

Opening the Inquest

KEY MATERIALS

Legislation

Coroners and Justice Act 2009

Coroners (Inquests) Rules 2013

Coroners (Investigations) Regulations 2013

Introduction

1. The Coroners and Justice Act 2009 (the Act) introduced a new regime allowing a greater flexibility for coroners considering deaths reported to them. A three-stage process allows (1) preliminary inquiries with no investigation,¹ (2) an investigation, with no inquest, or (3) an investigation, plus an inquest.
2. There is no need to wait until an inquest has been opened before releasing the deceased's body for burial or cremation. The effect of [reg.20](#) and [reg.21](#) is that coroners must release the deceased's body as soon as practicable if the body is no longer needed for the purposes of their investigation.

Disputes over the release of a body

3. Where, rarely, a dispute arises between family members as to who a body should be released to, or how it should be respectfully disposed of, the coroner should take the following steps:
 - a) Identify if the deceased has made a will and who is the executor of the will.
Where there is an executor, the body should be released to them to make the appropriate arrangements in accordance with the deceased's wishes.

¹ s.1(7) CJA 2009

- b) If there is no will, the entitlement and duty to arrange disposal under common law will fall upon the administrators of the deceased's estate. Hence it is to them that the coroner should usually release the body. However, the practical reality is that the time taken for administration to be obtained usually means that letters of administration will not have been formally issued at the time the funeral is to be arranged.

- c) In the absence of a will or letters of administration, the coroner will need to decide, and indicate, to whom they intend to release the body. This person will generally be the person or persons with the greatest entitlement to be the deceased's administrator as determined by the 'Rules of Intestacy'.

- d) Under [rule 22 of the Non-Contentious Probate Rules 1987](#) ('r.22 NCPR') there is a strict order of priority regarding who can apply for a grant of administration (letters of administration) when someone dies without a will. This generally mirrors the inheritance rules, starting with any surviving spouse or civil partner. The deceased's children, come before the deceased's parents; then their siblings, nieces and nephews come before their grandparents; down to uncles, aunts and cousins, with the Treasury Solicitor handling bona vacantia (ownerless property) if no-one else qualifies.

4. The formal intestacy priority is as follows:

- 1) Spouse or Civil Partner.
- 2) Children & issue (Children and if deceased, their children i.e. the deceased's grandchildren).
- 3) Parents.
- 4) Whole blood siblings & issue (brothers/sisters and if deceased, nephews and nieces).
- 5) Half-blood siblings & issue.
- 6) Grandparents.
- 7) Whole blood uncles/aunts & issue (aunts/uncles and if deceased, cousins).

- 8) Half-blood uncles/aunts & issue.
 - 9) Treasury Solicitor (for the Crown/bona vacantia).
5. Under [s.46 of the Administration of Estates Act 1925](#), even if the deceased person was separated from their spouse or civil partner, the spouse or civil partner would come before the deceased's children or parents in obtaining a grant of administration.
 6. Usually there is no dispute about to whom the body should be released to arrange a funeral or cremation, but there can be occasions where two executors, or if the deceased died intestate, two or more factions of a bereaved family are in dispute.
 7. The coroner's decision whether and to whom to release a body is one that may be subject to Judicial Review. If a coroner is made aware of a likely dispute over who should take possession of a body, there is High Court dicta to support the view that the coroner should ensure the different factions are notified of the intended release before it takes place. Indeed, in many cases of dispute the coroner giving such an indication may assist the bereaved to come to an amicable agreement about dignified disposal.
 8. Where agreement cannot be reached, the coroner will have to make a decision. Firstly, the coroner should consider if there are any special circumstances which weigh in favour of varying the order of priority set out in r.22 NCPR. Secondly, they need to ask is whether it is necessary or expedient to do so. It would be a rare case for both of those questions to be answered in the affirmative. In *Borrows v HM Coroner for Preston*², Cranston J determined that when a deceased person's wishes are known, those wishes are capable (if the high threshold is met) of overriding the standard, rigid hierarchy of relationships set out in the rules of intestacy.
 9. The decision to whom to release the body should be made by the coroner applying the guidance in *Borrows* and so considering the following:
 - a) Who would first be entitled to letters of administration under r.22 NCPR?.

