



CHIEF CORONER

GUIDANCE No.25

CORONERS AND THE MEDIA

INTRODUCTION

1. The purpose of this Guidance is to help coroners in all aspects of their work which concerns the media.¹ It is intended to assist coroners on the law and procedures to be followed and with a view to providing greater consistency of approach across England and Wales. It is also hoped that the Guidance will provide journalists with a clear understanding of the relevant law and procedure for their role in reporting cases in coroners' courts.
2. Fair and accurate reporting of proceedings is encouraged. At the same time the families of the deceased deserve sensitivity and respect for their privacy.
3. Coroners will be guided in the first instance by the important principle of open justice. This is best explained in the well known Court of Appeal case of *Guardian News and Media Ltd*² which applies to all courts including coroners' courts. It is the principle behind public courts, open hearings, recording hearings, public notification of inquests in advance, and provision to the media where appropriate of access to documents.
4. The application of the principle of open justice in coroners' courts and the exceptions in certain cases are set out below. This Guidance does not apply to deaths reported to the coroner which do not lead to a formal investigation and inquest.³

PUBLISHING HEARING DATES AND OTHER INFORMATION

5. The coroner must make the details of all final inquest hearings publicly available in advance: rule 9(3) of the Coroners (Inquests) Rules 2013. Those details must include the date, time and place of the inquest: rule 9(3).⁴

¹ My special thanks to Alison Hewitt, Senior Coroner for the City of London, for her legal assistance, and to various media organisations including the Society of Editors and the Media Lawyers Association for their extremely helpful input, as well as a number of coroners with whom I consulted.

² *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2012] EWCA Civ 420; [2013] QB 618.

³ See paragraphs 86-87 below.

⁴ The details in paragraphs 5-9 are taken from Chief Coroner's Guidance No.9 *Opening Inquests* (revised 14 January 2016).

6. The coroner must publish, preferably on a website (part of the local authority website or, better still, a separate website), and where possible at least seven days in advance of the hearing:
 - the date, time and place of the inquest
 - the name of the coroner (where known)
 - whether a jury inquest
 - the name and age of the deceased
 - the date and place of death (hospital or town).

It is not appropriate for the notice to include the medical cause of death, brief circumstances of the death or the likely conclusion of the inquest.

7. Where possible the same practice should apply to each opening hearing (but not if it will cause delay) and Pre-Inquest Review hearings (PIRs)⁵. If the hearing is in public and the public (including the press) have a right to attend, that right is of little value unless notice of the hearing is made publicly available in advance.
8. Where coroners have no access to a website in order to publicise cases, they should at the very least post a notice of forthcoming cases outside the court on a regular basis. Where possible, this should include openings and PIR hearings. Some coroners also make it known publicly that they will open inquests at a certain venue on fixed days during the week at fixed times.
9. Some coroners also use the good practice of using an email list of local hospitals, police, press, funeral directors etc who are regularly updated with forthcoming cases.

OPEN HEARINGS

10. The general public is entitled to attend all inquest hearings (with limited exceptions, below).
11. Hearings in the coroner's court must be held in a courtroom which is accessible to the public without physical barrier, so that any member of the public can 'drop in' to see how a hearing is conducted by a coroner: see generally *Storer v British Gas Plc* [2000] 1 WLR 1237, 1244.⁶
12. Members of the press are members of the public for these purposes.
13. The general rule is that all hearings, including openings, PIR hearings and final inquest hearings, must be held in public and therefore are open to journalists: rule 11.
14. The exceptions to this rule are very limited. They are set out in rule 11(2)-(5):
 - The public 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. The latter provision should not be used over restrictively.
 - The public may be excluded from an inquest hearing but only in the interests of national security.

⁵ See Chief Coroner's Guidance No22 *Pre-Inquest Review Hearings* (18 January 2016).

⁶ Referring to *Hodgson v Imperial Tobacco Ltd.* [1998] 1 WLR 1056, 1069.

