



CHIEF CORONER

GUIDANCE No. 33

SUSPENSION, ADJOURNMENT AND RESUMPTION OF INVESTIGATIONS AND INQUESTS¹

1. The purpose of this Guidance is to assist coroners on the law and practice on suspending investigations and adjourning inquests; resumptions and when a coroner becomes *functus officio*, with a view to achieving greater consistency of approach between senior, area and assistant coroners across all of England and Wales.

Suspension of investigation and adjournment of inquest

2. The law on suspending an investigation and adjourning an inquest is based upon the premise that investigations into a death should not be duplicated.
3. Schedule 1 (“the Schedule”) to the Coroners and Justice Act 2009 (“the Act”) sets out when a coroner can or must suspend and resume investigations. There are three specific circumstances in which the coroner is obliged to suspend the investigation and to adjourn any inquest being held as part of that investigation. There also exists a general power to suspend and adjourn, and a discretion to suspend and adjourn.

Compulsory suspension and adjournment

(a) Compulsory suspension pending or contemporaneous criminal proceedings

4. Under paragraphs 1 and 2 of the Schedule, there are three circumstances in which a coroner must suspend an investigation and adjourn an inquest. The most common of these is on the ground that a person either has been, or may be charged either with a homicide offence involving the death of the deceased or an offence alleged to be a related offence.²
5. Homicide and related offences are defined in paragraph 1(6) of the Schedule. The suspension must be for at least 28 days. The coroner has the power to extend (more than once if needed) the period of the suspension if asked to do so by the person or authority which requested the original suspension.

¹ The Chief Coroner wishes to thank Derek Winter DL, the Deputy Chief Coroner, for the first draft of this Guidance.

² For a detailed exposition of the various different situations, see Jervis on Coroners, 13th edition, 10-75ff.

6. In paragraph 1(6) of the Schedule, "homicide offence" is defined as:
- Murder
 - Manslaughter
 - Corporate Manslaughter
 - Infanticide
 - Road traffic offences of causing death by:
 - dangerous driving
 - careless or inconsiderate driving
 - careless driving while under the influence of drink or drugs
 - driving when unlicensed, disqualified or uninsured
 - Encouraging or assisting suicide
 - Causing or allowing the death of a child or vulnerable adult.

There are also related offences and the Service equivalent of a homicide offence.

7. The suspension/adjournment should be dealt with publicly, in Court and a review date set (even if this leads to further review dates or the review date being brought forward).
8. There is no formal provision for a court to notify the coroner of criminal proceedings. In practice many Magistrates Courts make such notifications but it is still advisable that coroners' staff should maintain contact with the police through the Senior Investigation Officer (SIO) or Family Liaison Officer (FLO) to ensure that there is no unnecessary delay with the family obtaining the death certificate so they may deal with the financial affairs of the deceased.
9. The coroner will await the outcome of the criminal proceedings. The Crown Court usually notifies the coroner but again the coroner's staff should maintain contact with the SIO/FLO so that no time is lost.
10. Some of the cases reported to the Chief Coroner as being in excess of 12 months old are in respect of criminal proceedings and which have not resumed. If there is to be a resumption then the sooner the decision is taken the better so that evidence may be marshalled and the full inquest listed in a timely way.
11. In these cases, the coroner may only resume the investigation/inquest if the coroner thinks that there is sufficient reason to do so. The decision to resume or not is of a highly discretionary nature.

(b) Compulsory suspension pending inquiry under the Inquiries Act 2005

12. Paragraph 3 (and 4) of the Schedule sets out the circumstances in which a coroner's investigation must be suspended where there is an inquiry under the Inquiries Act 2005. Paragraph 4(2) further provides that in such circumstances, the terms of reference of that inquiry must include the purposes set out in section 5(1) of the Act – that is who the deceased was and how, when and where the deceased came by his or her death.

