**Open Justice**

**Key Materials**

**Legislation**

[Section 39 Children and Young Persons Act 1933](https://www.legislation.gov.uk/ukpga/Geo5/23-24/12/section/39)

[Sections 4, 9 & 11 Contempt of Court Act 1981](https://www.legislation.gov.uk/ukpga/1981/49/section/11)

[Section 1 Sexual Offences (Amendment) Act 1992](https://www.legislation.gov.uk/ukpga/1992/34/section/1)

[The Coroners (Inquests) Rules 2013](https://www.legislation.gov.uk/uksi/2013/1616/made)

[Coroners (Investigation) Regulations 2013](https://www.legislation.gov.uk/uksi/2013/1629/contents/made)

**Other material:**

[Practice Guidance on the use of live-text based communication from Court, 2011](https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Guidance/ltbc-guidance-dec-2011.pdf)

[Independent press standards organisation: deaths and inquests guidance](https://www.ipso.co.uk/member-publishers/guidance-for-journalists-and-editors/deaths-and-inquests-guidance/)

[HM Courts and Tribunals service: General guidance to court staff on supporting media access to courts and tribunals](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1132175/HMCTS729_HMCTS_media_guidance_Dec_2022_v3.pdf)

**Introduction**

1. The principle of open justice, as best explained by the Court of Appeal in *Guardian News and Media Ltd,*[[1]](#footnote-2) applies to all courts including coroners’ courts. The important general principles that justice is administered in public and that everything said in court is reportable, underlies the coroner sitting in public courts in open hearings, recording hearings, giving public notification of inquests in advance, and providing the media with access to documents where appropriate.

**General principles**

1. Inquest hearings should generally be held in public in a courtroom easily accessible to the media and the public,[[2]](#footnote-3) where all witnesses are identified and can be seen. Fair, accurate and contemporaneous media reporting of proceedings is to be encouraged and so media reporting should not be curtailed unless strictly necessary. Any departure from open justice must be stringently regulated.[[3]](#footnote-4)
2. The media and the public are generally entitled to attend all inquest hearings, hear all legal argument before the coroner and report upon anything that is said or occurs in open court. Names of the deceased, the witnesses (unless granted anonymity) and any Interested Person (IP) will always be stated in open court and therefore to the media. However, in very limited circumstances, a coroner has the power to sit in private[[4]](#footnote-5) and to withhold the names of witnesses[[5]](#footnote-6) or IPs from the press and public or prevent any member of the press or public reporting any further some matters that they may have heard in court[[6]](#footnote-7).
3. If persuaded that information that would generally be made public should be withheld, the coroner should endeavour to minimise any restriction put in place as far as practicable and so limit the impact upon open and transparent justice.[[7]](#footnote-8)

**Publication of hearing dates**

1. [Rule 9(3) Coroners (Inquests) Rules 2013](https://www.legislation.gov.uk/uksi/2013/1616/article/9/made) requires a coroner to make the details of all final inquest hearings publicly available before the hearing commences. No fixed time period for notification is given in the rules, but coroners should publish the details of all final inquest hearings online at least seven days in advance of the hearing and should preferably give even longer notice. The hearing details that the rules require to be published are the date, time and place of the inquest, although this information will be meaningless unless the deceased’s name is also given. It is also helpful to include the age of the deceased and the date and place of death (for example, the hospital or town where they died, not a home address) if this is known. However, it is not appropriate for a coroner to publish details of the nature of the death or the medical cause of death, as those will be matters to be determined on the evidence.
2. The hearing details should be readily accessible and so should be published online. Some coroner’s service webpages may be hosted on a local authority website, but it is far better for a separate website to be used for the coroner’s service, thereby reflecting the separation of the coroner in their judicial role from their host local authority, so reinforcing judicial independence.
3. Although it is not a specific requirement under the rules to publish the time and date of a pre-inquest review hearing (PIR) or an inquest’s opening, the public’s right to attend such hearings is of little value unless those hearing dates are also published in advance. Details of openings and PIRs should therefore be published on the same webpage as the full inquest hearings. The [rule 5(1)](https://www.legislation.gov.uk/uksi/2013/1616/article/5/made) requirement to open an inquest ‘as soon as reasonably practicable after the date on which the coroner considers that the duty under [s.6](https://www.legislation.gov.uk/ukpga/2009/25/section/6) applies’ will mean that giving several days’ notice of planned openings is not possible, at least one working day’s notification should be given. It is arguably not reasonably practicable to conduct an opening on shorter notice than that because of the importance of advertising the opening for open justice purposes.
4. Similarly, although they do not involve a hearing, the principles of open justice are such that public notice should also be given of inquests to be held in writing. One way to achieve this is to set out on a public website a list of any inquests in writing that are to be completed each week. Giving a specific date or time for an inquest in writing is not required. However as inquests held in writing must always be opened in public under [rule11(1)](https://www.legislation.gov.uk/uksi/2013/1616/article/11/made) another approach that reflects good practice is to list these inquests on the coronial website as being the opening of an inquest in writing and to announce in court when the case is opened that the inquest is to be held in writing.