15. If the coroner directs that the public should be excluded from a hearing or part of a hearing, brief reasons must be given publicly.
16. Names of the deceased, witnesses (unless granted anonymity) and Interested Persons⁷ will always be given in open court and therefore to the media. For clarity first and last names should be given.
17. Applications for anonymity of witnesses or screening of witnesses⁸ will be heard in public.
18. Where possible (a) any consideration of excluding the public from a hearing, or (b) any application for anonymity or screening of witnesses, or (c) the possible imposition of reporting restrictions (see below) should be addressed in advance at a PIR hearing, with due notice to the media. This gives the opportunity for the press to make representations should they wish. It also avoids late applications by the media at the inquest which the coroner may find disruptive.
19. National media organisations may be notified by contacting the Press Association (which has agreed to be a point of contact, as with Family Division orders, for this purpose): for details see www.medialawyer.press.net/courtapplications/. The agreed person to contact at the press Association is Mike Dodd. His e-mail address is Mike.dodd@pressassociation.com and his contact numbers are 0207 963 7132 or 07973 846 851. Local press and media organisations should also be informed in advance where possible.
20. Seating should be made available for journalists in court. In sensitive cases the seating for the press should be separate from members of the deceased's family.

FORMAL RECORDINGS OF HEARINGS

21. All inquest hearings, including PIR hearings, must be recorded by the court and the coroner must keep the recording: rule 26.⁹
22. A recording is a 'document' for the purposes of the Coroners (Investigations) Regulations 2013 and the Coroners (Inquests) Rules 2013.¹⁰
23. In considering a request for a copy of a recording (or any other document), coroners will bear in mind the clear distinction in law between disclosure to Interested Persons and disclosure to others including the media.

Disclosure to Interested Persons

24. Where an Interested Person asks for disclosure of a document, including a recording of a hearing held in public or a post-mortem report or any other report provided to the coroner in the course of the investigation or any document which the coroner considers relevant to the inquest, the coroner must provide a copy of that document or make it available for inspection: see rules 12-16.

⁷ For the meaning of Interested Persons see section 47, Coroners and Justice Act 2009.

⁸ Rule 18.

⁹ See Chief Coroner's Guidance No.4 *Recordings* (16 July 2013).

¹⁰ Regulation 2, rule 2.

25. The coroner may only refuse a request by an Interested Person on specified grounds: rule 15.
26. A journalist or representative of the media is not an Interested Person.

Disclosure to others

27. The coroner may provide any document or a copy of any document, including a recording, 'to any person who in the opinion of the coroner is a proper person to have possession of it': regulation 27(2)).
28. In relation to a request by anyone other than an Interested Person for a recording or any other document, the discretion of the coroner on this issue (derived from the word 'may') must be exercised judicially.¹¹ 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
29. Although coroners have a discretion on this point, members of the media (who can show identification where necessary) should normally be expected to be considered proper persons for these purposes.
30. A copy of a recording should also be accompanied by a notice warning against improper use.¹² A charge of £5.00 may be made for a copy of a recording or other document.
31. Coroners are not obliged to produce transcripts of hearings.

EFFECT OF OPENING HEARING

32. Proceedings become 'active' for contempt of court purposes at the hearing when an inquest is opened: see paragraph 12 of Schedule 1, Contempt of Court Act 1981.¹³

TWEETING, TEXTING, MESSAGING etc; NO PHOTOGRAPHS

33. Live text-based communications by journalists or legal commentators for the sole purpose of fair and accurate reporting are permitted at all hearings, in accordance with the Lord Chief Justice's guidelines for court proceedings: *Practice Guidance*, 2011. Phones and laptops must be used silently.
34. Other members of the public who wish to make records in this way must apply to the coroner for permission (*Practice Guidance*, above). No application need be

¹¹ See Chief Coroner's Law Sheet No.5 *The Discretion of the Coroner* (revised 18 January 2016).

¹² See Guidance No.4 *Recordings* (16 July 2013) at paragraph 9.

¹³ See Chief Coroner's Guidance No.9 *Opening Inquests* (revised 14 January 2016).

made by journalists or legal commentators. Except for these purposes, mobile phones must be switched off.