² [2008] EWHC 1387 (QB), [2008] Inquest Law Reports 72

- b) Do any special circumstances weigh in favour of varying the order of priority set out in r.22 NCPR? Those special circumstances may well include the previous wishes of the deceased person.
- c) Is it therefore necessary or expedient to vary the order of priority set out in r.22 NCPR?

10. In *Anstey v Mundle*³, the High Court observed that in determining to whom a deceased's body should be released for the purposes of its burial, the following non-exhaustive factors were relevant:

- a) the deceased's wishes;
- b) the reasonable requirements and wishes of the family who were left to grieve;
- c) the location with which the deceased had been most closely connected; and
- d) most importantly, that the body be disposed of with all proper respect and decency and, if possible, without further delay.

11. If, however, the coroner is then made aware that a challenge to the right of burial/cremation has been or is about to be brought by any person via Judicial Review or a claim under s116 Senior Courts Act 1981, no release should be authorised unless and until those High Court proceedings have concluded. It is suggested that if no application has been made (or pre-action protocol letter received) within ten working days of the coroner giving notification of a date of release, then the body should be released to the person the coroner has determined is entitled to arrange the disposal.

Discontinuing an investigation

12. When the coroner's duty to investigate a death has arisen under [s.1 of the Act](#) the coroner is under a duty (by virtue of [s.6 of the Act](#)) to hold an inquest unless the investigation is discontinued pursuant to [s.4 of the Act](#).

13. An investigation may only be discontinued if, before the inquest has begun, the cause of death has become clear such that the coroner thinks that it is not necessary to

³ [2016] EWHC 1073 (Ch), [2016] Inquest LR 47

continue the investigation (such as when a natural cause of death is revealed on a post-mortem examination and there is no suspicion the death occurred in custody or state detention). In all other cases where the s.1 duty has been triggered an inquest must be opened.

Continuing to an inquest

14. [Rule 5\(1\)](#) requires the inquest to be opened as soon as reasonably practicable after the date on which the coroner considers that the duty under [s.6](#) arises. Opening an inquest is an important part of the coronial proceedings not least because proceedings are then deemed ‘active’ for contempt of court purposes but also because once an inquest is opened, the coroner has no power to discontinue the investigation.
15. Once opened an inquest must be resumed and concluded. The only exception to this is where there is reason to suspend an inquest under [schedule 1 part 1](#) of the Act⁴ and thereafter the inquest is not subsequently resumed under [schedule 1 part 2](#).

Opening in private

16. [Rule 11\(1\)](#) provides that an inquest must be opened in public. This will generally prevent openings in a coroner’s private administrative office which is not accessible to the public, as any person who chooses to do so is entitled to attend the hearing and so this should be facilitated. However, where the coroner does not have immediate access to a court room and unavoidable delay would ensue, then [rule 11\(2\)](#) permits a coroner to open the inquest privately and subsequently announce that the inquest has been opened at the next inquest hearing held in public. Coroners should not, however, fall back on [rule 11\(2\)](#) as an easy excuse for not opening an inquest in public. Coroners should be mindful that the principle of open justice is a long-standing and important tenet of constitutional law. Therefore if an inquest has been opened in private a record should be kept that can then be read into the public record at the next hearing.
17. Whilst it may be argued that the requirement under [rule 26](#) to record every ‘inquest

⁴ pending homicide charges or where a Public Inquiry is anticipated.

hearing’ does not strictly apply to an opening, it is nevertheless good practice to record all coronial proceedings, and so it is preferable for a recording of the inquest opening to be made and kept; this includes those cases where the inquest has been opened in private.