(c) Compulsory suspension in cases involving visiting forces

13. Under the Visiting Forces Act 1952, where the coroner is satisfied that the deceased had a relevant association with a visiting force, unless the

Secretary of State otherwise directs, the coroner must suspend the investigation, adjourn any inquest opened and discharge any jury summoned. In practice, there is a small cadre of coroners for service deaths who are specially trained to conduct investigations and inquests in the deaths of service personnel.³

General power to suspend an investigation

14. Paragraph 5 of Schedule 1 provides a general power to a coroner to suspend an investigation “if it appears to the coroner that it would be appropriate to do so.” This may be used, for example, if another investigation is being conducted into the death by the Independent Office for Police Conduct, the Health and Safety Executive or an Accident Investigation Branch, or if an investigation is being conducted in another jurisdiction, for example, if the death occurred abroad. Where this power is exercised, the coroner may resume the investigation at any time with sufficient reason (paragraph 10 of the Schedule).
15. Where an investigation is suspended under Schedule 1, it is highly likely that an inquest will have been opened, given the requirement in rule 5(1) of the Coroners (Inquests) Rules 2013 (the Rules).
16. The coroner’s discretion is wide but not unlimited and must be exercised reasonably and fairly.⁴ There must be a good reason to exercise a discretion in a particular way, both in fact and in law.

Discretion to adjourn an inquest

17. Rule 25(1) of the Rules provides that a coroner may adjourn an inquest if he is of the view that it is “reasonable to do so.” This is a statutory power to enable coroners to case manage and regulate a case.
18. The High Court will not interfere lightly with the coroner’s discretion to adjourn (or not adjourn) proceedings unless it is clear that the coroner has erred or misdirected himself in law or his decision is unreasonable.

Coroner’s certificate after suspension/adjournment

19. When suspending an investigation (and adjourning an inquest) under the Schedule, the coroner must provide the Registrar of deaths with the particulars required to register the death. Before issuing a Form 120 (‘the yellow’), the coroner must have opened an inquest to take evidence of identification.
20. Once a decision not to resume has been made or after the conclusion of the resumed inquest, the coroner should then provide a certificate to the Registrar of deaths. The coroner should use Form 121 (‘the blue’) for these purposes.

³ See Guidance No.7 A Cadre of Coroners for Service Deaths.

⁴ Coroners should remind themselves of the Chief Coroners Law Sheet no.5 The Discretion Of The Coroner.

Resuming the investigation

21. If the coroner suspends an investigation because someone may be charged with a homicide or related offence,⁵ the investigation must be resumed once the relevant period has expired (paragraph 7 of the Schedule).
22. Where the coroner has suspended the investigation because certain criminal proceedings have been brought,⁶ he can only resume an investigation if he thinks there is sufficient reason to do so. The investigation cannot be resumed until the criminal proceedings which triggered the suspension have come to an end in the court of trial, unless the prosecuting authority has confirmed it has no objection to this.
23. Coroners have long had a discretion to resume inquests adjourned in the above circumstances if there is “sufficient reason” for doing so. Paragraph 8(1) of the Schedule provides that a suspended coroner’s investigation “may not be resumed unless, but must be resumed if, the senior coroner thinks that there is sufficient reason for resuming it.”
24. The outcome of such an investigation resumed must be consistent with the result of the criminal proceedings which triggered the suspension.⁷
25. Where the investigation was suspended because of an inquiry under the Inquiries Act 2005,⁸ the coroner can resume an investigation only if he thinks that there is sufficient reason for resuming it. It cannot be resumed until after 28 days have passed since either the date that the Lord Chancellor has notified the coroner as the date of conclusion of the inquiry or, where the coroner has received no such notification, the date of publication of the findings of the inquiry. Again, the coroner’s investigation cannot reach a conclusion which is inconsistent with the outcome of the inquiry which triggered the suspension.⁹
26. Where a coroner resumes an investigation under Schedule 1, he must resume any inquest that was adjourned. The resumed inquest may be held with a jury if the coroner thinks that there is sufficient reason for it to be held with one.¹⁰ There is no authority directly addressing this exercise of discretion, however given the similarity of wording to s7(3) of the Act, the law relating to discretionary juries is apposite.
27. In the 2015 case *R (Fullick) v HM Senior Coroner for Inner North London*¹¹, the Divisional Court provided a non-exhaustive list of factors relevant to the correct exercise of discretion under 7(3) of the Act. None of them are necessarily determinative:
 - (i) the wishes of the family (following *R (Paul) v Deputy Coroner of the Queen’s Household and the Assistant Deputy Coroner for Surrey*¹²);

⁵ Under paragraph 1, Schedule 1 Coroners and Justice Act 2009.

⁶ Under paragraph 2, Schedule 1.