**Closed hearings**

1. The exceptions to the rule that coroners must hold open public hearings are very limited and are found in [rule 11(2)-(5)](https://www.legislation.gov.uk/uksi/2013/1616/article/11/made). There is no provision for excluding IPs or their lawyers from an inquest hearing, although a separate hearing (or part of a hearing) determining the operation of public interest immunity (PII) may, if the interests of justice require, be heard in their absence.[[8]](#footnote-9)
2. The public and media may only be excluded from an inquest hearing in the interests of national security. But the public and media may be excluded from a PIR hearing either in the interests of national security *or* if the coroner considers it would be in the interests of justice to do so. This latter provision should not be used for mere convenience. If a hearing is to be held in private the specific interest needing to be protected and why the need for protection arises should be clearly identified and stated in open court (to the extent that this is practicable without defeating the purpose of holding a closed hearing).
3. Holding a PIR (or part of one) in the absence of the media and public may be required in the interests of justice if the matters in issue cannot be discussed properly between participants in public without revealing confidential information. One example is when a [Ground Rules Hearing](https://www.theadvocatesgateway.org/news/toolkit-1%3A-ground-rules-hearings) will require discussion of a witness’ confidential medical condition and their specific vulnerabilities.
4. Applications for reporting restrictions and anonymity of witnesses[[9]](#footnote-10) will usually be heard in public, with care needing to be taken by all involved not to reveal the identity of the person whose anonymity is under consideration. If the coroner does direct that the media and public should be excluded from a hearing, or from part of a hearing, under r.11 then the outcome of the closed hearing should be announced in open court, giving a gisted summary and brief reasons for any decision, in so far as these can be publicly stated without defeating the purpose of the closed hearing.
5. Where possible any consideration of (i) excluding the public from an inquest hearing, (ii) an application for anonymity, or (iii) the imposition of reporting restrictions, should be addressed in advance of the inquest at a PIR hearing, with due notice[[10]](#footnote-11) to the media. This gives the opportunity for the press to make representations should they wish to do so. This can also avoid later applications by the media during the inquest itself, which may disrupt the planned timetable for the proceedings.
6. On occasions a coroner will be asked by an IP to exclude the public from a PIR in the interests of justice; however, having heard the submissions in private, the coroner may conclude that the matter did not actually need to be discussed in private at all. In such cases the coroner should re-open the court to the media and public and either explain what has occurred and what was said behind closed doors or alternatively the coroner might direct that the recording of the closed part of the hearing is re-played in open court or otherwise announce that it is available if any media representative wishes to listen to it.