35. No sound recording may be taken except with the permission of the coroner: section 9(1), Contempt of Court Act 1981. Where appropriate the coroner may permit a journalist to record proceedings, but only as an *aide memoire* to fair and accurate reporting; the recording must not be broadcast or used for any other purpose.¹⁴
36. It is a criminal offence for anyone to take photographs or other images, still or moving, in court or within the precincts of the court: section 41(1), Criminal Justice Act 1925. Court artists, however, may attend inside court (as a member of the public) so long as sketches are only made outside the courtroom. Jurors especially must be protected from publicity.

MEDIA REQUESTS FOR ACCESS TO DOCUMENTS

37. The media may ask for access to a document referred to in any inquest proceedings.
38. A coroner need not treat a request as coming from the media unless the applicant is a bona fide journalist and the request is 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.
39. The important distinction between disclosure to Interested Persons and disclosure to others has been set out above (see paragraphs 24-29). Media requests for access to documents will be dealt with under the discretionary power to disclose in regulation 27(2).
40. In deciding whether to grant access, the coroner should consider the principles discussed below.

The coroner's approach

41. 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.*¹⁵
42. Where the press requests access to material referred to in an inquest, in recognition of the role of the press as 'public watchdog' in a democratic society, there is a presumption in favour of providing access: *Observer and Guardian v UK* [1992] 14 EHRR 153. The purpose of disclosure is to enable the public to understand and scrutinise the justice system.
43. The media is not entitled to see documents not referred to in court. If a coroner holds documents which have not been relied upon and adduced in evidence, these need not be disclosed.

¹⁴ For draft directions see Section 1 of *The Coroner Bench Book*.

¹⁵ See Fn 2.

44. The media is also 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 restriction on reporting.
45. The presumption in favour of granting access does not mean that the media are 'entitled to disclosure', nor that it should take place 'by default'. Not all documents need be provided. The coroner may refuse access where there are compelling reasons against it. The presumption of providing access under regulation 27(2)¹⁶ 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'.
46. 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 but also bearing in mind that the media are entitled to attend all inquest hearings which are held in public.
47. Disclosure, where provided, may be of the whole or part of the document. Where appropriate a document may be redacted.

Refusal of access

48. Reasons for refusal of access may include, amongst others:
 - national security
 - public interest immunity
 - legal privilege
 - the avoidance of prejudice to current or future criminal proceedings arising out of the death¹⁷
 - the protection of personal information (particularly in the case of the vulnerable) which is sensitive or if disclosed could give rise to a risk of harm
 - the Article 8 rights of witnesses or others identifiable who may need to be protected from the glare of publicity. There may, for example, be a good reason for refusing access to the contents of a suicide note, even though it has been referred to in court. There may be good reason to limit or refuse the wider broadcast of certain images or video / audio footage, even if they were seen or heard in open court
 - if the application would be refused under rule 15 if made by an Interested Person.
49. The rationale for protecting personal information which is sensitive or could give rise to a risk of harm or be damaging or would breach any right of confidence, especially for the vulnerable such as children, the mentally disabled or the elderly or infirm, is that there is no obvious public interest in publicity.
50. It may also be a good reason for refusal if the request would:

¹⁶ See paragraph 27 above.

¹⁷ See, for example, *R (Green) v Police Complaints Authority* [2004] UKHL 6; [2004] 1 WLR 725 at [71]. Coroners should note that a document which 'relates to contemplated or commenced criminal proceedings' is a ground for refusal of disclosure even to Interested Persons: rule 15(d).

- be disruptive to the court proceedings, or
- place a great burden on the court: see *Guardian News* case.¹⁸

Coroners' courts do not always have ready access to photocopying, scanning and other facilities. Staff for carrying out these tasks are not always available.

The balancing exercise

51. In making a decision whether to provide or refuse access, and in deciding whether disclosure is necessary or desirable for open justice purposes, the coroner is required to carry out a fact-specific proportionality exercise.¹⁹ It may sometimes be necessary, for example, for the coroner to weigh in the balance on the facts of the specific case the competing rights of (1) the media under Article 10 of the European Convention on Human Rights (freedom of expression) with the rights of (2) a particular person (including Interested Persons, witnesses and any individual who could be affected by the disclosure) under Article 8 (right to respect for private and family life)²⁰ where disclosure could give rise to a risk of harm or otherwise interfere with those rights.
52. Where possible the coroner should take into account (as a relevant factor) the views on disclosure of Interested Persons and others including those who supplied the document to the coroner and should ask if there is any objection to disclosure.