⁷ Paragraph 8(5), Schedule 1.

⁸ Under paragraphs 3 and 4, Schedule 1.

⁹ Paragraph 9(11), Schedule 1.

¹⁰ Paragraph 11(3), Schedule 1.

¹¹ [2015] EWHC 3522 (Admin) [2015] Inquest LR 321.

¹² [2008] QB 172, [2007] Inquest LR 259.

- (ii) submissions made on behalf of any other interested persons;
- (iii) consideration of whether the facts of the instant case bear any resemblance to the types of situation covered by the mandatory provisions;
- (iv) the circumstances of the death;
- (v) any uncertainties in the medical evidence.

28. If the inquest was started with a jury and then adjourned and the coroner decides to hold the resumed inquest with a jury, if at least seven members of the original jury are available to serve, then they will form the jury for the resumed inquest. If not, or if the original jury was discharged, a new jury must be summoned.¹³
29. Where the coroner resumes an inquest as part of a resumed investigation, the coroner must notify the interested persons of the details of the resumed inquest hearing.¹⁴ The hearing will be in public in the usual way.
30. It may be that the views of the next of kin and other interested persons will have been canvassed by the coroner's staff in advance or the resumption hearing is used as a Pre-Inquest Review hearing to give directions for the disclosure of evidence and submissions about resumption.
31. Under paragraph 8(5) the determination of the resumed inquest cannot be inconsistent with the Crown Court proceedings and cannot appear to determine criminal liability on the part of a named person.

Exercising the discretion on resumption – “sufficient reason”

32. It may be unusual to resume if there has been a substantive hearing at the Crown Court where there has been thorough consideration of all the facts. The coroner may conclude there would be no useful purpose to a resumption as all the facts have been sufficiently aired in public (and in all likelihood in the presence of the family). The coroner may discover this from the SIO/FLO or even contact with the trial judge or consideration of their sentencing remarks. It would be exceptional if the coroner had to consider the transcripts of the trial itself.
33. Relevant factors can be found in the 1988 Northern Ireland High Court *Re Downes' Application*,¹⁵ “the coroner must direct his attention to the question whether it has been sufficiently established who the deceased was, and how, when and where he came by his death. If the coroner, after looking at the facts of the case, considers that these matters have already been sufficiently established in public proceedings, he is quite justified in taking the view that an inquest is not necessary...What is material is whether the relevant matters have been established in a manner in which the public interest has been adequately served.”

¹³ Paragraph 11, Schedule 1.

¹⁴ Rule 25(3) The Coroners (Inquests) Rules 2013.

¹⁵ [1988] 4 NIJB 91.

34. As the judgment of *ex parte Dallaglio*¹⁶ made clear, “the decision to be made...is of a highly discretionary nature and in no way circumscribed by a need to find exceptional circumstances, only ‘sufficient cause’...the section¹⁷ itself expressly envisages, rather than discourages, such a course.”¹⁸
35. The 2017 High Court case of *Silvera*¹⁹ held that a coroner approaching a resumption hearing should consider whether the Article 2 investigative duty is triggered, and if so, whether the investigations that have taken place to date in relation to the death are such as to discharge that investigative obligation. If not, then a properly conducted inquest can discharge the state's investigative obligation.
36. Where a death has occurred in custody, the state has a particular duty to conduct a public investigation before an independent judicial tribunal in which the deceased's relatives can participate.²⁰
37. In summary an inquest is more likely to be resumed, especially if Article 2 is engaged, if the acts or omissions of a public authority ought to be subject to scrutiny at a public hearing during which the family can effectively participate with a view to the coroner exercising his duty to write a Report to Prevent Future Deaths under Regulation 28. Each decision is case specific. If there has been a criminal hearing it will depend on the nature of that hearing, and the nature of any internal or quasi-internal review carried out by the third party (health trust, care home etc).
38. Not resuming an inquest may be unlawful and in breach of both the obligations under Article 2 and the common law.

