



CHIEF CORONER

GUIDANCE No. 30

JUDGE-LED INQUESTS

Introduction

1. From time to time a request is made by a coroner to the Chief Coroner to discharge his/her section 1¹ duty from conducting an investigation and inquest and to transfer the case to another jurisdiction or to a judge.
2. This Guidance will not address a section 2 transfer between coroners to transfer the conduct of an investigation, which is achieved by mutual agreement² between two coroners.³ This is addressed in Guidance No. 24.
3. It is the Chief Coroner's firm view that unless there are exceptional reasons (including situations discussed below), once the section 1(1) duty is triggered, the senior coroner of the relevant jurisdiction is and remains seized of the matter and is under a duty to conduct the investigation, including inquest.

Section 3 of the Coroners and Justice Act 2009

4. The Chief Coroner also gets requests from interested persons who, for various reasons, wish another coroner to conduct the investigation and inquest. The Chief Coroner may make this direction under section 3 CJA 2009. The Explanatory Notes to the 2009 Act make it clear that the government intended this provision to be used by the Chief Coroner to aid in global case management. The Explanatory Notes give two such examples, namely to enable the Chief Coroner to respond effectively to an emergency situation, or to reallocate work between coroners in the event of backlogs of work building up in a particular area.

¹ Section 1 Coroners and Justice Act 2009.

² Only very rarely will the Chief Coroner intervene in this request, when he may adjudicate between two disagreeing coroners.

³ Usually because the incident which led to the death took place in the other coroner's area.

5. Where a request pursuant to s3 falls outside the scope of that administrative function, the Chief Coroner is not able to make such a direction. Parliament has not put in place a statutory appeal process for coroner decisions and the Chief Coroner cannot exercise any quasi-appeal functions.
6. The correct forum in which to challenge a coroner's decision is by way of judicial review to the High Court whereby the Court can review the way in which a decision was taken. A fresh inquest can also be sought by way of section 13 of the Coroners Act 1988 (as amended) which allows the High Court, on an application brought with the permission of the Attorney General, to quash an inquest and order a fresh one where it is necessary or desirable in the interests of justice to do so (for example by reason of irregularity of proceedings, insufficiency of inquiry or the submission of fresh evidence).

Physical security

7. There are times when the coroner is advised (usually by local police) that there may be some concerns about the security of the public and/or staff during an inquest, such as if the deceased had some involvement in a gang or with firearms or drugs.
8. Occasionally there is also an issue raised about protecting the identity of a witness. This may be related to, or entirely separate from, any concern about secret evidence.
9. Any physical security concerns should be raised early in the inquest process to allow the coroner, in conjunction with the relevant local authority, to make the necessary arrangements. If the coroner suspects there may be concerns about physical security, he/she should encourage the interested persons to make submissions on it at the earliest opportunity.
10. The coroner should be in dialogue with their local authority about other suitable venues which may occasionally be required for use by the coroners' service. This could be the local Crown Court, the local Town Hall or function room.
11. As a general rule, the Chief Coroner will not accept a request for transfer of jurisdiction based on physical security concerns. It is a matter for the coroner to find alternative accommodation. In any event, even if a judge is appointed or nominated, that does not entail the automatic provision of alternative court accommodation, as the relevant local authority will still be responsible for the administrative and financial burden of the inquest.
12. Occasionally it may be that a neighbouring coroner has suitable accommodation. In that instance, a section 2 request for the other coroner to conduct the investigation can be made in the usual way. Alternatively, the coroner with jurisdiction can simply come to an administrative agreement to hold the inquest in – for example – a neighbouring coroner's court.

