CHIEF CORONER

GUIDANCE No.13

FAMILY COURT PROCEEDINGS - FINDINGS OF FACT

ADMISSIBILITY IN THE CORONER'S COURT

Introduction

1. Are findings of fact by a judge in care proceedings in the Family Court admissible in an inquest? The purpose of this Guidance is to suggest that they are admissible (even though objection is taken). This is Guidance and not a Law Sheet because the law has not been conclusively decided on this point. This Guidance suggests a way forward but where the issue arises it will be for coroners to make up their own mind having heard submissions from interested persons.[1]

Care proceedings

2. Where there has been the death of a child and there is an application for a care order in respect of a sibling or another child, the death may often be investigated fully, with evidence called and examined closely. After a thorough hearing the judge will make findings of fact.

3. There are good reasons why such evidence should not have to be heard again at the inquest:

    (1) The inquiry in the Family Court will have been thorough.
    (2) Usually the respondents in the Family Court will have been publicly funded (unlike at the inquest) and therefore represented, giving them the opportunity to challenge any evidence should they wish to.
    (3) It would be time-consuming, costly and stressful for the same evidence to be reheard. There is therefore a public interest in relying upon the findings and not rehearing the evidence.
    (4) If there is a fresh inquiry by way of inquest, the findings of fact by the coroner could be different to the Family Court's findings and therefore produce inconsistency. One court should always be reluctant to depart from the opinion or decision of another.[2]

---

[1] My thanks to a number of coroners for their help, in particular Prof Paul Matthews, City of London Senior Coroner, and Mairin Casey, Nottinghamshire Senior Coroner.
[2] See *R v Greater Manchester Coroner ex parte Tal* [1985] 1 QB 67.

The law

4. There is no authority which has directly decided this issue. The following observations are therefore made in order to assist coroners in making up their own minds if and when this issue arises.

5. The findings of fact in the Family Court are opinion evidence, the opinion of the judge who has heard and assessed the evidence, and they are relevant evidence. Just as there is no restriction on the admission of hearsay evidence at an inquest[3], there is no restriction by statute, rule, regulation or case authority to the admissibility of opinion evidence in an inquest. As was famously stated, '… it is clear that a coroner's inquest is not bound by the strict law of evidence.'[4] No doubt that is because of the special nature of the inquest: '… we have no doubt that a coroner's inquest is still a court, though one having characteristics which are unique in the English legal system, in that its function is to investigate but not reach a final decision such as a judgment order or verdict of guilt'.[5]

6. The findings of the Family Court judge in Children Act proceedings may carry additional weight in this context because that court too, although retaining adversarial elements, is far from adversarial. The higher courts have emphasised both the partly inquisitorial nature of care proceedings and the relaxation of the strict rules of evidence. As Dame Elizabeth Butler-Sloss P has explained[6], with approval from the House of Lords[7]:

> 'The strict rules of evidence applicable in a criminal trial which is adversarial in nature is to be contrasted with the partly inquisitorial approach of the court dealing with children cases in which the rules of evidence are considerably relaxed.'

7. The above approach may therefore suggest that the long-standing (and often criticised) rule in *Hollington v Hewthorn* [1943] KB 587 that findings of fact are ordinarily inadmissible in other proceedings has no application to evidence of this kind being adduced in a coroner's court.

8. Furthermore, it is at least arguable that Parliament should be taken to have intended the Children Act 1989 to be an exception to the rule in *Hollington v Hewthorn*, just as in company director disqualification proceedings Parliament has been held by the Court of Appeal to have intended that findings of fact in reports by Financial Services Authority investigators under a statutory scheme could be used in subsequent court proceedings.[8]

9. Coroners may therefore take the view, after legal submissions, that they are not barred from relying upon findings of fact in Family Court proceedings. There is both good sense and potentially good law for taking that view.

---

[3] *Ibid.* at 84-85, citing *Divine*, below, and followed in *R v HM Coroner for Lincoln Ex parte Hay* (1999) 163 JP 666.
[4] *R v Divine, ex parte Walton* [1930] 2 KB 29, 36, *per* Talbot J, reading the judgment of the court (Talbot, Charles and Humphreys JJ).
[5] *R v Surrey Coroner, ex parte Campbell* [1982] QB 661, 674-675 *per* Watkins LJ.
[6] *Re U (A Child) (Department for Skills and Education Intervening)* [2005] Fam 134, 143-144.
[7] *Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 35, [13], [68] – [70].
[8] *Aaron v Secretary of State for Business, Enterprise and Regulatory Reform* [2008] EWCA Civ 1146.

In practice

10. If coroners do take that view, then, before admitting the evidence, whether in the face of objection or not, they should consider whether in the particular case it is fair and just to do so. It may be fair and just to do so where -

    (1) the coroner has closely scrutinised the judgment of the Family Court in order to be satisfied that the Family Court heard all the relevant evidence about the death,
    (2) the relevant members of the family of the deceased had the opportunity to challenge the evidence in the Family Court,
    (3) other relevant matters not covered by the findings in the Family Court may be raised in further evidence at the inquest,
    (4) interested persons have had the opportunity to consider making submissions about the law and the findings at a Pre-Inquest Review hearing, and
    (5) the coroner is satisfied in all the circumstances, in the inquisitorial role of coroner, that there is 'sufficiency of evidence' for the purposes of the inquest.

11. The coroner may also wish to identify at a PIR hearing (as in Family Court procedure) issues of fact which are not in dispute and those which are in dispute.

12. In all cases, unless the judgment has already been released for publication by the Family Court, the coroner must obtain the permission and an order for disclosure of the judge in the Family Court before relying upon the judgment.

13. Redaction may be necessary where the judgment is provided to interested persons.

14. There should be good co-operation between coroner and local Family Court judge, keeping lines of communication open. The judge may require material from the coroner or vice-versa. The coroner may require a judgment and sometimes additional material for the purposes of the coroner investigation. Either way judges and coroners are expected to make requests of each other, not orders. Informal requests may sensibly precede more formal requests for judgments or other information. Reasons for requests should also be given. In complex cases it will help if coroner and judge set out a joint timetable providing for the timing of disclosure and the sharing of conclusions and determinations.

15. This Guidance has been approved by Sir James Munby, President of the Family Division[9].

HH JUDGE PETER THORNTON QC
CHIEF CORONER

10 April 2014

[9] With the assistance of Ryder LJ. I am grateful to them both.