

Inquests after a Disaster

This guide has been written by members of Disaster Action, all of whom are survivors and bereaved people from disasters. Some of the disasters we have been affected by are the Zeebrugge ferry sinking, King's Cross fire, Lockerbie air crash, Hillsborough football stadium crush, Marchioness riverboat sinking, Dunblane shootings, Southall and Ladbroke Grove train crashes, the 11 September attacks, the Tsunami and the Bali, London 7 July, Sharm El Sheikh and other overseas attacks.

The Inquest

Role of the inquest and public inquiry

The inquest is a judicial inquiry into deaths that have taken place. An inquest must be held where a death was violent or unnatural. A coroner, who seeks to establish the following information, conducts it:

- who the deceased were
- when they died
- where they died
- by what means and in what circumstances they came by their death

In addition the coroner may make recommendations as to how such deaths may be avoided in future. These recommendations are not legally binding.

The role of a public inquiry into a disaster is 'to restore public confidence by carrying out "a full, fair and fearless investigation into the relevant events"'. It should also identify lessons to be learned. The decision as to whether or when to hold a public inquiry into a disaster is made by the relevant government department or Secretary of State.

The inquest will very likely be subordinated to the public inquiry (in order to avoid two hearings of the same evidence). If it is so subordinated, the inquest opens formally for identification and release of bodies for burial, then adjourns, resuming (if at all) only after the completion of the public inquiry.

The inquest cannot make or suggest any finding of civil liability, or any finding of criminal liability against any named person or company responsible for the deaths. .

Immediately after the death

It is highly likely that the coroner for the area in which the bodies are found will handle all deaths that occur in England or Wales as a result of a disaster. The coroner therefore has legal custody of the body of the deceased until he or she releases it for burial or cremation.

If the disaster occurs overseas and the body is repatriated to England or Wales, the coroner local to where the body arrives takes charge. For example if the arrival point is Heathrow airport the appointed coroner will be one of the London coroners. If a cremation has taken place overseas, however, and only the ashes of the deceased are brought back to England or Wales, the coroner has no jurisdiction and this means that there will not be an inquest.

As the coroner has legal custody of the deceased, s/he makes all the important decisions about identification, post-mortems and seeing the deceased. This can be a frustrating experience for relatives, who feel that the person who has died is still their loved one, and yet they cannot see them, hold their hand, say goodbye, or take them home if the coroner has decided that is to be the case.

The bereaved should expect the coroner, usually through his officer, to communicate with them in an open, honest and sensitive manner about the standard procedures that are going to be followed, and if there are to be any delays.

Although in the past many coroners have refused to let relatives see the body of the deceased before it is released for burial or cremation, there is now a greater awareness that this may be undesirable, as well as, potentially, an infringement of the human rights of the bereaved. Relatives who wish to see the body should make this very clear to the coroner.

Even if the body of the deceased is very badly damaged, relatives should be given an informed opportunity to see it, or part of it, if they wish to do so, as soon as possible after death. For advice on this please see *When Disaster Strikes, The Immediate Aftermath for Family and Friends*. See also the Government's Charter for the Bereaved, which will come into effect in April 2012.

Post-mortems

In cases of sudden death a forensic pathologist, who then produces a post-mortem report, usually carries out an examination of the body for the coroner. This contains a description of what was done by the pathologist to establish the cause of death, including the details of any laboratory tests.

The consent of the next of kin is not required for a post-mortem examination to take place, but the next of kin are entitled to have their own doctor present at the examination. They can also ask to have a second post-mortem examination carried out by their own pathologist but are expected to pay for this.

The next of kin must be informed, if they wish to be, of any organs removed from the body. Some relatives may prefer to wait for their return, in order for the whole body to be buried or cremated at once.

Opening and adjourning the inquest

Once the coroner has taken the steps required to identify the deceased and establish a cause of death, s/he is in a position to release the body for burial or cremation. This should, in straightforward cases, be done within a few days of the death, but where there are multiple fatalities, or where DNA testing is required for identification, it may take much longer.

