



CHIEF CORONER



JUDICIAL  
COLLEGE

# The Coroner Bench Book



This is a new Bench Book for coroners. It has been written by Peter Thornton, Alison Thompson and Michael Burgess. It is designed to provide coroners, especially newly appointed coroners, with a guide to their use of words in court, although coroners will use their own words, tailored to the particular facts and circumstances of the individual case.

This Bench Book should be read, where appropriate, in conjunction with the Chief Coroner's Guidance (available on the judiciary website).

The Bench Book is issued in electronic form and displayed on the judicial intranet. It will be produced section by section, starting with jury inquests (June 2015).

# Index

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<b>Jury Inquests (June 2015)</b> .....	1
1 Directions to the press .....	1
2 Reporting restrictions .....	2
3 Excluding the public .....	3
4 Juror excusal.....	4
5 Juror oath.....	5
6 Opening remarks.....	5
7 View of the scene.....	16
8 Summing up .....	17
9 Jury retirement .....	35
10 Majority direction.....	36
11 Conclusion and Record of Inquest .....	38
12 Discharge the jury .....	39
13 Thank the jury .....	39

## Jury Inquests (June 2015)

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### **DIRECTIONS TO THE PRESS**

*In a case likely to involve significant publicity, the following directions should be given.*

1. Before the inquest starts I want to say a few words to the press. In support of the principle of open justice, I encourage the fair and accurate reporting of these proceedings.
2. This is a public hearing and there are no automatic reporting restrictions in the coroner's court, although families deserve sensitivity and respect for their privacy.

### **Tweets etc; no photographs**

3. As in most other courts you may tweet and use laptops silently<sup>1</sup>, but this is a jury inquest so you must NOT take any photographs in court or in the court building.
4. Specifically I should remind you that it is a criminal offence to take ANY photograph of a juror, witness or the coroner anywhere in the court building or within the precincts of the building<sup>2</sup>.

### **Recordings**

5. And you must not make any sound recording of the proceedings without my permission<sup>3</sup>.
6. [*In response to an application for permission: I shall permit journalists to record these proceedings, but only as an *aide memoire* to fair and accurate reporting; the recording must not be broadcast or used for any other purpose.*]

### **FURTHER DIRECTIONS TO THE PRESS**

*When the jury is absent because a point of law is raised, the media should be given this reminder.*

7. I must remind you that you may not report (in any form) legal argument which takes place in the absence of the jury.
8. If, following the legal argument, I make a ruling, I will make it clear whether it may be published and if so when.

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<sup>1</sup> Criminal Practice Directions Amendment No.3, 18 March 2015.

<sup>2</sup> Section 41, Criminal Justice Act 1925.

<sup>3</sup> Section 9, Contempt of Court Act 1981.

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## REPORTING RESTRICTIONS

### Postponed reporting

9. I order that publication of this part of the proceedings [legal submissions in absence of jury] be postponed until the jury have reached their conclusion. I consider there to be a risk of substantial prejudice in the administration of justice because [the jury might read them and be improperly influenced by them]<sup>4</sup>.

### Child as witness

*Note that for the purposes of inquest hearings orders under section 39, Children and Young Persons Act 1933, may only be made about children who are witnesses.<sup>5</sup> A section 39 order applies to print as well as sound and television broadcasting.<sup>6</sup> It also applies to any internet publication.<sup>7</sup>*

10. I direct that there must be no publication, whether in the press or by broadcasting or on the internet, of any details that may reveal the identity of any child witness in these proceedings. This includes the publication of their name, address, school or anything else that may identify them, including a picture.
11. I impose this restriction in respect of the witnesses because
- child AB is now in care
  - child CD is the child/sibling of the deceased and may have been harmed by neglect
  - child EF may have inadvertently caused or contributed to the death
  - child GH acted as a whistleblower at a Young Offender Institution where he is still detained
  - child IJ, who is still at school, may in the unusual circumstances of this case be harmed by publicity
12. Any breach of this order may be a criminal offence<sup>8</sup> or contempt of court.

### Order in family proceedings

13. The [Family Division of the] High Court has made an order restricting the reporting of the identity of a child who will be mentioned in these proceedings. [Date of order if known.] That order is still in force.
14. I therefore remind you that the publication of the name, address and anything else that may identify the child [name; sister/brother of the deceased] is prohibited.

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<sup>4</sup> Section 4, Contempt of Court Act 1981.

<sup>5</sup> Section 39(1), Children and Young Persons Act 1933, as amended by section 79, Criminal Justice and Courts Act 2015.

<sup>6</sup> Section 57(4), Children and Young Persons Act 1963.

<sup>7</sup> Section 39(3), Criminal Justice and Courts Act 2015 (from 13 April 2015).

<sup>8</sup> Section 39(2), Children and Young Persons Act 1933.

### **Anonymity of witness**

15. I have already granted an application for anonymity of this witness and directed that their evidence may be given behind a screen<sup>9</sup>.
16. I therefore direct that the publication of any details that may identify this witness be prohibited<sup>10</sup>.

### **EXCLUSION OF THE PUBLIC**

*This should only happen exceptionally.*

17. Pre-inquest review hearing. I have already directed that the public be excluded from (part of) this pre-inquest review hearing on the ground that it is in the interests of justice/national security to do so<sup>11</sup>. [Brief reasons, if possible.]
18. Inquest hearing. I direct that the public be excluded from (part of) this inquest hearing on the ground that it is in the interests of national security to do so.<sup>12</sup> [Brief reasons, if possible.]
19. Publication. [Where the public is excluded from a hearing or part of a hearing on grounds of national security] I remind the press that the publication of any details of this part of the hearing may be a contempt of court.<sup>13</sup>

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<sup>9</sup> Rule 18, Coroners (Inquests) Rules 2013.

<sup>10</sup> Section 11, Contempt of Court Act 1981.

<sup>11</sup> Rule 11(5), Coroners (Inquests) Rules 2013.

<sup>12</sup> Rule 11(4), Coroners (Inquests) Rules 2013.

<sup>13</sup> Section 12, Administration of Justice Act 1960.

## **JUROR EXCUSAL**<sup>14</sup>

### **Juror problems**

1. In a moment you will be selected to sit on a jury inquiring into the death of [full name].
2. This inquest is expected to last about [days/weeks] so until about [date]. You were given notice of this in a letter and expressed no difficulties about the time or indeed, anything else. I hope that is still the case.
3. You have a duty as citizens of this country to sit on a jury when summoned; it is an important civic duty.
4. If however, you feel you have a good reason for not sitting on this inquest, you should say so when your name is called. It will have to be a very good reason, such as a booked pre-paid holiday, hospital appointments or an examination. I will invite you to talk to me privately about it, and then I will decide whether you can be excused.

### **Connection with the case**

5. I am also going to ask you some questions. If, for you, the answer to any of them is 'yes', please say so when your name is called<sup>15</sup>.
6. The questions are<sup>16</sup>:
  - a. Do you know any of the witnesses? Their names are listed on this sheet [provide sheet; or read out slowly].
  - b. Do you know the deceased [full name] or any member of his/her family?
  - c. Do you or does a close member of your family work, or have you or they ever worked, for [company or organisation]?
  - d. Do you or does a close member of your family have any strong connection with [company or organisation]?

### **Decision**

7. You are excused OR I am afraid I cannot excuse you.

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<sup>14</sup> See Advice from the Chief Coroner, *Procedure for excusal of jurors* (29 April 2015). Note that coroners' courts are not governed by the Juries Act 1974 (as amended) except with regard to **qualification** for jury service (section 1, Juries Act 1974) and **disqualification** from jury service (Parts I and II of Schedule 1 to the Juries Act 1974): see section 8(4) and Schedule 6 to the Coroners and Justice Act 2009; see also Form 1, Schedule to the Coroners (Inquests) Rules 2013.

<sup>15</sup> Exceptionally, where for example there is a real threat of jury intimidation, names may be anonymised: see *R v Comerford* [1998] 1 WLR 191.

<sup>16</sup> These or other questions should be discussed in advance with the Interested Persons, preferably at a pre-inquest review hearing.

## **JUROR OATH**

*Each juror will be sworn separately with the following oath (or affirmation).*

I swear by Almighty God [Allah etc] that I will diligently inquire into the death of AB and make findings of fact and come to a true conclusion according to the evidence.

I do solemnly, sincerely and truly declare and affirm that I will diligently inquire into the death of AB and make findings of fact and come to a true conclusion according to the evidence.

## **OPENING REMARKS**

### **Introduction**

1. You have been sworn in as the jury for this inquest. My name is [name]. I am the coroner.
2. This is an inquest into the death of AB [full name] who died on [date]. This case concerns a death in [prison/police custody/mental health institution/care home/hospital/other].
3. I welcome the family [identify those present and inquire what name they prefer when referring to the deceased]. The family are represented by [name of counsel/solicitor].
4. Other interested persons present in court are [names] and are represented by [names of counsel/solicitors].