Reasons

53. In granting or refusing an application for disclosure (particularly the latter), the coroner should give brief reasons. When refusing access the ruling should refer to:
 - (1) The application
 - (2) The nature of the material requested
 - (3) Whether the application has 'journalistic purpose'
 - (4) The principle of open justice; Article 10 freedom of expression
 - (5) The presumption in favour of disclosure
 - (6) The 'countervailing reasons'
 - (7) The refusal of the application
 - (8) The reasons for refusal

Types of documents

54. Access may be granted to material referred to in the course of the proceedings, including documents such as maps, photographs, CCTV, audio, and video tapes. This list of material also includes documents in a jury bundle and other documents which are referred to in open court. It includes applications and supporting evidence for witness anonymity. It includes skeleton arguments and written legal submissions which have been referred to in court where not provided by those who produced them for the court.

¹⁸ At [87].

¹⁹ Following the *Guardian News and Media Ltd* case: see Fn 2.

²⁰ See, for example, the case of *Re LM (A Child) (Reporting Restrictions: Coroner's Inquest)* [2007] EWHC 1902 (Fam); [2008] 1 FLR 1360.

55. By way of example, a jury bundle may contain (a) documents which have been referred to and read out and (b) other documents such as intimate correspondence which have been referred to generically but not read out. The coroner, where appropriate, may decide to refuse access to the latter.
56. Access to a document, if granted, may be by inspection or copying. A journalist may take a photograph of a document as a copy. A reasonable cost may be charged for photocopying. Redaction may be necessary.

Witness statements

57. Where a witness has given evidence, the testimony given in open court is usually sufficient for open justice purposes. The statement of the witness need not be provided; it is not evidence.
58. The open justice principle will often be satisfied sufficiently by a document being read out in court. This includes witness statements which have been read out in full or in part. Parts of statements (and other documents such as personal correspondence or suicide notes) are often not read out because of their sensitive nature. It will be a matter for the coroner's discretion whether to provide the statement or other document (redacted or otherwise).
59. Where the coroner considers it appropriate, the coroner may permit the journalist to see the whole of a witness statement but only on the condition that those parts not read out (and not relied on) may not be used or reported.
60. Where a witness statement (or other document) has been referred to by the coroner and relied on for a ruling or conclusion but not read out, access should usually be provided. This situation was the context for the *Guardian News* case.

Copyright

61. Despite the discretion given to coroners in rule 15(b) to refuse disclosure of a document or a copy of a document to an Interested Person where 'the consent of any author or copyright owner cannot reasonably be obtained', it is arguable that there is no restriction on the coroner disclosing documents which may be subject to copyright. It may not be necessary to obtain the author's permission.
62. Copyright may not be infringed by anything done for the purposes of parliamentary or judicial proceedings: section 45(1), Copyright, Designs and Patents Act 1988.²¹ As soon as the inquest is opened, judicial proceedings are commenced. Thereafter any proper disclosure for the purposes of the investigation may protect the coroner from an allegation of infringement of copyright.

LEGAL SUBMISSIONS

63. Subject to the limited exceptions to an open hearing (see paragraph 14 above), legal argument before the coroner will be held in public (in the absence of the jury if there is one) and therefore in the presence of the press, but subject to delayed reporting as in criminal proceedings: section 4(2), Contempt of Court Act 1981.

²¹ See Chief Coroner's Advice to coroners *Copyright: Disclosure by Coroners* (21 January 2016).

