

Counsel to the Inquest

KEY MATERIALS

Legislation

[Coroners Allowances, Fees and Expenses Regulations 2013](#) reg 7.

[Coroners \(Inquests\) Rules 2013](#) rule 21

[Coroners \(Investigations\) Regulations 2013](#) reg 7

Chief Coroner's Guidance

[No. 30 Judge Led Inquests](#)

Introduction

1. The use of Counsel to the Inquest (CTI) by coroners and in judge-led inquests is well-established and is analogous to the role of counsel to a public inquiry. In *R (Plymouth CC) v HM Coroner for Devon*¹ Wilson J commented approvingly on the instruction of CTI. Similarly, the use of a firm of solicitors to assist a coroner is well-established. Although coroners may also sit with legal assessors² this practice has largely been abandoned in favour of instructing CTI and/or solicitors to the inquest.
2. The appointment of a judge to hear an inquest - whether under Schedule 3 as an assistant coroner, or Schedule 10 Coroners and Justice Act 2009 (the 2009 Act) - is dealt with in detail in the [Chief Coroner's Guidance No.30](#). Such cases will often involve lengthy and complex hearings when it is usual for CTI, and often a solicitor to the inquest, to be appointed. In such cases the team of counsel and solicitors will usually be chosen by the judge.
3. Coroners will not need to instruct CTI and/or solicitors to the inquest to assist with the

¹ [2005] 1 Inquest LR at §10

² *R v Surrey Coroner, Ex Parte Wright* [1997] QB 786

majority of inquests, but there are some cases in which such assistance will be justified.

4. Features of inquests that may justify the instruction of CTI and/or solicitors to the inquest include:

- Factual or legal complexity;
- Novel points of law;
- Disputed / complex expert evidence and factual issues;
- Voluminous and/or complex documentation;
- Lengthy or very complex jury inquests;
- Multiple interested persons (IPs), particularly where there is an adversarial subtext;
- Long duration of the inquest with large numbers of witnesses;
- A mass fatality incident;
- National security concerns, materials covered by the Regulation of Investigatory Powers Act 2000 / Investigatory Powers Act 2016 and other sensitive materials giving rise to special difficulties (police firearms operations, terrorism, foreign cases).

Tasks of CTI

5. It will be a matter for the coroner to decide what forms of assistance are needed and who should provide them. CTI need not be instructed for the entirety of the inquest process, rather coroners may use CTI (or a team of solicitors) to assist them in different ways. In particular:

- A KC or senior junior barrister appointed as CTI might provide advice or submissions on specific points of law, e.g. to draft submissions as ‘amicus curiae’ (friend of the court) on a complex or difficult point of law arising at a pre-inquest review hearing (‘PIR’).
- CTI might also assist more extensively, in both the preparation for and conduct of the inquest hearing on behalf of the coroner, including assisting with preparation of agenda for PIRs, liaison with other counsel, leading the examination of witnesses, drafting a provisional list of jury issues for the

coroner's consideration, and preparing summaries of witness evidence to assist with summing up.

- A coroner may instruct solicitors either from their local authority legal services department or from an appropriate law firm to assist with tasks such as initial review of documents; preparation of material for disclosure to IPs; preparation of bundles; correspondence with lay and expert witnesses.
- A coroner may also use much more junior counsel in a support role for some cases, undertaking tasks such as managing the documents, bundling, disclosure, taking a detailed note of key parts of evidence to feed into later witnesses' questions or assisting in formulating the summing up.

However in all cases the judicial decisions must remain those of the coroner who may delegate administrative but not judicial decision making to their CTI or solicitors.