Actual bias, appearance of bias, conflicts of interest and recusal

13. Coroners should not be quick to recuse themselves from a case. The bar is high and it should be a rare occurrence. Although recusal is a judicial decision, coroners should also familiarise themselves with the March 2018 Guide to Judicial Conduct which can be found here - <https://www.judiciary.uk/wp-content/uploads/2016/07/judicial-conduct-v2018-final-2.pdf>
14. Cases of what the case law calls 'actual bias' are very rare. Actual bias is when a judge has a personal (including but not only pecuniary⁴) interest in the outcome of an issue which he is to resolve, then he is improperly acting as a judge in his own cause.⁵
15. The test for apparent bias is "whether a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."⁶ A reasonable member of the public is neither complacent nor unduly sensitive or suspicious. Bias means a prejudice against one party or its case for reasons unconnected with the legal or factual merits of the case.⁷ Context is everything. The question that coroners should ask themselves is whether the s5(1) purpose of an investigation into a person's death will be compromised by any perceived or apparent bias.
16. Whilst an allegation of bias by an interested person should be considered carefully by the coroner, the decision about whether to recuse him or herself must be on the basis of his or her own assessment of whether valid grounds have been shown for doing so and not on the basis that the interested person feels that the coroner's impartiality has been compromised.
17. It is a common feature that from time to time a coroner may know an advocate appearing in front of him or her. Occasionally assistant coroners appear in their own jurisdiction as the representative of an interested person. An advocate might appear before an assistant coroner from the same chambers. These situations will not, without more, give rise to apparent bias.⁸
18. The coroner is also in a special position in that, unlike other branches of the judiciary, his or her office operates within the purely local environment and does not have access to national resources. The coroner relies upon the evidence gathered by other local agencies, for example the local police. The fact-finding investigation that a coroner undertakes does not put the coroner's role in conflict with, for example, the decision of the CPS to prosecute.

⁴ Re. Pinochet (1999) UKHL 52.

⁵ Locabail UK Ltd v Bayfield Properties Ltd (2000) EWCA Civ 3004.

⁶ Porter v Magill (2002) 2 AC 357 at para 103 (Lord Hope).

⁷ Flaherty v National Greyhound Racing Club Ltd (2005) EWCA Civ 1117 at para 28; Secretary of State for the Home Department v AF (No2) (2008) EWCA Civ 117; (2008) 1 WLR 2528 at para 53.

⁸ Locabail UK Ltd at para 25.

Sensitive material disclosed to the coroner – the two stage process⁹

19. Coroners make requests for documentary material in their investigations, and may make orders under Schedule 5 to the CJA. Public authorities usually provide material by agreement. Requests for disclosure may be framed in broad terms because of a coroner's inquisitorial role, and it is often the case that the coroner will receive a larger body of material than they disclose to interested persons. The coroner will usually make a decision on scope of inquiry at a relatively early stage in the preparations for an inquest, although usually after receipt of some material from the primary investigating authority (e.g. the police). Such a decision on scope will ordinarily be provisional and open to be revised as further facts and evidence emerge. While there is no absolute requirement to make such a decision before obtaining further information and documents, an early ruling on scope of inquiry can assist organisations in identifying relevant material to provide to the coroner. Generally the starting point is that if material is "relevant for the purposes of... (the coroner's) inquiry,"¹⁰ including for consideration of scope, Article 2 issues, reports to prevent future deaths, selection of appropriate witness and documentary evidence, pursuance of relevant lines of inquiry and the framing of questions for witnesses, then the coroner is entitled to see it. That entitlement is subject to limited exceptions.
20. The distinction between disclosure to the coroner and disclosure to interested persons in an inquest or others has always been significant.¹¹ "The question of any further disclosure is a matter...(for the coroner), having taken into account any further arguments in favour of non-disclosure...thus maintaining sufficient safeguards to those properly seeking non-disclosure of...documents."¹²
21. In some cases, an interested person or other party may hold material or information which they assert would be damaging to the public interest if disclosed by the coroner to interested persons. In such a case, a public interest immunity (PII) claim will be made before the coroner. In other, rarer cases, an objection may be made to material being provided to the coroner, typically by reference either to a PII claim or to statutory objections.
22. If a person or organisation which holds relevant material wishes to object to providing it to the coroner, they may raise that objection in response to the coroner's request for disclosure or to any Schedule 5 notice issued by the coroner. The objection will be considered in the first instance by the coroner, who may decide to withdraw the request or notice. Special considerations and procedures apply to objections relating to national security, which are considered in the next section of this Guidance. If a person or organisation which holds relevant material wishes to object to it being disclosed to interested persons or others (but does not object to its disclosure to the coroner), the usual approach will be for the material to be supplied to the coroner

⁹ See also Law Sheet No.3 The Worcestershire Case, 31 January 2014.