The coroner then prepares to open the first part of the inquest and the next of kin should be advised as to where and when this is to take place. It is not necessary for anyone to attend, but many relatives wish to, because it feels very much like being involved in the process. Their lawyer, if they have one, may also attend. The procedure, however, only takes a few minutes. The purpose is to enable the coroner to formally record the deceased's identity and to relinquish custody of the body. At this short hearing, the coroner issues an interim death certificate for the purposes of burial or cremation.

The inquest is then adjourned, to be re-opened (if at all) very much later, in some cases not just months but even years later, depending on judicial investigations and whether there is a public inquiry or there are any criminal prosecutions.

Communicating with the coroner

When the coroner's investigations are complete, s/he sets a date for the inquest to resume. Only those whose details the coroner has at that time are notified, so it is important to get in touch with the coroner or coroner's officer if you wish to be kept informed. Any 'properly interested person' (see below for the list) can expect to be allowed to ask questions and be represented at the full inquest hearing.

Complex family situations, however, can mean that the next of kin may not pass on information to other family members, in which case any other interested family member should be in touch with the coroner's officer directly. The inquest itself is open to the public so anyone may attend, although only properly interested persons may ask questions during the hearing.

Before the inquest resumes you should receive information from the coroner in the form of a booklet, as well as details of where and when the inquest will take place. Some coroners provide a lot of information, some very little. It is important to form a good relationship with the coroner or the coroner's officer so that you are able to ask questions in advance of the inquest. Coroners vary greatly in their willingness to communicate directly with relatives.

The Charter for Bereaved People, however, places much emphasis on the coroner making information readily available to relatives, and should be invoked where the coroner is not keeping to it.

Many, though not all, relatives especially want to know details of how the person died, whether they would have known they were dying, and whether they suffered physical pain. There are many different ways to die in a single incident and the coroner should not assume that relatives do not wish to know exactly what happened to each individual. This information should, of course, be given out sensitively and confidentially.

If such information is made available before the inquest begins, some of the most difficult aspects of the inquest can be avoided. Bereaved relatives will otherwise be in a position whereby the inquest is their first and only opportunity to find out exactly what happened to their loved one, and this can be made even more difficult by the public nature of the inquest.

Relatives who wish to have a copy of the post-mortem and special examination reports before the inquest opens should also communicate this to the coroner's officer. Normally the coroner's office would expect only to have to produce one copy, however, to the next of kin.

The coroner should also be able to provide a list of witnesses and a list of the statements that will be used during the inquest. Whether the relatives, or their lawyers, see the full statements well in advance will depend on the circumstances. The coroner has no legal duty to disclose the full statements. In the past, relatives have also asked the coroner for information about:

- how long the inquest is likely to last
- whether there will be a private place to meet other relatives or their lawyers during the inquest
- how the inquest will proceed - whether the coroner will take each of the deceased in turn, and, if so, when. This is because relatives are not always able to take long periods of time off work, or do not live locally, or wish to be present only when the death of their relative is being examined
- whether they will be able to see any documents or photographs before the inquest
- whether other parties will be legally represented. It can be distressing for a relative to arrive at the inquest and realise that every other party has at least one lawyer, yet there is no one

representing the bereaved. Please see *When Disaster Strikes Legal Representation after a Disaster* for more information on this.

Attending the inquest

Multiple fatality inquests are held in large buildings so that there is sufficient room for the coroner, jury, lawyers for all the interested persons, and members of the press. Relatives should be prepared for a public, crowded room, but may wish to enquire ahead of the start date whether there will be private places for them to meet, discuss matters with their lawyers - if they are represented - and ask questions of the coroner or his officer.

If information has not been forthcoming before the inquest then this will be the relatives' chance to find out exactly what happened to their loved one. In that case, every effort should be made prior to the inquest to establish whether the coroner will make that information available to the bereaved during the inquest itself (including access to photos and post-mortem reports if that is their wish), preferably outside of the main court room and in private.