### **Purpose of inquest**

5. An inquest hears evidence so that you, the jury, can make findings of fact and come to a conclusion about the death. Formerly a conclusion was known as a verdict. Now we use the word conclusion to distinguish the inquest process from a criminal trial.
6. Nobody is on trial here. An inquest does not decide matters of criminal or civil liability. There is no question of attributing blame. The inquest is simply a way of establishing facts about the death of AB.

### **The four questions**

7. Your role in this inquest is to answer four main questions. Who was the deceased? When, where and how did he/she come by his/her death? You are also required to record particulars for registering the death, such as date and place of birth and occupation. You are not allowed to express an opinion on any other matters.

### **The Record of Inquest**

8. In due course, you must complete and sign a document called a Record of Inquest, setting out your findings and a conclusion about the death. That will include the medical cause of death.
9. I shall tell you more about all of these things towards the end of the inquest.



## Procedure

10. You will shortly be hearing the evidence in this case, all of which will be recorded. I shall take each witness through their evidence. Then the family and other interested persons may ask questions [through their counsel or legal representative]. After that, you may ask questions to clarify any matters, if you wish. You should write these down and pass them to me. I have a duty to exclude any question that is not relevant to the purpose and scope of the inquest.
11. Some of the evidence will be read out without the witnesses having to come to court. This is because nobody has required their attendance and their evidence is not in dispute.  
OR I propose to put before you the written evidence of the following: [list full name(s), nature of evidence and whether all or part of a document will be read]. Can I confirm there is no objection and interested persons have a copy?<sup>17</sup>
12. At the end of the evidence, I shall sum up the case to you. I shall give you directions on the law, indicating what conclusions you may consider and what factual findings are required to support them.
13. I shall also summarise the evidence, reminding you of what is important in the evidence. Some of you may also find it helpful to take a brief note during the evidence.
14. I shall then invite you to retire to consider your findings and conclusion.

## Warnings

15. Next, I have to give you some important warnings [a list of dos and don'ts]. [*This is the nine point list in the Chief Coroner's Guidance No.10, Warnings to Juries.*<sup>18</sup>]
16. You will decide this inquest on the evidence which you see and hear in court, and on nothing else.
17. Do not discuss the evidence except amongst yourselves when you are all together in private. Do not discuss the inquest with family or friends when you go home, tempting though that may be, because it will be you and not they who hear the evidence in court.
18. Do not communicate with anyone about the inquest in any way at any time; that includes by phone or text, chat lines, twitter or blogs.
19. Do not be tempted to do your own research; just listen to the evidence. Do not go to the scene or make your own inquiries. Do not look anything up on the internet or on social networking sites such as Facebook. None of that is evidence.
20. These are important directions, given by me the coroner, and you must follow them. If you disobey them, any of them, it may amount to contempt of court or

<sup>17</sup> The second alternative complies strictly with Rule 23, The Coroners (Inquests) Rules 2013. The first may be sufficient when clear agreement has been reached with Interested Persons at a pre-inquest review hearing.

<sup>18</sup> Issued 22 October 2013, amended 29 April 2015.

even a criminal offence<sup>19</sup>, both of which can be punished by a fine or imprisonment.

21. That is why I must warn you about these things. And if any of it does happen it may bring the inquest grinding to a halt. That might mean having to start all over again with another jury, which would not be good.
22. Do not let anybody talk to you about the inquest. If anyone tries to, tell the coroner's officer who will tell me.
23. If you have any serious concerns about anything which takes place outside the jury room, or even inside it, do not hesitate to tell the coroner's officer straightaway, so that I get to know about it.
24. [There is likely to be some publicity about this inquest. Just ignore it. Publicity in the press and media is not evidence. It may refer to evidence but it will be selective, whereas you will come to your decisions on the whole of the evidence.]

### Timings

25. The inquest is due to last [days/weeks]. We will aim to sit from [10.00 am] until [4.15-4.30 pm] every day, Monday to Friday. We shall break for lunch between 1.00-2.00pm and sometimes have a short break mid-morning and mid-afternoon.

### Summary of case

26. Now let me give you a brief summary of the case so you know what sort of evidence to expect.
27. [Neutral summary of the circumstances.]

### Topics (scope)

28. The evidence will cover in the main the following topics [provide a list e.g. personal background of deceased, how he/she came to be detained, medical history, treatment during detention, cause of death].

### Issues

29. Although this may change as the evidence unfolds, I expect the main issues to be [provide a list e.g. the state of mind of the deceased and whether he/she intended to take his/her own life, incidents during detention and whether there was an obvious risk of self-harm].

### [Additional matters]

30. [Refer to any further aspect of the case which may be of particular importance, e.g. hearsay evidence - see actual example illustration below.]

### Conclude

31. Members of the jury, that is all I wish to say by way of introduction to the case. The evidence will now be called before you. The first witness is [name].

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<sup>19</sup> For new offences of jury research etc in force from 13 April 2015, see Schedule 6 to the Coroners and Justice Act 2009 (as amended by Schedule 13 to the Criminal Justice and Courts Act 2015).

## ***SPECIMEN EXAMPLE: OPENING REMARKS IN PRISON DEATH CASE***

### **Introduction**

1. Members of the jury, you have been sworn in as the jury for this inquest. I am the senior coroner/assistant coroner for the area of Oxfordshire.
2. This inquest concerns the death of AB on 30 December 2014. He was 23 years old and died in prison.
3. I welcome the family. His mother and sister are in court and are represented by counsel Mr C.
4. Other interested persons present are the Prison Service represented by Mr D and Oxford Health NHS Foundation Trust represented by Ms E of counsel.

### **Purpose of inquest**

5. An inquest hears evidence in order to make findings of fact and draw a conclusion about a death. Formerly a conclusion was known as a verdict. Now we use the word conclusion to distinguish the inquest process from a criminal trial.
6. Nobody is on trial. An inquest does not decide matters of criminal or civil liability. There is no question of attributing blame. The inquest is simply a way of establishing facts about the death of AB.
7. As required, these proceedings are being recorded.

### **The four questions**

8. Your role in this inquest is to answer four main questions. Who was the deceased? When, where and how did he/she come by his/her death? You are also required to record particulars for registering the death, such as date and place of birth and occupation. You are not allowed to express an opinion on any other matters.

### **The Record of Inquest**

9. In due course, you must complete and sign a document called a Record of Inquest, setting out your findings and a conclusion about the death. That will include the medical cause of death.
10. I shall tell you more about all of these things towards the end of the inquest.

### **Procedure**

11. You will shortly be hearing the evidence in this case. I shall take each witness through their evidence. Then the family and other interested persons may ask questions through their counsel or legal representative. After that, you may ask questions to clarify any matters, if you wish. You should write these down and pass them to me. I have a duty to exclude any question that is not relevant to the purpose and scope of the inquest.

12. Some of the evidence will be read without the witnesses having to attend. This is because nobody has required their attendance and their evidence is not in dispute.

OR I propose to put before you the written evidence of the following [list full name(s), nature of evidence and whether all or part of a document will be read]. Can I confirm there is no objection and interested persons have a copy?<sup>20</sup>

13. At the end of the evidence, I shall sum up the case to you. I shall give you directions on the law, indicating what conclusions you should consider and what factual findings are required to support them. If necessary, I shall provide written directions.
14. Then I shall summarise the evidence, indicating where it is capable of assisting you to make findings of fact. Although I shall be reminding you of what was said, you may find it helpful to take a brief note as we proceed.
15. I shall then invite you to retire to consider your findings and conclusion.

### Warnings

16. Next, I have to give you some important warnings [a list of dos and don'ts]. [*This is the nine point list in the Chief Coroner's Guidance No.10, Warnings to Juries. See Opening Remarks at p6 above.*]

### Timing

17. The inquest is due to last one week. We will aim to sit from 10am until 4.30pm every day with breaks at about 11.30am and 3.15pm.
18. Refreshments are available in your room and lunch is available in the canteen unless you wish to bring your own.

### Summary of case

19. This is a brief summary of the case so you know what sort of evidence to expect.
20. AB worked part-time for a local supermarket and lived with his mother. He had a close relationship with his sister who lived nearby. He no longer had any contact with his father.
21. He was arrested by police on 31 October 2014 following an allegation of assault. He spent the night in a police cell and, following a brief appearance in court the following day, he was remanded to Bullingdon prison. It was his first time in prison.
22. You will hear evidence as to what happened over the course of the next 4 weeks, from staff who had contact with him and from fellow inmates. You will also hear from the police officer who investigated the death and from his mother.

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<sup>20</sup> To comply with Rule 23, The Coroners (Inquests) Rules 2013.

23. At about 7am on 30 December 2014, he was found suspended from the top bunk of his cell by a belt round his neck. He was no longer conscious. Though attempts were made to resuscitate him, he died in hospital later that morning.