**Media requests for disclosure of documents**

1. The media are not generally entitled to any more information in relation to evidence at an inquest other than that which has been adduced publicly. All courts and tribunals have an inherent jurisdiction under the principle of open justice to allow access to any document referred to in the course of proceedings in open court.
2. Any requests made for disclosure by the media for inquest exhibits or other documents that have been referred to in evidence should be considered by the coroner in accordance with [regulation 27(2) Coroners (Investigation) Regulations 2013](https://www.legislation.gov.uk/uksi/2013/1629/regulation/27/made) (‘the Regulations’) which permits a coroner to provide a document or copy of a document to ‘any person who in the opinion of the coroner is a proper person to have possession of it’. There is a presumption in favour of granting media requests for disclosure, unless there is a compelling reason against it.[[11]](#footnote-12) Document is defined as ‘any medium in which information of any description is recorded or stored’[[12]](#footnote-13) and so would include voice recordings and images from CCTV and body worn recorded footage.
3. A coroner need not treat a request for access to a document as coming from the media unless the applicant is a bona fide journalist[[13]](#footnote-14) and the request is made for a proper journalistic purpose. The request must specify precisely the document sought and explain why it is required. Where any of this is unclear, the coroner may ask for clarification.
4. Access to documents referred to in court is governed in the first instance by the open justice principle. Open justice is a constitutional principle ‘at the heart of our system of justice and vital to the rule of law’: per Toulson LJ in *Guardian News and Media Ltd.* [[14]](#footnote-15) Where a member of the press requests access to material referred to in an inquest there is a presumption in favour of providing access.[[15]](#footnote-16) The purpose of the disclosure is to enable the public to understand and scrutinise the justice system.
5. For this reason, if any skeleton arguments or written submissions have been put before the court on behalf of the IPs then media requests for access to these should generally be facilitated. These documents are often the single most useful resource for any third party trying to understand the issues in a case, as they will often summarise the key issues of fact and law that the coroner has to decide and set out the main arguments advanced by the IPs. If such documents are kept from the press then the legal arguments put before the court will not have been made fully public.
6. The press are not, however, entitled to see documents that have not been referred to in court. If a coroner holds documents which have not been relied upon nor adduced in evidence, and so are not material to the decisions being made by the coroner or the jury, these need not be disclosed, although there is still a discretion to do so in appropriate cases.
7. Similarly the press are not entitled to have access to documents before a hearing, save when disclosure is necessary to enable the media itself to make representations (when entitled to be heard), for example in relation to a proposed reporting restriction.
8. The presumption in favour of granting media access to documents does not mean that the media are ‘entitled to disclosure’ or that it should take place ‘by default’. The coroner may refuse access where there are compelling reasons against it. The presumption of providing access under reg. 27(2) is therefore capable of rebuttal, but only for good and justifiable reason. In the *Guardian News* case it was described as ‘some strong contrary argument’ or ‘countervailing reasons’.
9. The coroner should, therefore, normally accede to a media request unless there is a compelling reason not to. The coroner must make these decisions on a case by case basis, document by document, noting the presumption of disclosure and bearing in mind the important role of the press as ‘public watchdog’ in a democratic society.

### The approach to requests for disclosure

1. In relation to a request by anyone other than an IP for a recording or any other document, the discretion[[16]](#footnote-17) of the coroner on this issue must be exercised judicially. The coroner should take into account:
* the person requesting the document
* the reason for the request
* the public interest
* the sensitivities of particular passages of evidence
* the need for editing or redaction (if any, bearing in mind this was a public

hearing), and

* other relevant factors

**Media requests for recordings**

1. All inquest hearings, including PIR hearings, must be recorded by the court and the coroner must keep the recording to comply with [rule 26.](https://www.legislation.gov.uk/uksi/2013/1616/article/26/made)  A recording of an inquest hearing is a ‘document’ for the purposes of the inquest regulations and rules.[[17]](#footnote-18)
2. In addition, any person may, with the leave of the court, make their own recording of a hearing, pursuant to the [Contempt of Court Act 1981](https://www.legislation.gov.uk/ukpga/1981/49/section/9) s.9(1)(a). The long standing guidance is that applications from legal representatives, bona fide journalists[[18]](#footnote-19) and IPs to use their own recording device should be treated sympathetically.[[19]](#footnote-20) However, it would be a contempt of court for anyone to make or attempt to make a recording of proceedings without the coroner’s express permission.
3. If leave is given to someone to make their own recording, conditions can be placed on that leave pursuant to [s.9(1)(c)](https://www.legislation.gov.uk/ukpga/1981/49/section/9). The effect of [s.9(1)(b)](https://www.legislation.gov.uk/ukpga/1981/49/section/9) is that any such recording may only be used for that person’s own purposes (e.g. for ensuring accurate media reporting). It would be a contempt of court if they were to publish the recording in any way or play it in the hearing of the public, and the coroner has no power to give anyone leave to do so.[[20]](#footnote-21)
4. Requests under this provision are, however, quite rare given that the court’s own recording is likely to be complete and of better quality, therefore it is far more common for an application for access to the court’s own recording to be made under [reg.27(2).](https://www.legislation.gov.uk/uksi/2013/1629/part/6/made)
5. If permission has been given for someone to make their own recording then it is also prudent to provide them with a written warning notice in line with the wording appended here.[[21]](#footnote-22)