When the hearing begins, the coroner, having sworn in the jury, explains that the purpose of the inquest is to establish who each victim was, where and when they died, and how they came by their death. S/he also states that the inquest will not establish any criminal or civil liability or blame any named person or organisation for the death.

At some multiple fatality inquests individual time slots have then been allocated by the coroner to each deceased person, so that relatives can choose to attend only at that time rather than having to sit through details about the deaths of others, if they do not wish to.

The coroner's role, for the main part of the inquest, is to call witnesses and take them in turn through their witness statements. The coroner's duty is to ask all the questions that interested persons would wish to be asked of witnesses. Where - in the relatives' view - the coroner is not asking the questions which are of interest to them (as has happened in the past), it is possible for any properly interested person or their legal representative to question the witness themselves after the coroner has finished.

At some inquests, the coroner may also allow relatives to make victim impact statements, which aim to give the bereaved the opportunity to describe to the court and the public the effect that the death has had on them and their family and friends. Victim impact statements do not always form part of the inquest, but if the opportunity arises the statement should be written in advance. Some or all of the statement may be reported in the media.

The right to question witnesses (“interested persons”)

This right, under the Coroners and Justice Act 2009, is given to:

- (a) a spouse, civil partner, partner, parent, child, brother, sister, grandparent, grandchild, child of a brother or sister, stepfather, stepmother, half-brother or half-sister
- (b) a personal representative of the deceased
- (c) a medical examiner exercising functions in relation to the death of the deceased
- (d) a beneficiary under a policy of insurance issued on the life of the deceased
- (e) the insurer who issued such a policy of insurance

- (f) a person who may by any act or omission have caused or contributed to the death of the deceased, or whose employee or agent may have done so
- (g) a representative of a trade union of which the deceased was a member at the time of death (in certain cases)
- (h) a person appointed by, or representative of, an enforcing authority
- (i) a chief constable (in certain cases)
- (j) a Provost Marshal in certain cases)
- (k) the Independent Police Complaints Commission (in certain cases)
- (l) a person appointed by a Government department to attend an inquest into the death or to assist in, or provide evidence for the purposes of, an investigation into the death under this Part
- (m) any other person who the senior coroner thinks has a sufficient interest.

This is something that should be considered well ahead of the inquest, along with legal representation.

Legal representation at the inquest

It is very difficult to feel confident enough to stand up in front of a full courtroom to ask the coroner or a witness a question, especially as the coroner can, under the coroners' rules, reject the question as not relevant to the purpose of the inquest or as breaching the immunity of the witness from self-incrimination. Some coroners have been known to do this less than sensitively. It may therefore be desirable to obtain the help of a specialist legal representative. Please see the *When Disaster Strikes, Legal Representation after a Disaster* leaflet.

Generally, there only needs to be one legal representative, or a team of lawyers, acting for all the bereaved in a mass inquest. Where there is a parallel public inquiry, then the same legal representative(s) could, and should, be retained.

Having one representative for all the relatives may not be appropriate in the case of a bereaved person whose deceased family member was, for example, the driver of a train that crashed after the driver was possibly careless in passing a red signal for example. In that case, separate representation must be obtained.

Dealing with the media

Major disaster inquests attract the attention of the media and bereaved relatives are always approached for comments. If you choose to speak to journalists it should be borne in mind that what is said in interviews is heavily edited, sometimes to fit a particular agenda. Some relatives have found it useful in the past to attend the inquest with pre-written statements that can be handed out to the media. If you choose not to speak to the media you can say so firmly and ask to be left alone. Alternatively, you might wish to enquire about whether you can enter the inquest through a side entrance, for example, without having to pass through the assembled media.

The verdict

Once all witnesses have been questioned and all the other evidence has been given, the coroner will commonly direct the jury to return a particular verdict, which must in no way reflect the civil liability of anyone or the criminal liability of any named person. Where there is no jury, the coroner gives his or her own verdict.