### **Topics (scope)**

24. The evidence will cover in the main the following topics:
- a. Medical background of the deceased, including mental health
  - b. Medical screening at prison reception
  - c. Medical care during his detention
  - d. State of mind during his detention
  - e. Assessing risk of self-harm and procedures for monitoring (ACCT)
  - f. Immediate circumstances of the death (how and when discovered)
  - g. Expert evidence of AB's mental condition

### **Issues**

25. Although this may change as the evidence unfolds, I expect the main issues to be:
- a. Efforts to obtain community medical records
  - b. Continuity of medication and psychiatric support
  - c. Response to documented history of self-harm
  - d. Response to material (potential ligament) being found in cell
  - e. Knowledge of ADHD (attention deficit hyperactivity disorder) within prison mental health team
  - f. Frequency of cell observations
  - g. Whether AB intended to end his own life or whether he intended to be rescued
  - h. Whether the death could reasonably have been prevented

### **Conclude**

26. Members of the jury, that is all I wish to say as an introduction to the case. The evidence will now be called before you. The first witness is [name].

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## **ACTUAL EXAMPLE: CUSTODY DEATH ABROAD**

### **Introduction**

1. You have been sworn in as the jury for this inquest. I am the coroner.
2. AK died in custody in Syria on 16 December 2013, aged 32. In this country he was a qualified doctor and surgeon, working for the NHS.
3. Although his death was in Damascus in Syria, under our law an inquest must be held into the death.
4. An inquest is very different from cases in other courts. Nobody is on trial. No organisation or government is on trial. You, as the jury, will not decide any question of criminal or civil liability. That is why you are a jury of 11, a historically different number to a jury in a criminal case, which has 12.

### **Jury's role**

5. Your role in this inquest is to decide four questions. Who was the deceased (the person who died) and when, where and how did he come by his death. -
  - a. **Who** was the deceased? - In this inquest that is clear: his name was AK.
  - b. **When** and
  - c. **Where** did he come by his death? - He was found dead allegedly hanged in prison in Damascus on 16 December 2013.
  - d. **How** did he come by his death? - I will return to that in a moment.
6. And it will also be your task to record the particulars concerning the death, as required by the Registration Act. I shall tell you more about that towards the end of the inquest.
7. After these Opening Remarks the evidence will be called before you and then I will sum up the case to you, giving you directions on the law, directing you on what is required from you, possible conclusions, questions to be answered, and so on. And I will review the evidence which you have heard, reminding you of what is important. Some of you may take notes of the evidence - fine. Some of you may not - also fine. But either way I shall remind you of the important evidence at the end.
8. This is an inquest not a public inquiry. But every inquest is an inquiry into the death. That involves looking at how Dr AK came by his death, but not all of the much broader issues which a public inquiry might consider. I have a duty to exclude any question which is not relevant to the scope of this inquest, and to restrict the issues to the central purpose of this inquest.
9. You will listen to the evidence and when you have heard it all you will make findings of fact and then draw conclusions, if you can, from those findings.
10. If you wish, you may ask questions of witnesses at the end of all the other questions. You should write down any question you may have and have it passed to me.

## Warnings

11. Members of the jury, you will decide this inquest on the evidence which you see and hear in court, and on nothing else. Witnesses will be called before you and they will be asked questions by the lawyers. Some witnesses will not come to give evidence, but their statements (or parts of them) will be read to you, by agreement of the lawyers. There will also be documents in the case. All of that will be evidence. But anything outside of that will not be evidence.
12. Do not discuss the evidence except amongst yourselves when you are all together in private (a room has been set aside for you just nearby). Do not discuss the inquest with family or friends when you go home, tempting though that may be, because it will be you and not they who hear the evidence in court.
13. Do not communicate with anyone about the inquest in any way at any time; that includes by phone or text, chat lines, twitter or blogs.
14. Do not be tempted to do your own research; just listen to the evidence. Do not make your own inquiries. Do not look anything up on the internet or on social networking sites such as Facebook. None of that is evidence.
15. These are important directions, given by me the coroner, and you must follow them. If you disobey them, any of them, it may amount to contempt of court which can be punished by a fine, even imprisonment.
16. That is why I must warn you about these things. And if any of it does happen, it may bring the inquest grinding to a halt. That might mean having to start all over again with another jury, which would not be good.
17. Do not let anybody talk to you about the inquest. If anyone tries to, tell the usher, who will tell me.
18. If you have any serious concerns about anything which takes place outside the jury room, or even inside it, do not hesitate to tell the usher straightaway, so that I get to know about it.
19. There is likely to be some publicity about this inquest. Just ignore it. Publicity in the press or media is not evidence. It may refer to evidence but it will be selective, whereas you will come to your decisions on the whole of the evidence.
20. That is my headmasterly bit, the dos and don'ts for jurors.

## Timings etc

21. The inquest will start at 10am each day and finish about 4.15-4.30pm. We shall break for lunch between 1-2pm and usually have a short break mid-morning and mid-afternoon.
22. We shall sit five days a week, Monday to Friday. But some days there will be gaps, because I may need to discuss some point of law or point on the evidence with counsel, and I shall do that in your absence. And I will decide what is relevant to the hearing.

## Counsel

23. Let me introduce counsel who will be asking the questions. -
  - a. First, counsel to the inquest, here to assist me [names].
  - b. Then the family of Dr AK are represented by [names].
  - c. The FCO are represented by [name].

## Summary of the case

24. Now let me tell you something about the evidence which will be called before you. This is just a very brief summary to let you know what sort of evidence to expect.
25. Dr AK was a family man, living in London with his wife and two children. He also had brothers and sisters, and his mother is FK.
26. Dr AK, as I have said, was a fully qualified and respected medical man, a doctor and a surgeon.
27. It is clear that he wanted to use his medical skills to help others. That included helping others in conflict-torn Syria.
28. He made two trips to Syria in 2012. He went via Turkey, travelling on behalf of a charity, Human Aid UK.
29. The charity did not encourage or support him or others to enter Syria. It was risky, if not dangerous. The FCO's clear and firm advice was: 'Do not travel to Syria.' Do not go there. The British Embassy was closed and it would be impossible to look after a British citizen if anything went wrong.
30. On Dr AK's second visit to Syria in 2012, he crossed the border from Turkey to Syria illegally. He had no permission to enter Syria.
31. He went to Aleppo in Syria and was working there as a doctor, in two hospitals.
32. I want to emphasise that there is no information or evidence that Dr AK went to Syria to fight. On the contrary it will be clear that when he went to Syria on those two occasions in 2012 he went to provide humanitarian medical aid, to help as a doctor if he could. There will be evidence that that is exactly what he did. [*This was an agreed form of words.*]
33. Things went wrong on 22 November 2012. Dr AK was working in a hospital when he went out for a walk. He was detained and was never a free man again.
34. Just over a year later, still in detention in Syria, he was found dead allegedly hanged in a prison in Damascus.
35. During that period of a year, while he was in custody, his family made super-human efforts to try and get him released. In particular his mother, FK, was extraordinarily persistent. She spent much time in Damascus, going to prisons, to lawyers, to judges, to officials and many others - seeking her son's release. Her account of these events, which you will hear is remarkable and moving. It is an anguished but determined mother's story.
36. Amongst all of the many efforts to secure his release, there was a possible unofficial British Parliamentary delegation, work by George Galloway MP, by Nick Griffin MEP, and by other possible intermediaries.



37. More significantly FK was promised by various Syrian authorities that her son, AK, would be released, and that it would be done by order of a Syrian court. Although Dr AK had been in an earlier prison where he had been treated badly, in later months at the time of these promises he was treated reasonably well and was himself well and looking forward to going home.
38. But he was not released. He died in prison on 16 December 2013.
39. It is the death of Dr AK that you will now investigate, through the evidence which will be called before you.

### **Topics of evidence**

40. The evidence will cover in the main the following topics:
  - a. The personal and working background of Dr AK.
  - b. How he came to be in Syria; the history of his movements.
  - c. How he came to be detained in Syria on 22 November 2012.
  - d. The contact between AK and his family (and others) while in detention.
  - e. Contact between the family and the Syrian authorities.
  - f. The family's expectations of his release.
  - g. What was known about Dr AK's state of mind.
  - h. What was known to the FCO and what was done by them.
  - i. The announcement to the family of the death.
  - j. The cause of death. You will hear expert evidence about that including the post-death medical investigations.

### **Possible issues**

41. Having heard the evidence, I expect the sort of issues, the main issues, you may have to consider, although it will depend upon the evidence as it unfolds, are likely to be along these lines:
  - a. Did Dr AK take his own life? In other words was it suicide? OR
  - b. Was he forced in some way by his captors, to take his own life against his will? And 'by his captors' I mean by either agents of the Government of Syria (i.e. the regime of President Assad) or by others who independently of the state decided that Dr AK should die? OR
  - c. Was he just killed by his captors? Not killed by virtue of the law, for example sentenced to death by a court, but just deliberately and unlawfully killed.

### **Hearsay evidence**

42. There is one further thing about the evidence that I should mention. And that is hearsay evidence. By hearsay evidence I mean a witness saying: 'So and so told me that this or that happened.' OR 'So and so told me that somebody told her that this or that happened'. OR 'I learned from my inquiries that this or that had happened'.