¹⁰ Worcestershire County Council & Anor v HM Coroner for the County of Worcestershire (2013) EWHC 1711 (QB) at para 98.

¹¹ Law Sheet No. 3 at para 12.

¹² Worcestershire County Council referring to Inner West London Assistant Deputy Coroner v Channel Four Television Corporation (2008) 1WLR 945.

with notice of the objection to onward disclosure. Such an objection may itself be based on a PII claim, which may be determined by the coroner in the usual way, by balancing the public interest in the material being disclosed against the public interest in it not being disclosed. Coroners' decisions on any of these matters may be challenged by way of judicial review.

23. Although the PII procedures described above may be used for many kinds of documents, there is some material which has to be addressed in a modified way because of statutory constraints or because it raises issues of national security. Such material is considered in the next section of this Guidance.

Security sensitive and intelligence material which cannot be disclosed to the coroner

24. This part of the Guidance is intended to replace previous guidance given by the Chief Coroner which is dated 27th September 2016 and marked confidential. It is the policy of the current Chief Coroner that all Guidance documents should be publicly available on the Chief Coroner's website.
25. Statute¹³ prevents disclosure of some security sensitive material (including intercept-related material) to the coroner him or herself. In addition to the specific types of material which cannot be disclosed by statute, there is a wider class of security sensitive material which the government treats in the same way as a matter of policy. This policy was described by Cranston J in *Secretary of State for the Home Department v HM Senior Coroner for Surrey & Ors* [2016] EWHC 3001 as "unassailable."¹⁴ The practical effect of this is that only the fact of the existence of the security sensitive material in a specific case can be disclosed to the coroner.¹⁵
26. In some cases the need to consider security sensitive material will be obvious and the sensitive material may be so core to the investigation that the issue is best dealt with by nominating a judge to sit as the coroner at the very outset of the process. Under Schedule 10 CJA, the Chief Coroner may request the Lord Chief Justice, in consultation with the Lord Chancellor to nominate a person who at the time of the nomination is a judge of the High Court, a Circuit judge, or a person who has held office as a judge of the Court of Appeal or of the High Court (but no longer does so), and is under the age of 75. Security sensitive material can be disclosed to a judge who is a nominated person.¹⁶ Subsequent references to a judge are to a judge who has been appointed as a nominated person.

¹³ Section 56 of the Investigatory Powers Act 2016 ("IPA"), by para 45 of Schedule 10 IPA, repealed section 17 of the Regulation of Investigatory Powers Act 2000 ("RIPA"). See also para 24 of Schedule 3 IPA.

¹⁴ At para 48. "In my view the justifications for the policy are legal, rational and take relevant factors into account...It is a pragmatic response to the very real practical problems when courts handle security and intelligence material".

¹⁵ Para 24(3)(a) Schedule 3 IPA.

¹⁶ Para 24(1)(a) Schedule 3 IPA.