Choice of CTI

6. In cases where CTI or solicitors are instructed, the choice of barrister or solicitors is that of the coroner. The coroner will wish to have regard to factors such as: accreditations, inquest experience, technical/specialist skills, recommendations, fee structure, accessibility, directory entries, security clearance, geographical location and any other matters of relevance to the close working relationship that will develop. It is usually sensible for the coroner to meet CTI personally before instructing them.
7. In some cases, CTI and/or solicitors may need to be [Developed Vetted](#) ('DV cleared') in order to review material which may raise national security concerns. DV cleared counsel and solicitors may be used for the discrete task of reviewing such material even in cases which do not otherwise require the instruction of external lawyers.³
8. In most cases, it will not be appropriate for an assistant coroner in the coroner area to perform the role of CTI as this lessens the appearance of the independence of CTI from the coroner and the coroner's service. CTI clearly being independent is likely to reduce any concerns regarding bias or inappropriate influence.

³ see [Chief Coroner's Guidance No.30](#), at §28

Instruction and Funding of CTI

9. The decision to instruct CTI and/or solicitors is ultimately for the coroner. The coroner does not need the permission of the funding local authority to do so as it is a judicial decision. However, the instruction of CTI and/or solicitors carries a cost which may be significant, so it would be prudent to secure in writing the funding local authority's agreement to meet the costs in advance of any instruction being confirmed.
10. In any event, in accordance with the [Coroners Allowances, Fees and Expenses Regulations 2013](#) Reg. 7, the coroner must notify the relevant local authority of any unusual expenditure to be incurred, and this will include that incurred by the instruction of CTI and/or solicitors. The coroner should generally provide the funding authority with sufficient and updated information about the likely costs to be incurred based on hourly rates/brief fees and an estimate of the hours of work to be required, so that the local authority can budget and settle fee notes and invoices in a timely way.
11. The local authority may wish CTI and solicitors to invoice on a monthly basis in order to assist with the local authority's budgeting.
12. There is no national agreement as to the fees that may be charged by CTI and these are a matter of individual determination by each coroner. However, coroners may wish to be guided by the fee rates set by the Attorney General's Office for Treasury Counsel.⁴
13. An inquest which uses CTI and/or solicitors often also bring other expenditure due to their complex nature which the local authority will need to resource or fund for example a website, recording and transcribing, alternative venue etc. Coroners should ensure that there is appropriate communication with the local authority on these points.

Delegation of functions

14. If CTI and/or solicitors are instructed, the responsibility for the investigation and inquest remains that of the coroner. The coroner marshals the evidence, lists the

⁴ The rates are set out [here](#) for the Attorney General's Civil Panel Counsel. In January 2025, rates started at £60 per hour for junior counsel under 5 years call, rising to £120 ph for senior juniors and £180-£250 ph for KCs.

hearing and deals personally with all associated matters in readiness for the inquest. The coroner has primary responsibility for the questioning of the witnesses throughout, no matter what the duration of the hearing is. In accordance with general public law principles the coroner may delegate administrative functions under [Coroners \(Investigations\) Regulations 2013](#) reg 7, but may not delegate judicial functions. However, there is nothing improper about a coroner instructing CTI to provide assistance and to examine witnesses on their behalf, provided that the coroner retains overall control of proceedings and takes the judicial decisions.

15. A coroner has a general power to rule on matters of procedure not specifically governed by statutory rules, subject to public law principles of fair procedure. The Courts have held that this extends to a general power to ‘allow anyone to question witnesses’.⁵ Provided that the coroner retains overall control and a right to ask questions in addition to those of CTI, there is no question of improper delegation in that regard.
16. There are some functions which by statutory provision are reserved to the coroner and which therefore a coroner could not ask CTI to perform (e.g. directing the jury as to law and summing up the evidence).
17. At the inquest CTI will generally not sit alongside the coroner on the bench, their separation from the coroner is best demonstrated by a separate position in court which, depending on court layout, may be to the side of the bench or in the well of the court with the other advocates / representatives.
18. Where CTI provides guidance to the coroner on contentious issues of law or on significant and potentially contentious points of procedure, that guidance should either be given in writing and disclosed to all IPs or presented through oral submissions in open court. Advice of CTI may initially be given privately to the coroner, but if so it should be repeated in open court and the submissions of other IPs also heard and considered before the coroner comes to any decision. A court or tribunal should never determine contentious issues on the basis of private submissions.
19. Because submissions made by CTI are made from an independent viewpoint, they should reflect CTI’s honest view of the correct legal position, rather than ‘instructions’

⁵ *R v Surrey Coroner, Ex Parte Wright* [1997] QB 786

given by the coroner.