43. These are just examples of hearsay evidence. Be cautious about this kind of evidence. It is still evidence in the inquest, but it is coming indirectly, second or third hand, from somebody who is not here to give evidence and be cross-examined about what they had to say.
44. It may be good, sound, reliable evidence, or it may be less reliable, for example because it comes from somebody who has a motive to lie or distort the truth. You must decide for yourselves, looking at each piece of hearsay, what weight you should give to it in all the circumstances, including other evidence. You can give it full weight, or less weight, or no weight at all, making up your own minds, being fair and sensible about it.
45. I shall come back to the topic of hearsay evidence later in the hearing.

### **Conclude**

46. That is all I wish to say to you as an introduction to the case, as a brief guide to the evidence which is to come and the issues likely to arise. The evidence will now be called before you [by counsel].

## **VIEW OF THE SCENE**

*Taking the jury on a 'view' is not encouraged. Photographs, plans, CCTV etc are normally good enough to explain the scene of particular events. But occasionally a view is necessary for the jury to fully understand key events. The ground rules for a view should always be discussed in advance.*

1. Members of the jury, tomorrow we will go together to view [place/scene] so as to give you a better idea of how it looks. A coach has been organised and we shall leave shortly after 10.00am.
2. What you will see there [at place] is part of the evidence in the case.
3. It will help you if you take your plans and photographs with you. We shall stop at the corner of [name] street and [name] road and walk along [name] street to the end by the café. You will be able to see [describe points which need to be viewed, if appropriate by reference to plans and photographs].
4. Bear in mind, as I have been told, that the café now looks rather different from the way it looked at the time (as shown in the photographs).
5. When we get there I shall lead the way and you will follow with the coroner's officer. Please keep together.
6. And bear in mind that you will be in public, so do not say too much, certainly not loudly. The press may be there too. They are entitled to be there but they cannot take photographs or video recordings of you. Some of the lawyers will be there too, but no witnesses.
7. You may ask questions if you need to. Ask the coroner's officer who will be with you and he will tell me and I will try and help. Don't speak to anyone else.

## **SUMMING UP**

*A summing up must always be tailored to the particular facts and circumstances of the individual case.*

## **SPECIMEN SUMMING UP: DIRECTIONS OF LAW**

### **Introduction**

1. I am now going to sum up to you.
2. I shall give you directions on the law which you must take from me and apply to the evidence.  

[If possible provide this part of the summing up to the jury in writing<sup>21</sup>, and state: I am going to give you my directions of law in writing so that you can have them with you when you retire. And I shall read them out for the record.]
3. I shall also remind you of the evidence to enable you to make factual findings that will support your conclusion.
4. You have heard all the evidence in this case. The evidence includes the evidence of witnesses from the witness box, statements of witnesses that were read, other documentary evidence, [items of property, photographs, CCTV, etc].
5. Your findings must be based solely on the evidence you have heard or seen in court. You must ignore anything else, such as media coverage of the case. It is irrelevant.
6. If I appear to express a particular view about the evidence, you must ignore it, unless you agree with it. It is your view of the evidence that matters.
7. This is not a trial; it is an inquest into a death, a fact-finding inquiry to find out how AB died. It is not concerned with attributing blame. It is simply a way of establishing facts.
8. In order for you to decide the facts, you must make an assessment of the evidence. It is up to you what you make of each witness, in terms of their credibility and reliability. What evidence do you accept and what evidence do you reject? That is a matter for you. It is open to you to accept one part and reject another part of a witness's testimony.

### **The four questions**

9. The evidence has been directed towards answering four questions. Who was the deceased? When, where and how did AB come by his/her death? You must also reach an overall conclusion about the death. You must not express an opinion about other matters or make recommendations.

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<sup>21</sup> See *R v Bennett* [2014] EWCA Crim 2652 at [63].

## The Record of Inquest

10. Once you have made your findings in relation to the four questions and reached a conclusion you must record these and sign one copy of the Record of Inquest. You have copies of this form in front of you and must complete all the sections. I shall give guidance as to how you approach individual sections.

### Section 5

11. I shall deal with this first. These are the details which are required for the death to be formally registered. In this case there is no dispute about them and I therefore direct you to enter the following [details].

[Alternatively, if there is conflicting evidence, state that it will be covered later and is for the jury to determine].

### Section 1

12. Again I direct you to enter the full name of the deceased.

### Section 2

13. You are required to determine the medical cause of death. You will recall from the evidence of the pathologist that the correct format for recording this is to show the disease or condition directly leading to death i.e. the immediate cause of death, under 1(a), with underlying conditions in sequence under 1(b) and 1(c) [if appropriate].

14. This has not been a subject of dispute in this case and I therefore direct you to record the following [details].

[Alternatively, if there is conflicting evidence, state that it will be covered later and is for the jury to determine.]

### Section 3

15. This is where you should record when, where and how the deceased came by his death. You will see from the wording on the form that you should include the wider circumstances of the death where section 5(2) of the Coroners and Justice Act 2009 applies. [It applies/does not apply in this case].

16. What you write down in section 3 is a matter for you. It should be brief, neutral and factual, expressing no judgment or opinion, without naming individuals. Restrict your findings to answering the three key questions: when, where and how did he come by his death. Add a separate piece of paper if you need more space.

17. [As this is a case where the wider circumstances should be recorded, you should include factual findings on relevant issues specific to this case, about which you have heard evidence. I suggest that this includes the following issues [list issues]. You may include other issues that you consider important provided they are relevant to the circumstances of the death].

[Examples may be given: 'No night-time cell checks were carried out' rather than 'Officer A should have checked the cell', 'Prescribed drugs were not administered', not 'Nurse B was negligent and forgot to give the drugs'.]

## Section 4

18. Finally, you are required to record your conclusion in section 4<sup>22</sup>. This should not be considered until you have agreed the factual foundation for it in section 3.
19. I shall now direct you as to what conclusions you should consider, and in what order.
20. In this case, there are [two/three etc.] possible conclusions. They are alternatives and I shall deal with each of them in turn.

## Conclusions

21. [List available conclusions, preferably in writing. Indicate the essential elements about which the jury must be satisfied and the standard of proof required. Indicate the order in which conclusions should be considered. Identify the evidence capable of supporting each conclusion.]<sup>23</sup>
22. Those are the three alternative conclusions. One of those three conclusions must be entered in Section 4.

## Other directions

### Expert evidence

23. Let me say a word or two about expert evidence. In this case you heard the evidence of [name(s)], which I will summarise shortly.
24. Expert evidence is designed to help you with things which are likely to be outside your own experience. An expert should be independent and neutral, trying to assist the court. As with all evidence you are entitled to accept the expert evidence or reject it or any part of it as you see fit, [although in this case there is no dispute about it].

### Hearsay<sup>24</sup>

25. Let me also say a word about hearsay evidence.
26. You will need to consider the evidence of witness [name] who gave what is called hearsay evidence. This is evidence of what a witness hears from someone else about an event that they themselves have not seen or heard. [Alternatively, you may be dealing with a document produced by a witness who did not write it].
27. You must be cautious about this kind of evidence. It is still evidence in the inquest but it comes from someone who is not here and cannot be asked questions about it.

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<sup>22</sup> For the three stage process leading to a conclusion, see Chief Coroner's Guidance No.17 *Conclusions*, at paragraph 18.

<sup>23</sup> If Article 2 is engaged, the jury must reach conclusions on the central issues and identify any shortcomings in the operation of a regulatory system. They must be asked to express conclusions on matters which *probably* caused or contributed to the death and may be asked (this is not mandatory) to include matters that *possibly* did so.

<sup>24</sup> See Chief Coroner's Law Sheet No.4 *Hearsay Evidence*.

28. You should consider the circumstances in which it was said. Is it good reliable evidence or could it be from someone who has a reason to distort the truth?
29. It is for you to consider how reliable it is and how much weight should be given to it. It is evidence that requires careful scrutiny by you, being fair and sensible about it. You must decide what weight, what value, you can give to it. You may give it considerable weight, or some modest weight, or little weight, or no weight at all. That is for you to decide.

### **Evidence**

30. I shall now review the evidence in the inquest.
31. [Summarise the evidence in a logical order, sometimes chronological, but not necessarily in the same as the order of witnesses. Have a clear plan. Outline the approach you intend to take. Group together evidence relating to particular issues e.g. chronology (day, date, time and place), medical cause of death, evidence as to state of mind, systems. Indicate where there has been no dispute and where the evidence has been a subject of challenge. Indicate where evidence supports other evidence and where there are inconsistencies. Cross reference to pages in the jury's bundle of documents. Try not to be too lengthy.]

### **Final remarks**

32. Before you retire to consider your findings, I must give you these further legal directions.
33. First, you may not express any opinion on any matter other than giving answers to the four questions and providing details for registration.
34. Secondly, your conclusion must not be framed in such a way as to appear to determine any question of criminal liability on the part of a named person or civil liability.
35. I must also repeat the warning I gave you before. You decide this case solely on the evidence which you see and hear in this court. Do not do your own research or look anything up on the internet. This is most important.
36. You must reach if you can a unanimous conclusion, one with which you all agree. There may come a time when I can accept a majority decision and if so I shall call you back into court and give you further directions.
37. When you have completed the Record of Inquest, I shall check to make sure there are no errors or inconsistencies. Then you will be called back to court and asked to read it out.
38. If you have not already done so, please elect a foreman, man or woman; someone to chair your discussions and to speak on your behalf when you return to court.
39. If you want further directions, on the law or the evidence, send a note. The court will reassemble and I will give them to you.
40. Members of the jury, when the jury bailiff/usher/coroner's officer is sworn I shall ask you to retire to consider your findings and conclusion and enter them on the Record of Inquest.