27. In other instances, there is an alternative solution. Disclosure is permitted to a security-cleared¹⁷ legal adviser for the purpose of considering whether the material is relevant and within scope of the inquiry, and if so, whether it must be seen by whoever conducts the coronial investigation.¹⁸
28. The coroner can take a number of practical steps should this situation arise. They are as follows.
- (i) The coroner may first seek to determine whether security sensitive material might potentially be relevant to the investigation and inquest. He/she may hold a pre-inquest hearing to determine what topics are within the scope of inquiry. In some circumstances, the equity-holder may make submissions at such a hearing that security sensitive material may exist which is relevant to certain topics. However, in other cases, it will be impossible to give an explanation (or a full explanation) publicly, and the organisation may notify the coroner by private correspondence of the existence of security sensitive material within the scope of inquiry.
 - (ii) If security sensitive matters are in scope, the coroner should inform the Chief Coroner as soon as possible.
 - (iii) If there is likely to be sensitive material potentially relevant to the investigation which cannot be provided to the coroner, the coroner should appoint Developed Vetted ('DV' cleared) counsel¹⁹ who, by virtue of their security clearance, will be permitted to have access to the sensitive material (without being obliged to share their knowledge with the coroner). Coroners are invited to contact the Chief Coroner's Office to get the details of DV cleared counsel, if necessary.
 - (iv) If DV counsel advises that the material is irrelevant for the purposes of the investigation, as defined by any ruling on scope, the coroner can proceed with the inquest.
 - (v) If DV counsel advises that the material is (actually or potentially) relevant, DV counsel may be able to work with the equity-holder to formulate a confidential summary or gist of the material to show to the coroner alone. Any such gist should reflect the material made available to the DV counsel insofar as he or she has identified it as being potentially relevant to the issues arising in the inquest.
 - (vi) If the coroner decides that the material as disclosed to him/her by way of a confidential gist is not relevant and not within scope, then the material falls away and the inquest proceeds.
 - (vii) If the coroner decides that the material as disclosed to him/her by way of gist is relevant and within scope, then the coroner should invite confidential submissions from the equity-holder on whether it, or a version of it, can be disclosed to the other interested persons and, if not, what course should be followed.
 - (viii) If the coroner rules that the gist should be disclosed, but the equity-holder does not wish for it to be disclosed then the coroner may either hold a PII

¹⁷ Para 168 of the Explanatory Notes to the IPA – “the legal adviser appointed will need to hold suitable security clearance”.

¹⁸ Para 24(3)(b) Schedule 3 IPA.

¹⁹ Security clearance is carried out by the United Kingdom Security Vetting unit (UKSV). Developed Vetting (DV) is the highest level of Security Clearance and allows the person to see TOP SECRET documents and assets.

hearing in respect of the confidential gist or simply proceed straight to requesting the nomination of a judge.

29. There will be some situations in which DV counsel advises that no gist can be prepared or disclosed to the coroner because the relevant material is too sensitive even to be disclosed in summary or redacted form, or that any agreed gist does not adequately reflect the sensitive material relevant to the inquest. In that case, the coroner should approach the Chief Coroner to nominate a judge under Schedule 10.
30. Once appointed, the judge must decide whether the sensitive material (which they can see in full) is relevant and whether the material should be disclosed to the interested persons. If the equity-holder does not wish to disclose the material then they may claim PII in respect of that documentation.
31. The judge may uphold any submission to withhold disclosure to interested persons and the public on the grounds of PII. Since there is no mechanism for any kind of closed hearings in an inquest, the effect of upholding the claim for PII is that the material in question falls to be excluded from further consideration during the inquest process. The judge may conclude that he or she can properly comply with the duty to hold a full investigation under the CJA without deploying the sensitive material, in which case that course will be taken.²⁰
32. Alternatively, the judge may conclude that he or she cannot comply with the duty to carry out a proper investigation into the death.²¹ In that situation the judge should consider writing to the Lord Chancellor to convert the inquest into a Public Inquiry so that all relevant evidence can be heard.
33. It should be stressed that the issues discussed above relate only to material of such a security sensitive nature that it cannot be disclosed to a coroner. There are many cases in which coroners can receive and/or consider sensitive material which does not touch on national security (e.g. documents about police tactics) but which may give rise to more conventional PII applications.

Nominating a judge under Schedule 10 to sit as a coroner

34. The Schedule 10 process will be suitable for cases in which national security sensitive material is in scope. These cases are likely to be few and far between as the Chief Coroner hopes that most inquests which involve sensitive material can be heard by the coroner using the assistance of DV counsel and/or by gisting the relevant sensitive material.
35. If a coroner believes that a judge should be nominated to hear an inquest, then ordinarily the coroner should hold a pre-inquest review hearing and invite submissions from the interested persons as to the suitability of the proposed nomination.

²⁰ See the inquest into the death of Alexander Perepilichnyy.