**Live text-based communications**

1. Unlike the public, the media do not need to apply to use text-based devices to communicate from court. In accordance with the Lord Chief Justice’s [Practice Guidance](https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Guidance/ltbc-guidance-dec-2011.pdf)[[22]](#footnote-23) communications by journalists and legal commentators from the courtroom using mobile phones or laptops are permissible for the sole purpose of fair and accurate reporting. Such live communication will generally, in accordance with the journalists’ codes of ethics, present merely a factual account of what is being said in court.
2. A journalist who uses a device for live court reporting on X, Threads or any other social media platform will be subject to the same legal restrictions and obligations as any other form of court reporting. Electronic devices should not be used in a manner that causes a disturbance or distraction in the courtroom and the coroner retains full discretion to prohibit live, text-based communications from court, if such a prohibition facilitates the administration of justice.
3. Members of the public who wish to engage in live communications from the courtroom must apply to the coroner for permission in advance. The application need not be a formal one, it might, for example, be a request passed on through court staff. Each application must be judged on its own merits. It is therefore reasonable for a coroner to ask any member of public who seeks permission to engage in live communications from court to give their reason for wanting the relevant permission. That reason should then be taken in to account when balancing the needs of open justice with the coroner’s duty to ensure that proceedings are conducted consistently with the proper administration of justice and to avoid any improper interference with its processes.
4. If live communications by members of the public cause any disturbance or detract from the purpose of the inquest, then it may not be in the interests of justice to allow them to continue. For example, if a member of the public is communicating something from the courtroom that is not merely factual, but includes commentary upon the evidence being given or expresses opinions about the evidence or the demeanour or credibility of witnesses then this may create pressure on witnesses, by distracting or worrying them.
5. Whilst mobile phones may be used in court for texting it remains a criminal offence for anyone to take photographs or other images, still or moving, or make a sketch of any person in court or within the precincts of the court.[[23]](#footnote-24) However, since it is not an offence to photograph an inanimate object in the court precincts, journalists may be permitted to use their mobile devices to photograph court documents to which they are entitled and coroners should generally facilitate this when requested.[[24]](#footnote-25) If photography of court documents is allowed before the end of the hearing the coroner may have reason to restrict the use to which the photograph of a document is then put. The use might, for example, be limited to aiding accurate media reporting of the precise text of a long document. If necessary to avoiding a substantial risk of prejudice to the administration of justice, the coroner could order that the publication of any report, or any report containing the information in a photographed document, must be postponed[[25]](#footnote-26). When making such a direction, the coroner should give clear reasons and specify the point at which the reporting embargo will be lifted.
6. The statutory prohibitions on photography and recording in court equally apply to remote observers of proceedings who must be warned against taking screenshots of coronial proceedings or making unauthorised audio or video recordings.[[26]](#footnote-27)