41. Please take all your documents and personal notes with you.

[For jury retirement, majority directions, jury conclusions etc, see below.]

## ***SPECIMEN EXAMPLE: SUMMING UP IN A PRISON DEATH***

### **Introduction**

1. I am now going to sum up to you. First I shall give you directions on the law which you must take from me and apply to the evidence. Secondly I shall remind you of the evidence to enable you to make factual findings that will support your conclusion.

### **Directions of Law**

2. You have heard all the evidence in this case. There will be no more evidence. The evidence includes the evidence of witnesses from the witness box, statements of witnesses that were read, other documentary evidence such as photographs of the cell and items of property such as the belt apparently used by the deceased.
3. Your findings must be based solely on the evidence you have heard or seen in court. You must ignore anything else, such as media coverage of the case. It is irrelevant.
4. If I appear to express a particular view about the evidence, you must ignore it, unless you agree with it. I do not intend to express a view.
5. This is not a trial; it is an inquest into a death, a fact-finding inquiry to find out how AB died. It is not concerned with attributing blame. It is simply a way of establishing facts.
6. In order for you to determine the facts, you must make an assessment of the evidence. Some has been agreed, some has not. But you must decide. What evidence do you accept and what evidence do you reject?

### **The four questions**

7. The evidence has been directed towards answering four questions. Who was the deceased? When, where and how did he come by his death? You must also reach an overall conclusion about the death. You must not express an opinion about other matters or make recommendations.

### **Record of Inquest**

8. Once you have made your findings in relation to the four questions and reached a conclusion you must record these and sign one copy of the Record of Inquest. You have copies of this form in front of you and must complete all the sections. I shall give guidance as to how you approach each section.

### **Section 5**

9. I shall deal with this first. These are the details which are required for the death to be formally registered. In this case there is no dispute about them and I am directing you to enter the following:



- a. Date and place of death – 1 November 2014, John Radcliffe Hospital
- b. Name and surname of deceased – AB
- c. Sex – male
- d. Maiden surname of woman who has married – not applicable
- e. Date and place of birth – 13 July 1991, Oxford
- f. Occupation and usual address – Delivery driver, 1 Meade Close, Reading

### Section 1

10. Again I direct you to enter the full name of the deceased: AB

### Section 2

11. You must decide and enter the medical cause of death. The medical evidence was that the cause of death (as a result of the hanging) was recorded as 1a) hypoxic brain injury.
12. There has been no dispute about that in this case. You should therefore enter that medical cause of death in section 2.

### Section 3

13. This is where you should record when, where and how the deceased came by his death. You will see from the wording on the form that you should include the wider circumstances of the death where section 5(2) of the Coroners and Justice Act 2009 applies. It applies in this case.
14. You should record your factual findings, based on the evidence, about the circumstances of the death, in particular the central issues identified in this case. The law says that you must not make recommendations or express opinions or name individuals. Add a separate piece of paper if you need more space.
15. I suggest that the sort of questions you might like to ask and then answer are as follows:
  - a. When and where was AB detained?
  - b. When, where and how was he found on 30 November 2014?
  - c. Did he deliberately suspend himself by a belt?
  - d. If so, did he intend to take his own life (low mood, history depression and self-harm, note to mother)?
  - e. Or did he intend to be found and rescued ('cry for help', to gain admission to healthcare)?
  - f. Or are you unable to determine his intention ('impulsivity' associated with illness)?
  - g. Was there adequate knowledge about ADHD amongst prison medical staff (expert)?

- h. Overall, were there failures in medical intervention (delay GP records, absence community mental health records, no follow-up prison GP appointment, delay starting medication, delay psychiatrist)?
  - i. Overall, were there failures to respond to an obvious risk of self-harm (indications of low mood, history of self-harm, torn material, ACCT procedure - Assessment, Care in Custody and Teamwork)?
16. These are only suggestions. What you find and how you express it is entirely a matter for you. I am merely helping you with the sort of words you might write under this heading. You can include other issues that you consider important provided they are central issues which are relevant to the circumstances of the death.
17. Once you have agreed the facts, then and only then should you move on to consider your conclusion under Section 4 of the Record of Inquest. Let me now direct you about that.

#### **Section 4**

18. You are required to record your conclusion in section 4. I shall now direct you as to what conclusions you may consider, and in what order.
19. In this case, there are three possible conclusions: suicide, misadventure and a short narrative. They are alternatives and I shall deal with each of them in turn.

#### **Conclusions**

*[For the approach to short-form and narrative conclusions see the Chief Coroner's Guidance No.17 Conclusions (January 2015). For the wording of the different short-form conclusions see the section of this Bench Book on non-jury inquests which will be published shortly.]*

##### **(1) Suicide**

20. The first possible conclusion is suicide.
21. You may reach this conclusion if on the evidence you are sure that AB took his own life and intended to do so.
22. Suicide must never be presumed but must be based upon evidence that the deceased intended to take his own life.
23. The standard of proof for the conclusion of suicide is 'beyond reasonable doubt'. In other words you must be sure that the intention of the deceased was to take his own life.
24. The law says you must consider suicide first. If you are not sure of suicide, go on to consider misadventure or a narrative conclusion.

##### **(2) Misadventure**

25. You may reach this conclusion if you are satisfied on the basis of the evidence that it is more likely than not (i.e. it is probable) that AB deliberately suspended himself by a belt, but he did not intend the outcome to be fatal. In other words, AB died as an unintended consequence of his actions; a deliberate act that went wrong.

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26. This would be the case if he had intended to be discovered and rescued, perhaps either as a cry for help or in an attempt to obtain a benefit such as admission to the Healthcare department.
  27. The standard of proof for the conclusion of misadventure is lower than that for suicide. You must be satisfied on a balance of probabilities, in other words, on the weight of the evidence, that this conclusion is more likely than not.

### **(3) Narrative**

28. The third conclusion is in the form of a short narrative and is appropriate where either you cannot decide AB's state of mind or you find that his mental condition caused him to be incapable of forming an intention or where, on balance, you find he intended to take his own life but you cannot be sure about it.
29. You could say something like: AB deliberately chose to suspend himself by a belt
  - a. but the evidence does not fully explain whether or not he intended that the outcome be fatal OR
  - b. but he was not capable of forming an intention that the outcome be fatal OR
  - c. and, on balance, he intended that the outcome be fatal.

What words you use is entirely a matter for you
30. As with misadventure, you must be satisfied on a balance of probabilities that the act of suspension was deliberate and also that either AB could not form an intention as to the consequences or you cannot determine his state of mind one way or the other or, on balance, he intended that the outcome be fatal.

### **Additional narrative**

31. Once you have reached one of the conclusions above, it is open to you to add one or both of the following form of words, provided you are satisfied on a balance of probabilities, that there is a direct causal connection with the death and the contribution to the death is more than trivial:
 

'to which a failure(s) in medical intervention contributed' AND/OR

'to which a failure(s) to respond to an obvious risk of self-harm contributed'

### **Evidence**

32. I shall now review the evidence in the inquest.
33. I shall review the evidence in chronological order. Unless I state otherwise there has been no dispute about the evidence.
34. AB was detained on 1 November 2014. He was allocated to a cell with XY. He told the nurse at reception that he took the drug *Concerta* as his 'brain worked too fast'. He also felt down sometimes. He gave the name of his GP.
35. The nurse says she made a note to get the medical records but this is not in the prison documents that you have seen. She told you she was unfamiliar with the drug and did not write it down. She referred him to the prison doctor the following day.