Resuming historic inquests

39. There have been a number of recent cases in which there have been applications made to coroners to resume inquests after a long period of time. Great care should be taken by coroners to satisfy themselves that there is “sufficient reason” to resume the inquest. When a coroner is dealing with such a case, he should notify the Chief Coroner.
40. A coroner hearing a resumed inquest after many years should carefully consider the scope of the inquest. Whilst a matter for the individual coroner alone, scope must go towards answering the four statutory questions. “A decision on scope represents a coroner's view about what is necessary, desirable and proportionate by way of investigation to enable the statutory functions to be discharged. These are not hard-edged questions.”²¹
41. Inquests should not be used to supplement or replace historic police investigations. In an historic case, “the fact that extensive criminal investigations have not delivered convictions for the atrocity...does not

¹⁶ R. v. Inner West London Coroner, *ex parte Dallaglio and another* [1994] 4 All ER 139.

¹⁷ This is a reference to s16(3) Coroners Act 1988 which is in identical terms to the relevant provision in the 2009 Act.

¹⁸ *Ex parte Dallaglio*, para f p155.

¹⁹ R (on the application of *Silvera*) v HM Senior Coroner for Oxfordshire [2017] EWHC 2499 (Admin).

²⁰ *Regina (Amin) v Secretary of State for the Home Department* [2003] UKHL 51.

²¹ *Coroner for the Birmingham Inquests (1974) v Julie Hambleton and others* [2018] EWCA Civ 2081, para. 48.

begin to establish that proper investigations have not been carried out.”²²
“There is no immutable rule that the failure of a police investigation to identify a perpetrator requires an inquest to take on that role.”²³

42. Consideration should be taken with regard to the length of time that has passed since the relevant event.
43. Any decision that a coroner makes in terms of resumption of historic cases is subject to the supervisory jurisdiction of the High Court.

Functus Officio

41. The 2015 case of *Flower v HM Coroner for The County of Devon, Plymouth, Torbay and South Devon*²⁴ clarified the law on when a coroner becomes functus officio, in other words when a coroner ceases to have jurisdiction to inquire into a case.
42. The *Flower* case found that an inquest or an investigation has not been “held” (for the purposes of s13(1)(b) of the Coroners Act 1988) until an inquest has been conducted *and completed*.
43. *Flower* held that when a coroner has suspended an investigation pending criminal proceedings and has decided not to resume the investigation following the outcome of those proceedings, he is not functus officio, because no inquest was held.
44. Nor is a coroner functus officio when he has notified the Registrar either by way of Form 100A (in which a coroner has made preliminary inquiries and has established that he is not under a duty to investigate the death under s1 Coroners and Justice Act 2009), or by way of Form 100B discontinuance of the investigation under s4 of the Act (the post-mortem examination having established that it is not necessary for the coroner to hold an inquest). This is because no inquest has been held.
45. In all cases in which a coroner is not functus officio, the coroner may revisit the earlier decision not to proceed further. If the coroner has opened an investigation or inquest and then either suspended (the investigation) or adjourned (the inquest), then the inquest has been neither held nor completed. Therefore the coroner remains seized of the case and must resume the investigation if he thinks there is sufficient reason for resuming it.
46. Similarly, in a case in which a Form 100A or 100B has been signed, the coroner remains seized of the matter and can (and “must”²⁵) investigate the death if it becomes apparent that his s1 duty is triggered.
47. It is not uncommon that a coroner will issue a Form 100A or 100B to the Registrar, the deceased is cremated, but then further information comes to light that triggers the coroner’s duty to conduct an investigation under s1. In this circumstance, there is no need to report the matter to the Chief Coroner

²² Birmingham Inquests v Hambleton, para. 60.

²³ Birmingham Inquests v Hambleton, para. 42.

²⁴ [2015] EWHC 3666 (Admin).

²⁵ s1(1) Coroners and Justice Act 2009.

under s1(4) of the Act. This is because the destruction of the body²⁶ occurred *after* the coroner is already seized of the matter and has already commenced preliminary inquiries (which led to his original decision that he did not have a s1 duty to investigate the death).

48. That is a different situation from a completely new referral to a coroner (where the coroner has never been aware of the death) when the body has already been destroyed, lost or absent. A coroner would need a s1(5) direction from the Chief Coroner to commence an investigation and inquest because in that situation the duty to investigate does not arise because of the destruction, loss or absence of the body.²⁷

HHJ MARK LUCRAFT QC

CHIEF CORONER OF ENGLAND AND WALES

7 October 2019

²⁶ Which would otherwise mean that the duty to conduct an investigation under s1 does not arise – s1(4)(c).

²⁷ s1(4)(c) Coroners and Justice Act 2009.