64. Where there is a jury the coroner will usually order that publication of this part of the proceedings (legal submissions in absence of jury) be postponed until the jury have reached their conclusion, on the ground that there is a risk of substantial prejudice in the administration of justice because the jury might read about the submissions and be improperly influenced by them.²²

REPORTING RESTRICTIONS

65. While fair and accurate reporting of proceedings is encouraged, there will be occasions when the coroner may restrict full reporting of proceedings.
66. In accordance with the principle of open justice, as stated above, all coroner hearings will be in public (and therefore open to journalists) and not subject to reporting restrictions. But there are limited exceptions to this rule where the public, and therefore the press, may be excluded: see paragraph 13 above.
67. In considering whether to impose any reporting restriction the coroner must always take into account the principle of open justice. For this reason any restriction may be imposed only when it is lawful, necessary and proportionate. The order imposed must be limited to the minimum required to protect the interests in issue.
68. Where possible the coroner should consider any possible reporting restriction in advance of the inquest hearing, for example at a PIR hearing, and, where possible, giving the media notice in advance and the opportunity to make representations. It is in everybody's interest that these matters are resolved earlier rather than later.
69. Reporting may be restricted where the coroner has made an order for the anonymity of a witness or for a witness to give evidence from behind a screen.²³
70. The coroner may order that reporting of a particular matter, such as legal argument, be postponed for such period as the coroner thinks necessary for avoiding a substantial risk of prejudice to the administration of justice in those or any other proceedings pending or imminent: see paragraphs 63-64 above.
71. In practice, coroners may wish, in appropriate instances and for good reason, to invite the press not to report something.

Children

72. A coroner's power to restrict the reporting of a child's identity by name or other details is limited.

Section 39, Children and Young Persons Act 1933

73. The application of the discretionary power to restrict reporting pursuant to section 39 of the Children and Young Persons Act 1933 is restricted in the coroner's court to children who are witnesses.²⁴ Section 39 cannot be used, for example, to provide anonymity for a deceased child who is the subject of the

²² Section 4, Contempt of Court Act 1981.

²³ Rule 18.

²⁴ Section 39(1), as amended by section 79, Criminal Justice and Courts Act 2015, is limited to children who are witnesses or in respect of whom the proceedings are taken.

inquest or the child of a deceased person or a child who is otherwise referred to in the evidence.

74. Where a section 39 direction, which is discretionary, is given, it prohibits the reporting of the name, address or school or any particulars calculated to lead to the identification of the child witness, including publication of a picture.
75. A section 39 order may only be made for necessary and proportionate reasons. The coroner must always take into account the principle of open justice.
76. A section 39 order applies to print as well as sound and television broadcasting.²⁵ It also applies to any internet publication.²⁶
77. A section 39 order expires on the witness's 18th birthday.²⁷

Other restrictions

78. The identity of a deceased child may be protected where the Family Court or High Court has imposed an order restricting reporting and the order remains in force. The coroner must comply with the strict wording of the order but no further.
79. A child may be protected by an anonymity order where appropriate. It may be possible to approach anonymity from the standpoint of a coroner being obliged as a 'public authority' not to act in contravention of Convention rights. This would be an exceptional approach and there is no precedent for it. It would require careful consideration of the balance between the child's Article 2 and/or Article 8 rights and the media's Article 10 rights.
80. A person (probably not a coroner) may obtain an injunction from the High Court or Family Court to restrict publication.
81. The coroner may direct, where appropriate, that a child (as with an adult) may give evidence by video link or from behind a screen.²⁸
82. Where the coroner considers that there are compelling reasons for not identifying a child who is not (so far) a witness, the coroner may exceptionally consider one of two possible approaches. (1) It may be appropriate to obtain a witness statement from the child (which could be read under rule 23) so that section 39 protection may, where appropriate, be provided. Or (2) in some cases there may be no need to identify a child who is referred to in proceedings on the basis that the identity of the child is irrelevant for the proceedings. But the coroner in such circumstances should be careful to avoid using either alternative simply as a device to avoid legitimate reporting.
83. The coroner may also ask the media to refrain from publishing details which might identify a child. Journalists often agree to such a request.

²⁵ Section 57(4), Children and Young Persons Act 1963.

²⁶ Section 39(3), Children and Young Persons Act 1933, as amended by section 79, Criminal Justice and Courts Act 2015 (from 13 April 2015).