36. The GP noted that AB seemed very restless. He decided to wait for the medical records and see him again. No date was given for the next consultation and there is no copy letter to the GP among the prison record.
37. The GP surgery received no request until 15 November. You will remember that this is after AB told a member of the library staff, who told a nurse, that he was not getting his usual medicine so found it hard to concentrate on reading.
38. The records revealed that AB had suffered from ADHD since childhood. Not only was he prescribed *Concerta* but also *Risperidone* for moderate depression. He had tried to harm himself with a blade on 2 occasions and had an appointment on 20 November to see a psychiatrist specialising in ADHD. He had been receiving support from the adult community mental health team for the past 3 years.
39. The nurse spoke to the prison doctor over the phone. His drugs were restarted. He was given an appointment with the visiting psychiatrist for 29 November. The nurse did not request community mental health records and did not open an ACCT document. She told you she did not think AB was at risk of self-harm at the time but said she should have paid more regard to his history.
40. The appointment was cancelled due to the overwhelming workload of the psychiatric team and rescheduled for 7 December.
41. AB was found hanging in his cell at 7am on 30 November during a routine morning check. He had tied a belt to the upper bunk. His cell mate had heard nothing.
42. AB was unconscious but because prison officers thought they felt a weak pulse, resuscitation was started and continued all the way to hospital. However the death was formally recognised by the consultant in the Emergency Department at 8.04am. No criticism of his treatment has been raised during the hearing.
43. A note was found in his cell - 'Sorry Mum. I can't get help. Please look after my dog'.
44. During the investigation that followed a newly recruited prison officer said that he had found a piece of torn material in the cell a week before but had taken no action. He had not yet received any ACCT training.
45. The prison governor told you that in these circumstances ACCT should be followed. In all probability AB would have been placed on advanced observations, reducing the opportunity for self-harm.
46. The pathologist told you the cause of death. He also said that because he cannot determine the time of the hanging, he cannot say that a cell check at 6am, which was missed, would have made any difference to the outcome.
47. I move on to the expert evidence from Dr Z. Let me say a word about expert evidence. Expert evidence is designed to help you with things which are likely to be outside your own experience. An expert should be independent and neutral, trying to assist the court. As with all evidence you are entitled to accept the expert evidence or reject it or any part of it as you see fit, although in this case there is no dispute about it.
48. Dr Z told you about ADHD. He told you it is associated with a high level of impulsivity. Incarceration can make the symptoms worse. Withdrawal of

medication tends to increase agitation. Had medication been prescribed on his arrival and had he seen a specialist psychiatrist the risk of harming himself would have been greatly reduced.

49. Dr Z told you of his experience in the prison service. He said there was a need for more training of medical staff as little was known and understood about ADHD, in particular the heightened risk of self-harm in prison.
50. You heard from AB's mother. She described the difficulty of AB living with the illness, how it made her son so wound up. She told you he could do crazy things without understanding the consequences. She did not think her son meant to hurt the man he assaulted. He was just frustrated and anxious. She had spoken to him over the phone several times during his detention and although he was agitated he did not sound depressed. She thought what he did was a cry for help. He wanted his medicine which he knew would have a calming effect.
51. You also heard from his cell mate and another fellow inmate. Both described him as funny and a bit crazy. He told good jokes and always seemed bubbly. Occasionally he could be rather manic and go a bit over the top. Neither ever saw him depressed. However he had told them he could get into Healthcare for a good rest if he pretended to harm himself.
52. However the librarian, with whom AB had evidently formed an attachment, told you she had seen him crying on several occasions. She was very concerned about him. He told her how he missed his mother and did not feel he could manage without her for much longer. He had never felt so sad.
53. So, members of the jury, there is conflicting evidence about AB's mood but it is for you to try to determine his state of mind from all the evidence you have heard about it.

### **Final remarks**

54. Before you retire to consider your findings, I must give you two final legal directions.
55. First, you may not express any opinion on any matter other than giving answers to the four questions and providing details for registration purposes.
56. Secondly, your conclusion must not be framed in such a way as to appear to determine any question of criminal liability on the part of a named person or civil liability.
57. I must also repeat the warning I gave you before. You decide this case solely on the evidence which you see and hear in this court. Do not do your own research or look anything up on the internet. This is most important.
58. You must reach if you can a unanimous conclusion, one with which you all agree. There may come a time when I can accept a majority decision and if so I shall call you back into court.
59. When you have completed the Record of Inquest, I shall check to make sure there are no errors or inconsistencies. Then you will be called back to court and asked to read it out.

60. If you have not already done so, please elect a foreman, man or woman; someone to chair your discussion and to speak on your behalf when you return to court.
61. If you want further directions, on the law or the evidence, send a note. The court will reassemble and I will give them to you.
62. Please take all your documents and personal notes with you when you retire.

## **ACTUAL EXAMPLE: DEATH IN CUSTODY ABROAD**

### **Summing up: Directions of Law**

#### **Preamble**

I am now going to sum up the case to you. I am going to give you my directions of law in writing<sup>25</sup> so that you can have them when you retire. And I shall read them out for the record. [The following directions were handed to the jury.]

[This was not an Article 2 inquest.]

#### **Introduction**

1. The Summing Up will be in two parts. First, I shall give you directions of law. I shall tell you what the law is for the purposes of this inquest and you must take that from me and apply it to the evidence which you have heard.
2. Secondly, I shall review the evidence in the case and remind you of what is important, although in the end it is what you consider to be important in the evidence that matters. It is upon the evidence and only the evidence that you come to your decisions. If I appear to have a view about the evidence, ignore it unless you agree with it. I do not intend to express a view. I must also tell you that the evidence is now closed. There will be no more evidence.
3. The evidence which you have is the evidence of the witnesses who gave evidence from the witness box, the statements of witnesses which were read and the documentary evidence. All of that is evidence for you to consider.
4. As I have said to you before, ignore anything which you may have heard or read about the events surrounding the death of Dr AK. Just concentrate on the evidence which you have heard and seen here in the hearing. Everything else is irrelevant. Also ignore any feelings you might have of sympathy for anybody or prejudice you might feel against anybody. Come to your decisions coolly and calmly on the evidence. Your duty is to find the facts and come to a conclusion - from the evidence.
5. I must remind you that this is not a trial; it is an inquest into a death, a fact-finding investigation to find out how Dr AK died. It is not a method of apportioning blame. There is no indictment, no criminal charge. It is simply a way of establishing facts.

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<sup>25</sup> See *R v Bennett* [2014] EWCA Crim 2652 at [63].

## The four questions

6. The process of inquiry in an inquest is to find answers to four questions: Who was the person who died? How, when and where did he come by his death? These proceedings and the evidence have been directed solely towards your finding the answers to those four questions (which are set out in an Act of Parliament) and to finding the Registration Act particulars (paragraph 8, below) - nothing else. Beyond that you must not express an opinion or make recommendations.

## The Record of Inquest

7. When you have considered and discussed the evidence you must complete in writing and sign a document which is called the Record of Inquest (a Form 2). You now have copies of that document. The Record of Inquest is a statement in which you will set out the matters which have been proved on the evidence which you have heard and read and which you conclude led to Dr AK's death.

## The Record of Inquest: Particulars required for the Births and Deaths Registration Act 1953 - Section 5

8. You must also include in section 5 of the Record of Inquest the details which are required for the purposes of the 1953 Registration Act, for keeping necessary records under the law<sup>26</sup>. I will deal with that now. Those details are straightforward here. There is no dispute about them. I will set them out for you and you will enter them on the form:
- a. Date and place of death. - 16 December 2013. Unknown prison or place of detention, Damascus, Syria.
  - b. Name and surname of deceased. - AK.
  - c. Sex. - Male.
  - d. Maiden surname of woman who has married. - Not applicable.
  - e. Date and place of birth. - 19/11/82. Balham, London.
  - f. Occupation and usual address. - Doctor and surgeon. [Full address (London).]

## The Record of Inquest: Sections 1 - 4

9. The four statutory questions - Who the deceased was and when, where and how he came by his death? (paragraph 6 above) - have been reduced on the Record of Inquest form to separate sections and you must complete all sections. If you need more space just add a separate piece of paper.
10. When you have considered and discussed the evidence you must agree the factual circumstances which gave rise to the death (Sections 1-3). You do that based upon the evidence and in the light of my directions of law. Having agreed those factual circumstances, and not before, you should then seek to agree the conclusion from those circumstances (section 4).

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<sup>26</sup> Strictly speaking this is not necessary because the death occurred overseas: section 15, Births and Deaths Registration Act 1973.

11. When describing the factual circumstances you should be brief, neutral and factual, expressing no judgment or opinion, and making no recommendation. You should set out actual facts as you find them and which you consider relevant and upon which you base your conclusion, using wording which is clear and straightforward. Remember that you are not deciding issues between parties.
12. I shall now give you further help and directions on each of the four sections of the Record of Inquest.

### **The Record of Inquest: Section 1 - Name of deceased**

13. In Section 1 you will enter the name of **AK** [full name].

### **The Record of Inquest: Section 2 - Medical cause of death**

14. Section 2 of the Record of Inquest is concerned with the medical cause of death.
15. The words for section 2 are usually taken from the pathologist's report. In this case Dr Cary concluded that the medical cause of death was **unascertained**. He said in evidence that there were too many unknowns for him to be able to advise on a medical cause of death. [The content of a Syrian post-mortem report was disputed and the body had been embalmed.]
16. I therefore invite you to enter the word **unascertained** in section 2.

### **The Record of Inquest: Section 3 - How, when and where Dr AK came by his death**

17. First, when and where. It is reasonably clear from the evidence that Dr AK came by his death on 16 December 2013 in a prison or place of detention in Damascus, in the custody of the security services. The precise place has not been named or identified. I invite you to enter **16 December 2013; unknown prison or place of detention, Damascus, Syria**.
18. It is a matter for you to decide 'how' Dr AK came by his death. You must ignore the words in section 3 'and for investigations where section 5(2) of the Coroners and Justice Act 2009 applies, in what circumstances'. Those words do not apply in this inquest.
19. In dealing with sections 3 and 4 together, section 4 being your final conclusion (which I shall come to shortly) the sort of questions which you might like to ask yourselves and answer for the purposes of 'how' in section 3 - there may be others which you consider important - are as follows:
  - a. Was Dr AK arrested and detained in Aleppo, Syria, on 22 November 2012?
  - b. Between November 2012 and December 2013 was he held in detention by the Syrian regime in a number of different places?
  - c. Was he beaten or tortured in Far'Falastin (Palestine Branch) prison or anywhere else?
  - d. Were there any promises from the Syrian regime that he would be released?
  - e. Did the family of Dr AK believe in those promises?