Matters to consider prior to opening an inquest

18. Prior to an inquest being opened it is good practice to notify the bereaved and, where practicable, other relevant interested persons (IPs)⁵ of the time, date and place of the inquest opening. Whilst proactively giving notification is not a legal requirement, it is not uncommon for some bereaved to wish to attend what is usually a very short administrative hearing. As the coroner does have a legal duty (under [reg.6](#)) to attempt to identify the deceased’s ‘next of kin or personal representative’ and inform them of the decision to open an investigation, giving them notification of the date of the opening of the inquest at the same time is a simple step.
19. When the bereaved do attend an inquest’s opening this may present a useful opportunity to discuss the inquest process with them, identify those family members who wish to take up the right to be considered an IP in the investigation, and be apprised of any issues or concerns that the bereaved may have which come within the coroner’s investigatory remit.
20. Details of inquests to be opened should also be made available on the coroner’s website so that public and press can be made aware of the date should they wish to attend. In cases of high-profile deaths, members of the press will often wish to attend the opening. The right to attend a public hearing is of little value unless notice of that hearing is made publicly available in advance.

At the opening

21. At the opening of the inquest, the coroner must, where possible, set the dates on which

⁵ Defined in s.47 of the Act – see [Chapter 2 Interested Persons](#).

any subsequent hearings are scheduled to take place.⁶ To comply with r.8 the inquest will normally be listed within six-months of the date on which the coroner was made aware of the death, or as soon as is reasonably practicable after that date.

22. Where the date for the inquest hearing cannot yet be fixed, for example in complex cases which require a case management hearing, the date of any future pre-inquest review (PIR) hearing should be identified at the opening. This should take account of the date by which any disclosure is expected to have been made available to IPs so that there may be meaningful discussion at any PIR.
23. The importance of setting dates for future hearings cannot be over-emphasised. Uncertainty causes distress to the bereaved and not setting a date frequently causes unnecessary delay. Where the inquest is also required to satisfy the state's Article 2 ECHR obligations there is a requirement of promptness and reasonable expedition in the investigation.
24. Two matters that will require consideration before opening an inquest are:
 - a) what evidence needs to be admitted;
 - b) how that evidence is to be admitted.

Evidence to be admitted

25. Evidence of identification is required as a minimum at all inquests. Whenever practicable, it is good practice to receive evidence at the opening of those registration particulars that will subsequently be required to complete part five of the Record of Inquest. That is the deceased's:
 - a) date and place of birth;
 - b) name and surname;
 - c) sex;
 - d) maiden surname if a married woman;
 - e) date and place of death;
 - f) occupation and usual address.

⁶ rule 5(2).

26. Evidence of the general circumstances of the death, how the body was found, whether a post-mortem examination has been conducted and the provisional cause of death may also be received. However, care must be taken to avoid giving the impression on opening that a conclusion has already been reached on any issue.

How evidence is admitted

27. The manner in which evidence of identification and the brief circumstances of the death is given at the opening can vary from court to court. In some jurisdictions evidence will be given orally on oath by a coroner's officer. In others, a formal written statement may be read into evidence by the coroner's officer or by the coroner in accordance with [r.23](#). In some high-profile cases with significant media attention, evidence regarding identification and brief circumstances of the death may be provided under oath at the opening by the Senior Investigating Police Officer.
28. There is no set format for an opening statement by a coroner's officer, a suggested example is here (**Appendix 1.1 Opening statement**)

Directions on opening an inquest

29. As a court of record a coroner's court is entitled to give reasonable directions for the management of the proceedings. Depending upon the information available at this early stage the coroner should consider:
 - a) setting out those individuals or organisations who are to be recognised as IPs in the inquest;
 - b) identifying any documents and records that should be provided to the coroner;
 - c) setting a timetable for the provision of witness statements and reports.
30. At openings coroners should not normally need to use the power to require evidence to be produced under [schedule 5 of the Act](#). Much can be achieved by the use of directions and local agreements. Coroners will usually have come to an arrangement with those local public bodies that are frequently designated as IPs at inquests in their

jurisdiction as to an agreed procedures for the production of witness statements, contemporaneous records and reports etc.