20. Any rulings of the coroner must represent the coroner's own judicial decision. While a coroner may accept the submissions of CTI and may receive assistance from CTI in drafting any ruling, it is important that the coroner always exercises independent judgment and takes responsibility for all decisions made and rulings produced.

Practical Benefits of CTI

21. Instruction of CTI and/or solicitors may bring the following practical benefits, to set against the costs:
 - Narrowing the issues in dispute. The ability of CTI to talk to other counsel (or the ability of a solicitor to the inquest to talk to other solicitors) can lead to agreement that narrows the issues in dispute, reduces the number of documents/witnesses required and reduces the length of the inquest accordingly;
 - Enabling the efficient allocation of resources (in that the coroner can concentrate on the hearing without distraction);
 - Relieving work pressure on the coroner's officer and coroner's administrative staff;
 - Allowing the investigation and inquest to proceed as expeditiously as possible;
 - Promoting the ability of informal discussions with advocates that the coroner cannot hold directly;
 - Reducing exposure to a Judicial Review and/or complaint with the associated costs (that may be more than the costs of instructing CTI).
23. At the inquest, CTI and/or solicitors can advise and assist with:
 - The management of pre-inquest review hearings (including preparation of PIR agenda and holding administrative pre-meetings with IPs' counsel to narrow issues);
 - Assisting unrepresented IPs with matters of procedure;
 - Securing and marshalling the evidence;
 - The disclosure of evidence, including redactions of documents;
 - Bundling and advice on the format and indexing of bundles;

- Selection of witnesses (including whether evidence should be adduced under Rule 23 or given in person);
- Selection and instruction of experts (including assistance with drafting letters of instruction);
- Difficult points of law such as Public Interest Immunity issues and anonymity
- Special measures for vulnerable witnesses, including liaising with other counsel on [Ground Rules Hearings](#);
- Practical considerations including whether evidence should be heard remotely, what CCTV / body worn video footage should be used in court, etc;
- Managing media requests for disclosure;
- Witness scheduling; and
- Other matters of relevance on the law and procedure.

24. Under the direction of the coroner CTI, and a solicitor as necessary, may:

- Advise and assist with the coroner's opening;
- Prepare documents for use in the inquest, such as a chronology;
- Examine witnesses by asking questions on behalf of the coroner before other IPs;⁶
- Read statements under rule 23;
- Advise on any legal issues and procedure arising from time-to-time and make submissions in open court in respect of such issues;
- Assist with the drafting of a ruling;
- Act as a bridge between the coroner, the family, other IPs and advocates by liaising with each of them and assisting the smooth running of the inquisitorial procedure;
- Advise on the coroner's summing up to a jury, any questions for their consideration and route to conclusion, if required, together with the framing of any narrative conclusion or questionnaire in contemplation;
- Advising on the process for and content of Reports to Prevent Future Deaths;

⁶ see [Coroners \(Inquests\) Rules 2013](#) r.21

- After the inquest hearing, CTI and /or solicitors can assist by advising on archiving of documents, post-inquest disclosure issues, etc.

Privileged advice from CTI

25. If there is an actual or threatened challenge by way of Judicial Review or otherwise, a lawyer acting as CTI can advise more expediently and economically than if counsel is instructed for the first time to advise on the challenge. Regardless of whether such a claim (or threatened claim) arises during or after the inquest, where CTI is instructed to advise on a civil action the advice of counsel on the actual or potential challenge will be privileged and so would not have to be made public in such a situation.