There are many possible verdicts for all types of circumstances (for example neglect or suicide) but in the case of a mass fatality disaster the likely verdicts are:

- accidental death
- unlawful killing (by ‘gross negligence’ which has been proved beyond reasonable doubt; this verdict is very rare.)
- open verdict (where the cause of death cannot be established)
- narrative verdict (a series of specific factual findings which describe how and why the death occurred: this is becoming more common even in cases where the death is not at the hands of state agencies such as the police or prison service).

For many relatives, a verdict of ‘accidental death’ appears to exonerate all parties from any responsibility for the deaths, whereas a verdict of ‘unlawful killing’ seems to hold that someone was criminally responsible. The verdict - almost always ‘accidental death’ (unless a criminal act has taken place, for example, a terrorist incident) - can therefore cause considerable upset and anger.

Challenging a Coroner's decision

Appeal to Chief Coroner

Under the Coroners and Justice Act 2009 section 40, any ‘interested person’ may in due course be able to appeal most decisions of the coroner, including a decision that they are not an interested person. This provision will replace the former section 13 applications (see below) when and if the Act comes into force fully. It is not known at the time of writing exactly when this will be.

Judicial review

There are many grounds for applying for judicial review. This is concerned with the fairness of the procedure and whether the coroner has properly exercised his/her powers. Some of the grounds upheld in the past have included:

- insufficiency of inquiry
- rejection of relevant evidence
- refusal to allow representatives to make submissions
- pressure on jury to return a particular verdict.

The application must be made promptly and in any case within three months of end of the inquest.

Section 13 applications

Section 13 of the Coroners Act 1988 provided that an application can be made to the High Court on the grounds that the coroner either has refused to hold an inquest which ought to be held or, where an inquest has been held, because of irregularity of proceedings or insufficiency of inquiry, or the discovery of new facts or evidence, another inquest should be held. The High Court may order an inquest or another inquest to be held into the deaths.

The application can be made at any time, but must be made ‘without unnecessary delay’.

Complaints

The Home Office is responsible for coroners, although the local authority pays them. A complaint to the Lord Chancellor may result in the removal of a coroner from his/her office for inability to discharge his/her duty, misbehaviour or neglect of duty.

Scotland and Northern Ireland

In Scotland, where the death is reported to the 'procurator fiscal' (rather than 'coroner') the body is in his or her custody until released. The Lord Advocate then makes a decision whether to hold a 'Fatal Accident Inquiry' (rather than an 'inquest'). Fatal Accident Inquiries are far less common than inquests, but in a multiple fatality disaster it would almost always be 'in the public interest' to hold one. If the death occurs outside Scotland, there is no such inquiry, unless the deceased died on active service abroad.

In Northern Ireland, where the law was updated in 2006, an inquest is held where the coroner deems it necessary to do so. Most the provisions otherwise are identical to those for England and Wales. There is, however, no provision for an inquest to be held were the death occurred outside Northern Ireland. (See Useful Links.)

Useful Links

Coroners Northern Ireland

<http://www.coronersni.gov.uk/>

Coroners Support Service

<http://www.coronerscourtsupportservice.org.uk/>

Crown Office and Procurator Fiscal Service

<http://www.copfs.gov.uk/Resource/Doc/13556/0000589.pdf>

Health and Safety Executive

<http://www.hse.gov.uk/enforce/enforcementguide/wrdeaths/coroner.htm>

Inquest

www.inquest.org.uk

Liberty – rights of the bereaved

<http://www.yourrights.org.uk/your-rights/chapters/rights-of-the-bereaved/index.shtml>

Ministry of Justice

The Ministry of Justice is responsible for the law and policy governing coroners.

<http://www.coronersociety.org.uk/wfDepConAffairs.aspx>

Victims' Voice

Victims' Voice raises issues that arise when people are bereaved by sudden and traumatic death and have to cope with the involvement of police, coroners, mortuaries, hospitals and the courts.

<http://www.victimsvoice.co.uk/>

Disaster Action would like to thank all those who assisted in the writing of this leaflet.