²¹ See R (Litvinenko) v Secretary of State for the Home Department (2014) EWHC 194 (Admin).

36. The Chief Coroner will usually want to know that – (i) the coroner has made appropriate efforts to establish whether sensitive material is likely to be within the scope of inquiry (usually by a ruling on scope and submissions or private correspondence from the equity-holder); and (ii) options other than the appointment of a judge have been properly explored (as set out in paragraph 28 above).
37. If the Chief Coroner agrees that a judge should be appointed as a nominated person, he will make enquiries as to the availability of judges and then make the Schedule 10 request to the Lord Chief Justice. He will inform the coroner that he has made the request.
38. Until such time as the Lord Chief Justice and the Lord Chancellor nominate a judge, the coroner retains conduct of the investigation and inquest. If the Lord Chief Justice and the Lord Chancellor nominate a judge, then the Chief Coroner will write to the coroner to invite him or her to inform the interested persons.
39. In circumstances where – for example – solicitors to the inquest and counsel to the inquest, or a wider inquest support team, may be required in addition to the appointment of a judge, the judge who is appointed and the relevant local authority will be expected to discuss these matters in detail with the Chief Coroner's Office first, who can provide detailed assistance and guidance on process.

Appointing a judge to be an assistant coroner

40. Very occasionally it may be the case that for particular, case-specific reasons, it is prudent for a sitting or retired judge to sit as a coroner. This may be because the investigation and inquest is very controversial or sensitive, or it has a difficult history which means that, looking at the case as a whole, the Chief Coroner decides to invite the relevant local authority to appoint a judge to sit as an assistant coroner. This is not a suitable route for those cases in which national security sensitive material is or may be relevant.
41. The process is as follows. Usually the coroner will inform the Chief Coroner that he or she considers a judge should be appointed. The Chief Coroner will usually want to know that there has been a pre-inquest review hearing in which the coroner has established that there is consensus amongst the interested persons that a judge should have conduct of the case. The Chief Coroner will wish to see those submissions from the interested persons and any ruling that the coroner has made.
42. If the Chief Coroner agrees a judge should be appointed, he will make enquiries as to the suitability of a relevant judge and inform the coroner.
43. Assuming the relevant local authority has no objections to the course proposed by the Chief Coroner, the local authority should then exercise their power under Schedule 3 CJA to seek the consent of the Chief Coroner and Lord Chancellor for the appointment of a judge as an assistant coroner. This should be done by letter to the Chief Coroner and to the Lord Chancellor in the normal way in which local authorities obtain consent for coroner appointments. In this instance there will be no open competition because the Chief Coroner has invited the relevant local authority to appoint the specific judge. Once the Chief Coroner and Lord Chancellor exercise

their consent, then the local authority will be informed by the Chief Coroner. The assistant coroner will be appointed under the usual terms under Schedule 3 CJA.²²

44. The appointment of a judge to sit as an assistant coroner should not be taken as any indication whatsoever as determinative of any rulings that the newly appointed assistant coroner may make in respect of any of the matters that the interested parties may have raised with the coroner. Nor is it indicative of the Chief Coroner's view on those submissions. Those remain entirely a matter for the coroner hearing the inquest.
45. The relevant local authority remains liable (other than in very exceptional circumstances in which as a matter of agreement central government agrees to bear the costs) for all the usual financial and accommodation costs of the investigation and inquest, even when a judge is nominated under Schedule 10 or appointed as an assistant coroner.
46. The Chief Coroner is unlikely to consider requesting a judge to be nominated to hear an inquest, or to request the relevant local authority appoints a judge as an assistant coroner just because a case is complex or there may be media interest in it. A coroner has the specialist skills to lead an investigation and inquest and this should only very rarely be replaced by another member of the judiciary.

HH JUDGE MARK LUCRAFT QC

CHIEF CORONER

29 January 2019

²² i.e. until they reach the age of 70 years (compulsory retirement age), unless they choose to resign or are removed by the Lord Chief Justice or Lord Chancellor prior to their 70th birthday.