96-113.
[12] See *HM Senior Coroner for South London v HM Assistant Coroner for South London [2022]* EWHC 1388 (Admin)
[13] See *Senior Coroner for Northamptonshire v Lovell and Teague* [2024] EWHC 2331 (Admin)
[14] An example can be found at Appendix 4 of *Jervis*.

hearing transcript from the previous inquest and any other documents relevant to the application, including previous witness statements and any fresh evidence. It will not usually be proportionate to provide the Attorney General with the entire inquest disclosure bundle unless all documents within it are relevant.[15]

27. In many cases it will be most efficient for the coroner applicant to draft any letter for the Attorney General in a format similar to how a Claimant might set out the 'Details of Part 8 claim' in the High Court – thereby reducing the time and effort involved in creating a fresh document for the Part 8 application should the *fiat* be granted.

28. There is no formal legal requirement to notify anyone else that the application for a *fiat* is to be made, however, it is good practice to do so. Not only is it courteous for a coroner to inform all the IPs at the earlier inquest that an application is being made (and to also tell any other person who would be an interested party in any High Court application), but also it provides an opportunity to seek their views on the matter. The invariable practice of the Attorney General is to seek the view of those who would be IPs in the fresh inquest before considering the *fiat* application. If the coroner has obtained their views in advance and can provide these with their application then the process will be far quicker.

29. Where the coroner's application is made with the support of the relevant IPs then this should be stated in the application and some evidence of the IPs agreement provided. This may be in the form of a letter or a witness statement from each IP, but it will often be most efficient to simply include a copy of the final order to be sought signed by all IPs to indicate their consent.

30. Whilst it is not a necessary part of the *fiat* application to provide the Attorney General with a copy of the court order that will be sought in the Part 8 claim, application will be speeded up if the coroner is able to provide that order, which will then be ready for use in the subsequent High Court application if proceedings are issued.[16]

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[15] See also: UK Inquest Law Blog: '*Top tips for making a s.13 application'* here with discussion of the case of *In the matter of the Inquest into the death of Michael Richard Vaughan* [2020] EWHC 3670 (Admin)

[16] Note the application cannot be decided by consent, as it must be determined by a Divisional Court. The support of the coroner and the bereaved will be an important but not a determinative factor - see *Farrell v Senior Coroner North East Hampshire* [2021] EWHC 778 (Admin).

31. Applications sent by email alone are preferred by the Attorney General's Office and these should be sent to: correspondence@attorneygeneral.gov.uk[17]

32. The test that is to be applied by the Attorney General when considering whether to grant leave is not formally defined. The Attorney General in his gatekeeping function should not be determining the ultimate matter himself but acting in the public interest. However, it is likely that the Attorney General will approach the issue by considering the prospects of success of the application in the context of the legal test under s.13(1)(b) which the High Court will later apply. Indeed the Attorney General's Office has stated in correspondence that the test applied will be: 'whether there is a reasonable prospect of the applicant satisfying the High Court that it is necessary and desirable in the interests of justice for a fresh inquest to be held'.[18]

Procedure following the grant of a *fiat*

33. Once a *fiat* is granted, an application to the High Court under the Civil Procedure Rules (CPR) part 8 procedure must be made and served on all those directly affected by the application within six weeks.[19] There is no provision in the rules to extend this time limit and therefore if the deadline is missed an application for relief from sanctions or permission under CPR 6.16(1) to dispense with service of a claim form entirely will be required. But it should be noted that the wording of CPR 6.16 makes it clear that the power applies only in "exceptional circumstances"[20].

34. The meaning of the term 'directly affected' has not been the subject of any legal decision but it is likely to be interpreted in the same way as CPR 54.1(f)[21], which defines an Interested Party for the purposes of judicial review proceedings as any person (other than the claimant and defendant) who is "directly affected" by the

[17] *fiat* applications in writing can be addressed to: HM Attorney General, C/O Inquest Team, HM Attorney General's Office, 102 Petty France, London, SW1H 9EA.
[18] In a letter to a Senior Coroner in November 2020. See also *R v the Attorney General, ex p. Ferrante* (8 Feb 1995 – Independent here) which concerned a failed judicial review of a refusal by the Attorney General to authorise proceedings, under s.13. The Court of Appeal held that in considering whether to give his authority the Attorney General was entitled to have regard to the prospects of success of such an application.
[19] CPR PD8A §19.3(3)
[20] See *Shipsey* at §60
[21] *See Shipsey* at §58

claim[22]. This will often, although not invariably, be all those who were IPs at the initial inquest and those who are likely to be IPs at any fresh inquest (if one is being sought).

35. The application should be made by the coroner using their judicial title. It is not appropriate to issue using the coroner's own given name.[23]

36. An application under s.13 Coroners Act 1988 must be heard and determined by a Divisional Court.[24] There is no provision in the Civil Procedure Rules for the matter to be dealt with by a single Administrative Court judge on the papers, and therefore a court hearing will generally be listed.

37. If the s.13 application is agreed by all parties, an agreed order should be provided with the Part 8 application. If there is agreement by all interested parties then once the case is listed and the members of the judicial bench identified it may be helpful for the coroner to make contact with the relevant judges' clerks to inquire whether any further oral submissions or attendance are required. If not it may then be proportionate and financially expedient to request the Divisional Court to excuse any attendance of the Claimant coroner (or their counsel) at the hearing or to permit remote attendance.

38. Even where a case is agreed by all involved, the decision to order a fresh inquest is that of the court, and hence the Divisional Court will usually still convene a pronouncement hearing in public to hand down a formal decision. In wholly uncontentious cases the court may choose to give only a very brief *ex tempore* oral ruling.

[22] as was recently considered in *R (Watson) v Chief Constable Greater Manchester Police* [2025] EWHC 332 (Admin).
[23] See discussion of this issue here
[24] CPR PD8A §19.1