1. [EWCA Civ 420; [2013] QB 618](https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Judgments/guardian-city-of-westminster-mags-03042012.pdf) [↑](#footnote-ref-2)
2. See [*Storer v British Gas PLC* [2000] EWCA B258](https://www.bailii.org/ew/cases/EWCA/Civ/2000/B528.html), where a preliminary hearing which took place in a chairman’s locked office due to lack of tribunal courtrooms was unlawful as, contrary to the Rules of Procedure, it had not taken place in public. [↑](#footnote-ref-3)
3. [R *v Bedfordshire Coroner ex p Local Sunday Newspapers Ltd* (2000) 164 JP 283](https://www.ucpi.org.uk/wp-content/uploads/2017/11/R-v-Bedfordshire-Coroner-ex-p-Local-Sunday-Newspapers-2000-164-JP-283.pdf) [↑](#footnote-ref-4)
4. See Coroners (Inquests) Rules 2013, [r. 11(4) & (5)](https://www.legislation.gov.uk/uksi/2013/1616/article/11/made) [↑](#footnote-ref-5)
5. There is generally no need to formally withhold the address of a witness as it is usually unnecessary to state the address of any IP or inquest witness in open court, unless this is relevant to the scope of the inquest or is one of the registration particulars. [↑](#footnote-ref-6)
6. See chapter 9 on anonymity and reporting restrictions [↑](#footnote-ref-7)
7. [*R (Hicks) v Inner North London Senior Coroner* [2016] EWHC 1726](https://www.bailii.org/ew/cases/EWHC/Admin/2016/1726.html) [↑](#footnote-ref-8)
8. The test for what the court must consider when deciding a PII application is set out [*in R v Chief Constable of the West Midlands Police, ex parte Wiley* [1995] 1 AC 274](https://www.bailii.org/uk/cases/UKHL/1994/8.html). [↑](#footnote-ref-9)
9. See chapter 9 on anonymity and reporting restrictions. [↑](#footnote-ref-10)
10. See chapter 9 on anonymity and reporting restrictions regarding notifying the press of an application [↑](#footnote-ref-11)
11. [R. *(Guardian News and Media) v Westminster Magistrates* [2012] EWCA Civ. 420](https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Judgments/guardian-city-of-westminster-mags-03042012.pdf) [↑](#footnote-ref-12)
12. See Coroners (Investigations) Regulations 2013, [reg. 2](https://www.legislation.gov.uk/uksi/2013/1629/regulation/2/made) and Coroners (Inquests) Rules 2013, [r.2](https://www.legislation.gov.uk/uksi/2013/1616/article/2/made) [↑](#footnote-ref-13)
13. ###  The recognised accreditation to identify a bona fide journalist is the UK Press Card issued under a voluntary scheme operated by the [UK Press Card Authority](https://presscards.co.uk/). Any UKPCA card can be verified using the Hotline 0870 837 6477. The cardholder should be able to provide a personal PIN or password to be given to the phone operator along with the card serial number. Where necessary a complete card check can be done by using this Verification Hotline, checking the card photo, checking the card bears a UK Press Card Authority hologram, and checking the card’s expiry date.

 [↑](#footnote-ref-14)
14. [EWCA Civ 420; [2013] QB 618](https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Judgments/guardian-city-of-westminster-mags-03042012.pdf) [↑](#footnote-ref-15)
15. [Observer and Guardian v UK [1992] 14 EHRR 153](https://www.ucpi.org.uk/wp-content/uploads/2018/03/The-Observer-and-The-Guardian-v-United-Kingdom-Application-No.-1358588-1992-14-E.H.R.R.-153.pdf) [↑](#footnote-ref-16)
16. derived from the word ‘may’ in [reg.27(2)](https://www.legislation.gov.uk/uksi/2013/1629/regulation/27/made) [↑](#footnote-ref-17)
17. See Coroners (Investigations) Regulations 2013, [reg. 2](https://www.legislation.gov.uk/uksi/2013/1629/regulation/2/made) and Coroners (Inquests) Rules 2013, [r.2](https://www.legislation.gov.uk/uksi/2013/1616/article/2/made) [↑](#footnote-ref-18)
18. The recognised accreditation to identify a bona fide journalist is the UK Press Card issued under a scheme operated by the UK Press Card Authority. [↑](#footnote-ref-19)
19. Home Office Circular of 1981 (no. 79 of 1981). No longer available on the internet, but see *Dorries on Coroners* §7.91 [↑](#footnote-ref-20)
20. See further at Chapter 6 §46 on the use of inquest recordings and transcripts taken from them. [↑](#footnote-ref-21)
21. A suggested notice warning against improper use of the court’s own recording when provided under reg.27(2) can be found in Chapter 6 §49. [↑](#footnote-ref-22)
22. [Lord Chief Justice’s Practice Guidance on the use of live-text based communication (including twitter) from Court for the purposes of fair and accurate reporting, 2011.](https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Guidance/ltbc-guidance-dec-2011.pdf) [↑](#footnote-ref-23)
23. section [41(1) and s.41(2)(c), Criminal Justice Act 1925](https://www.legislation.gov.uk/ukpga/Geo5/15-16/86/section/41). [↑](#footnote-ref-24)
24. The statutory prohibition on photography only relates to taking pictures of people. Allowing journalists to take pictures of documents in court will often be quicker and far less administratively burdensome than making physical copies of documents or emailing copies to journalists. [↑](#footnote-ref-25)
25. s.4(2) Contempt of Court Act 1981 [↑](#footnote-ref-26)
26. See further Chapter X on remote hearings here [↑](#footnote-ref-27)