31. In some cases, directions may already have been given in private when the coroner made the decision to proceed to an investigation and an inquest. However, unless there is a good reason not to do so, it is good practice and reflects open justice for any coronial directions already made to be restated in public at the inquest's opening and formally recorded.
32. An example of a coroner's opening with directions is appended (**Appendix 1.2 Coroner's opening and record of directions**)

Appendix 1.1: Coroner's Officer's statement at opening

Witness statement ofCoroner's Officer

1. I am a Coroner's Officer in the coroner area of
2. I make this statement regarding the death of which was reported to the coroner's office by(name) on(date)
3. The facts stated in this witness statement are true to the best of my knowledge and belief.
4. I attach to this statement:
 - a) Identification statement of(witness' name)
 - b) Provisional post-mortem report of Dr(pathologist's name)
5.(witness' name) is able to confirm the identity of the deceased by virtue of having been his/her(relationship) and provides the following further information:
 - a) Name and surname:
 - b) Date and place of birth:
 - c) Sex:
 - d) Marital status
 - e) Maiden surname of a married woman:
 - f) Occupation and usual address:
 - g) Date and Place of death:
6. A post-mortem examination was carried out by Dr
(pathologist's name) and a provisional cause of death is offered as follows:
 - 1a)
 - 1b)
 - 1c)
 - II

The pathologist no longer requires access to the body which the coroner has already determined can be formally released.

Signed

Dated

Appendix 1.2: Coroner's opening and record of directions

1. My name is I am the (*Senior/Area/Assistant*) Coroner for the jurisdiction of
2. I formally open an inquest regarding the death of
3. This inquest's opening is taking place today(*date and time*) at(*venue*).
4. The inquest's opening is taking place in the presence of the following family members/interested persons..... *or* in the absence of any family members/interested persons, who have been informed of this hearing date in writing.
5. This opening is being audio recorded and a copy of that audio recording will be made available to any family member or other interested person or on a later date upon request.
6. I have received a statement of identification provided by(*name*) signed and dated on and I/my officer will now read into evidence, pursuant to Rule 23 of the Coroners (Inquests) Rules 2013 the relevant parts of that identification statement.
7. I have received a post-mortem report of Dr (*name*) signed and dated on(*date*) and I/my officer will now read into evidence, pursuant to Rule 23 of the Coroners (Inquests) Rules 2013 a summary of the relevant parts of that report.
8. I make/have already made the following directions:
 - (a) The deceased's body shall be released forthwith to the family's nominated funeral directors;
 - (b) I adjourn this matter to(*date*) when the inquest will be resumed/a case management hearing, known as a pre inquest review hearing, will be held with a time estimate of (*time estimate*) to be heard at(*venue*).
 - (c) The bereaved are invited to provide to the court, through my coroner's officer, (i) a pen portrait of the deceased and (ii) a statement setting out the

background to the deceased's death and describing any concerns they may have relevant to the death. Those statements are requested by(*date and time*);

- (d) Factual witness statements shall also be sought by my Coroners Officer from the following persons, by no later than(*date and time*), regarding their knowledge of how the deceased came by their death;
- (e) The following public bodies/organisations are invited to assist the court by providing witness statements to the court from the following people, who I understand are their employees, by no later than(*date and time*), a statement regarding their knowledge of how the deceased came by their death;
- (f) The following public bodies/organisations are directed to provide a statement to the court from an appropriate person with senior managerial responsibility regarding (*cite relevant issue*) , by no later than(*date and time*);
- (g) The following persons or organisations shall be asked to disclose to the court, by no later than(*date and time*), the following documents to assist my investigation: *for example*
 - i. *relevant Care Plan, Risk Assessment and Accident Report*
 - ii. *the results of any investigation into the relevant events*
 - iii. *relevant policies or procedures.*