- f. Before his death in December 2013 was Dr AK expecting to be released?
  - g. At the time of and shortly before his death, what was the state of Dr AK's mental and physical health?
  - h. Did Dr AK die by hanging (suspension)?
  - i. Was he killed or did he take his own life? The answer to this question will obviously affect your conclusion in section 4 (see below).
  - j. If he took his own life, did he do so of his own free will or as a result of unlawful and dangerous acts, such as torture, beatings or threats?
  - k. Was his death made to look like suicide when in fact it was murder?
  - l. Was the Tripartite Medical Report from Syria an accurate document?
20. I am not telling you what to say. What you find and how you express it is entirely a matter for you. I am merely helping you with the sort of words you might write under this heading.
21. It is a matter for you whether your findings of fact under section 3 should include answers to questions such as these or other questions you may like to ask yourselves, bearing in mind that the law says that you must not make recommendations or express opinions, and you must restrict your answers to the circumstances of the death.
22. What is necessary from you is a clear statement of your findings of fact about the death, answering the statutory questions: How, when, and where did Dr AK come by his death?

#### **The Record of Inquest: Section 4 - Conclusion of the jury as to the death**

23. Once you have agreed the facts (above), then and only then should you consider your conclusion under section 4. Formerly a conclusion was known as a verdict; now we use the word conclusion so as to distinguish the inquest process from a criminal trial.
24. I have discussed this aspect of the inquest with counsel. They agree with me that there are three possible relevant conclusions in this case: (1) unlawful killing, (2) suicide, and (3) open conclusion. They are alternatives. Let me deal with each of them in turn.

### **Conclusions**

#### **(1) Unlawful killing**

25. The first of the three alternatives is unlawful killing.
26. For the purposes of this case you may enter the conclusion of unlawful killing by one of the following two routes.
27. **(A)** You must enter a conclusion of unlawful killing if on the evidence you are satisfied so that you are sure that Dr AK was deliberately and intentionally killed without any legal justification. (There is no evidence of legal justification such as a sentence of death by a court.)
28. By killing I mean either by the Syrian government regime or by agents of the state acting independently of the leaders of the regime.

29. Alternatively, **(B)** you must enter a conclusion of unlawful killing if on the evidence you are satisfied so that you are sure that Dr AK was driven to take his own life by unlawful and dangerous acts by his captors. In other words it was not suicide, taking his own life of his own free will, but he was driven to hanging himself by the actions of his captors.
30. For the purposes of (B) there is no evidence of specific unlawful and dangerous acts such as acts of torture, beatings or threats. But you are entitled to consider evidence which you have heard relating to detainees in Syria together with the circumstances of Dr AK's detention shortly before his death. From that evidence, you may, if you wish, draw the inference that he was driven to kill himself.
31. Under (A) and (B) you are entitled to look at the whole of the evidence, including the evidence of the sort of place of detention Dr AK was being held in his final days, the evidence of detention in such places, the expectations about his release and the evidence of his state of mind. From that evidence, you may, if you wish, draw inferences that he must have been killed unlawfully.
32. For the purposes of this case it must also be proved that Dr AK's death had been made to look like suicide. You must be sure that this was a 'fake suicide'.
33. The following evidence may be considered by you as evidence capable of supporting the conclusion of unlawful killing:
- [Each separate piece of evidence capable of supporting unlawful killing was briefly summarised. This was an unusual course to take, but was justified because there had been a great deal of evidence in a short space of time. The coroner therefore felt that the jury needed help in this way. The course adopted was discussed and agreed (as was the content) with counsel in advance.]

## **(2) Suicide**

34. The second of the three alternative conclusions is suicide.
35. For the purposes of this case you may enter the conclusion of suicide if on the evidence you are satisfied so that you are sure that Dr AK took his own life and intended to do so of his own free will.
36. Suicide must never be presumed but must be based upon evidence that the deceased intended to take his own life.
37. The following evidence may be considered by you as capable of supporting the conclusion of suicide:
- [Each separate piece of evidence capable of supporting suicide was briefly summarised.]

## **Your approach to these lists**

38. With each list of evidence capable of supporting unlawful killing or suicide, I have set out pieces of evidence which you may take into account in considering these alternative conclusions. There is, of course, other evidence, such as the evidence in the other list which may to some extent be contradictory, which you must also consider. And in any event you must consider each piece of evidence in its context and with regard to the evidence as a whole.

39. The mere fact that there are more pieces of evidence listed under unlawful killing than under suicide is not necessarily a determinative factor. You must decide what weight to give to any piece of evidence as you see fit, being fair and sensible about it.

### **The standard of proof**

40. I must also remind you that the standard of proof for the conclusions of unlawful killing and suicide is that you must be sure of the conclusion before you can enter it on the Record of Inquest. If you are not sure (sometimes expressed as having a reasonable doubt, but meaning the same thing) you must not enter the conclusion.

### **Order of consideration**

41. The law says that you must consider unlawful killing first. If you are not sure of unlawful killing, go on to consider suicide.

### **(3) Open conclusion**

42. If you are unable to be sure of either (1) unlawful killing or (2) suicide, you may come to an open conclusion.

43. You may enter an open conclusion when you are simply not able to be sure of conclusion (1) or conclusion (2). In doing so, you may, if you wish, add some additional words, such as

- a. On the balance of probabilities (i.e. it is more likely than not) we believe that Dr AK was unlawfully killed, but we cannot be sure about it.

OR

- b. On the balance of probabilities (i.e. it is more likely than not) we believe Dr AK took his own life and intended to do so of his own free will, but we cannot be sure about it.

44. It is a matter for you which words, if any, you add.
45. You should not choose an open conclusion simply because you disagree amongst yourselves on conclusions (1) and (2).
46. The finding of an open conclusion is not to be seen as a criticism of you or that you have failed in your duty in any way.

### **Enter conclusion in section 4**

47. Those are the three alternative conclusions. One of those three conclusions must be entered in Section 4.
48. Let me move on now to a few further directions.

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## Further directions

### Hearsay evidence

49. In my opening remarks at the beginning of the inquest I mentioned how you should approach hearsay evidence. I also said something about hearsay evidence just after the Tripartite Medical Report from Syria was read out because that is a piece of hearsay evidence. Let me say a little more.
50. Another example of hearsay evidence was the evidence of Nick Griffin when he said that he was told that the security forces were out of control. He did not know that himself, from his own experience, but he was told that by a Polish contact who had been told that by a French national in Damascus. That is hearsay, or more precisely double hearsay.
51. I remind you to be cautious about this kind of evidence. It is still evidence in the inquest, but it is coming indirectly, second or third hand, from somebody who is not here to give evidence and be cross-examined about what they had to say.
52. It may be good, sound, accurate, reliable evidence, or it may be less reliable, for example because it comes from somebody who has a motive to lie or distort the truth. You must decide for yourselves, looking at each piece of hearsay, what weight you should give to it in all the circumstances, including other evidence. You can give it full weight, or less weight, or no weight at all, making up your own minds, being fair and sensible about it.

### The Foreign Office (FCO)

53. We have heard quite a lot of evidence about the Foreign Office (the FCO - Foreign and Commonwealth Office). The witnesses were [name], now Head of Consulate Services worldwide and [name] who at the time was Head of the Syrian Desk at the British Embassy in Beirut, and you have a great many emails and Compass notes.
54. Questions have been put by counsel for Dr AK's family [names of counsel], suggesting that the FCO could have done more to secure the release of Dr AK. But there is no evidence that any suggestion made by counsel, if carried out, would have improved the chances of Dr AK's release and thereby saved his life. To suggest otherwise is speculation.
55. I must therefore direct you that there is no evidence that the FCO caused or contributed to Dr AK's death. Nor is the role of the FCO a central issue in this inquest. I direct you that the role of the FCO (or the security services) is not relevant to your conclusion. It is not relevant to the 'how' question in section 3 nor to your conclusion in section 4.
56. Nevertheless, the role of the Foreign Office, the advice it gave against travel to Syria, its contact with the family, the actions it took or did not take and why, are all part of the narrative of this case, the narrative of the period between November 2012 and December 2013. So to that extent the evidence is relevant and I shall remind you of it.
57. Some suggestions have been made by counsel for the family that the FCO could have done more to involve British intelligence with a view to secure Dr AK's release. But I direct you that there is no evidence that this route, even if

considered desirable, might have secured Dr AK's release. This is speculation too.

58. In all decisions made by those (other than the family) who were attempting to secure Dr AK's release, including the FCO and George Galloway MP, judgment calls had to be made in the light of their knowledge and experience. There is no evidence that the FCO (or anyone else) failed to listen to the family, take advice, consider all the circumstances and make appropriate judgment calls.