²⁷ *JC and RT v Central Criminal Court and others* [2014] EWCA 1041 (QB).

²⁸ Rules 17 and 18.

RECORD OF INQUEST

84. The completed Record of Inquest²⁹ should be treated by coroners as a public document.³⁰ Some redaction may be necessary, for example the signatures of jurors (in all jury cases).
85. The press should be allowed to inspect the Record of Inquest or copy it or have a copy provided. A charge may be made for copying. In practice, journalists will usually photograph the document on their phone.

NO INVESTIGATION

86. Where a death is reported to the coroner (in the usual way) and the coroner concludes inquiries into the death without commencing a formal investigation³¹ (and therefore no inquest or other hearing is held), the coroner will not normally release any details to the media.
87. The coroner will in such circumstances provide limited details to the local registrar of births and deaths and inform the registrar that it has not been necessary to conduct an investigation (and inquest). Details of the death will be registered by the registrar in the usual way on the public register.

REPORTS TO PREVENT FUTURE DEATHS

88. Reports to prevent future deaths (referred to as PFD reports or regulation 28 reports³²) which are written by coroners (usually) after an inquest and the responses are published by the Chief Coroner on the judiciary website: see Chief Coroner's Guidance No.5 *Reports to Prevent Future Deaths*.³³ Email alerts are available on the website on request.

CHALLENGING CORONERS' RULINGS

89. There is no right of appeal for the media from a coroner's ruling. The Coroners and Justice Act 2009 contained such a provision, section 40, but it was repealed before it came into force. The only route of challenge is by way of application in the High Court for judicial review.
90. Coroners should try and ensure where possible that rulings which are likely to affect reporting are heard and decided at PIR hearings, so that should the media wish to challenge them they may do so at the time or subsequently by way of judicial review before the final hearing.
91. Coroners should give the media on request the opportunity to make representations on matters which are of importance to them. Where time permits, representations should be reduced to writing prior to oral submissions.
92. The media will be aware that demanding requests to coroners during the course of an inquest, particularly at a time of sensitive evidence, may be disruptive to

²⁹ Form 2, Schedule to 2013 Rules.

³⁰ See Chief Coroner's Guidance No.17 *Conclusions: Short-Form and Narrative* (revised 14 January 2016), paragraph 12.

³¹ Pursuant to section 1, Coroners and Justice Act 2009.

³² See paragraph 7, Schedule 5, Coroners and Justice Act 2009; regulations 28-29.

³³ Revised 14 January 2016.

the proceedings and place a great burden on the court.³⁴ It may also distress families. The media will no doubt bear in mind that the coroner usually works without any legal support and that press requests may be time-consuming and distracting from the purpose of an inquest.

93. In more complex or high profile inquests, which may be of particular interest to the media, coroners should consider at a PIR hearing whether any special arrangements need to be made for the media, including:

- the provision or copying of relevant documents
- special seating arrangements
- overflow room facilities, and
- how any day-to-day requests from the media may be managed without unnecessary interruption to the inquest process.

The media should be invited to make representations, should they wish to, on this aspect of case management.

94. It will be helpful for all concerned, particularly in a high profile inquest, if there is a point of contact in the local coroner service or relevant local authority for all media inquiries.

CORONERS' CONCERNS

95. If any coroner has a concern about the conduct of a journalist or organisation, the Chief Coroner should be notified immediately. The media have codes of conduct which warn against intimidation, harassment or persistent pursuit including 'door-stepping'.³⁵

96. Coroners are judicial office holders and like other judges are not permitted to comment outside a courtroom on any of their cases (or indeed any other coroner's cases) or discuss any decision they have made: see *Media Guidance for the Judiciary* (2012).

97. All media queries relating to inquests should therefore be directed to the relevant local authority press office. The Judicial Press Office is not available to assist coroners.

**HH JUDGE PETER THORNTON QC
CHIEF CORONER**

30 September 2016

³⁴ See paragraph 50 above.

³⁵ See, for example, the Editors' Code of Practice, the Ofcom Broadcasting Code and the National Union of Journalists Code of Conduct. There are also relevant criminal and civil law provisions.