### **Evidence**

59. I shall now review the evidence in the inquest. [The relevant evidence was summarised.]

### **Final remarks**

60. Before you retire to consider the evidence and your conclusions, I will give you these further directions of law:
- a. In your findings you may not express any opinion on any matter other than in giving the answers to who the deceased was (section 1), and how, when and where he came by his death (section 3), and in providing the particulars for registration purposes (section 5).
  - b. No conclusion may be framed in such a way as to appear to determine any question of criminal liability on the part of a named person or civil liability.
61. You must reach if you can a unanimous conclusion. All 11 of you should agree, if at all possible, on the answers to all the sections on the Record of Inquest. If that is not possible I shall give you further directions in due course about a majority conclusion.
62. If you have not done so already, you should choose a foreman, man or woman, to chair your discussions and read out the answers to the sections.
63. If you want further directions, on the law or the evidence, send a note out and we will reassemble in court and I will give them to you.

## **JURY RETIREMENT**

### **Retirement**

1. Members of the jury, when the jury bailiff/usher/coroner's officer is sworn I shall ask you to retire to consider your findings and conclusion and enter them on the Record of Inquest.

*The jury should have a blank Record of Inquest. No boxes should be completed in advance by the coroner or coroner's staff.*

### **No pressure of time**

*A jury can be sent out at any time of the day including the middle to late afternoon (even on a Friday) so long as a clear direction is given.*

2. Just let me say this. You must have as much time as you wish. If you conclude your deliberations today, that is fine. If you do not finish today, that is also absolutely fine. You must have as much time as you need. I can call you back at 4.30pm, send you away until tomorrow/Monday in the usual way, and then ask you to come back to Court for a 10am start and ask you to retire again to your room and continue your deliberations.

### **Overnight retirement**

3. Members of the jury, it is now 4.30pm. I propose to ask you to stop now for the day and send you away until tomorrow/Monday morning.

### **Warnings**

4. It is most important at this stage that:
  - a. You must not discuss the case with anyone, including anyone at home. Do not discuss the case in twos or threes as you leave the court or make phone calls to each other. [My advice is to set the case aside, so that you can have a good weekend and come back refreshed on Monday morning.]
  - b. Do not, of course, do any research of your own, particularly looking anything up on the internet. That is most important.
5. So would you like to go now? Please assemble for a 10am start tomorrow/on Monday. I shall ask you to come into court then before asking you to retire again. Please do not discuss the case until then when you are all together.

## **MAJORITY DIRECTION**

*If it is clear from a note or in answer to a question from the coroner that the jury is not unanimous, a majority direction may be given. The jury must have been deliberating for a period of time that the senior coroner thinks reasonable in view of the nature and complexity of the case.<sup>27</sup> The jury should have been in retirement for at least 2 hours and 10 minutes. In a long case they should be allowed much more time before a direction is given.*

1. I shall now give you a majority direction.
2. I shall ask you once more to retire and to continue to reach findings and a conclusion with all of you in agreement.
3. But if you are unable to do so, I can now accept a completed Record of Inquest upon which no more than 2 of you disagree with the majority.
4. If you are able to achieve that, all of you in the majority must sign the Record of Inquest.

## **MAJORITY DIRECTION (QUESTIONNAIRE)**

*Where the jury have been asked questions which, with their answers, will form a narrative conclusion for Box 4<sup>28</sup> and a majority direction is required, the following direction should be used. Coroners will bear in mind that it should be tailored, where appropriate, to the note from the jury explaining their specific difficulties (for example, whether they are split on individual questions or on some aspect of their conclusions as a whole). Coroners should also invite submissions from Interested Persons before giving this direction.*

1. I shall now give you a majority direction.
2. I shall ask you once more to retire and to continue to reach findings and a conclusion with all of you in agreement.
3. But if you are unable to do so, I can now accept majority findings and a conclusion, that is with no more than 2 of you disagreeing with the majority.
4. I remind you that the written questions which you have and the answers to them will provide your narrative conclusion for the purposes of section 4 (where you will write 'See questionnaire').
5. In relation to those written questions, I ask you to continue to try and answer them, all of them, with all of you in agreement.
6. But if you are unable to do so, you may answer all questions with no more than 2 of you disagreeing with the majority. The numbers will have to be given out by the foreman when you return to court. At least 9 of you [for a jury of 11] must agree on the answers to all questions, and it must be the same 9 or 10 of you [for a jury of 11] who agree on all answers.

<sup>27</sup> Section 9(2)(b), Coroners and Justice Act 2009.

<sup>28</sup> Chief Coroner's Guidance No.17 *Conclusions*, at paragraph 40.

7. Once you have considered all of the questions you should look at the Record of Inquest as a whole (including the answers to questions). If all of you, or a majority of you (with no more than 2 of you in the minority), agree that the Record of Inquest is complete and accurate, the majority must all sign the Record at the end to signify that the Record is complete and accurate.

*When the jury return later with questions answered or not answered, the coroner will have to assess whether the questionnaire as answered is sufficient for the purposes of the inquest or whether the jury need to be asked to retire again or whether the jury will have to be discharged.*

### **Watson<sup>29</sup> direction**

*Although it is still lawful to give a Watson ‘give or take’ direction<sup>30</sup>, it should usually be avoided. Two criminal cases suggested that it should be given ‘only in exceptional circumstances’<sup>31</sup>, but no example of ‘exceptional’ was suggested and doubt has been cast upon this gloss to Watson itself.<sup>32</sup> If given, a Watson direction should only be given some considerable time after a majority conclusion direction and the precise words of Watson must always be used:*

Each of you has taken an oath [or affirmation] to return a true verdict [conclusion] according to the evidence. No one must be false to that oath [or affirmation], but you have a duty not only as individuals but collectively. That is the strength of the jury system. Each of you takes into the jury box with you your individual experience and wisdom. Your task is to pool that experience and wisdom. You do that by giving your views and listening to the views of others. There must necessarily be discussion, argument and give and take within the scope of your oath. That is the way in which agreement is reached. If, unhappily, [9, or the jury number less two] of you cannot reach agreement you must say so.

<sup>29</sup> *R v Watson* [1988] QB 690.

<sup>30</sup> See *Clayton v HM Coroner for South Yorkshire (East District)* [2005] EWHC 1196 (Admin).

<sup>31</sup> *R v Arthur (James)* [2013] EWCA Crim 1852; *R v M* CA (Crim Div), 18 November 2014, reported as *R v G* [2014] EWCA Crim 2508.

<sup>32</sup> *R v Noble Logo*, CA (Crim Div), 21 April 2015.



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## **CONCLUSION AND RECORD OF INQUEST**

### **Jury return with unanimous conclusion**

1. Would the foreman please stand?
2. Members of the jury, have you reached findings and a conclusion upon which you are all agreed? [Yes]
3. Have you entered those findings and your conclusion upon the Record of Inquest and have you all signed it? [Yes]
4. What are your findings in  
Section 1, name of deceased?  
Section 2, medical cause of death?  
Section 3?  
Section 5?
5. What is your conclusion in Section 4?
6. Have you all signed the Record of Inquest?
7. Thank you.
8. I shall sign (and date) the Record of Inquest as coroner.
9. That concludes this investigation and inquest.

### **Jury return with majority conclusion**

1. Would the foreman please stand?
2. Members of the jury [jury of 11], have you reached findings and a conclusion upon which at least [ 9 ] of you agree? [Yes]
3. How many agreed, and how many did not?<sup>33</sup>
4. [Continue with findings etc, as above.]
5. Has the majority signed the Record of Inquest?
6. Thank you, etc.

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<sup>33</sup> Section 9(2), Coroners and Justice Act 2009.

**Jury return with majority conclusion (questionnaire)**

1. Would the foreman please stand?
2. Members of the jury [jury of 11], have you reached findings and a conclusion upon which at least [ 9 ] of you agree? [Yes]
3. What are your findings in  
 Section 1, name of deceased?  
 Section 2, medical cause of death?  
 Section 3?  
 Section 5?
4. How many agreed, and how many did not?
5. In respect of your conclusion in Section 4 I shall ask you for the numbers for each question and answer.  
 On question 1, how many agreed, and how many did not?  
 On question 2, how many agreed, and how many did not?  
 On question 3, etc.  
 [Where there was a majority answer for more than one question] Can you confirm that at least 9 of you [for a jury of 11] agree on your answers to all questions?
6. Has the majority signed the Record of Inquest?
7. Thank you, etc.

***DISCHARGE THE JURY***

In the absence of the required majority agreement, I discharge you. I also order another jury to be summoned to hear the evidence afresh.<sup>34</sup>

***THANK THE JURY***

1. Thank you very much for your jury service over the last two weeks - for your attention, patience and hard work.
2. Jury service continues to play a significant part in the inquest system. Jurors therefore play an important public role.
3. [Although in a longer inquest, such as this one, I know that it takes time and dedication, taking you away from work and other duties (which sometimes mean sacrifices on your part).]

Thank you very much for your service on this inquest.

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<sup>34</sup> See section 9(3), Coroners and Justice Act 2009.