

Inquests – a guide to why they happen and what’s involved

Introduction

This guide has been written to support members of staff who are involved in an inquest. **It goes into quite a lot of detail – and is therefore very long – but please don’t panic if you are not able to read all of it.** There are key bullet points for longer sections, and the Trust legal team will offer advice and support throughout the process.

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Wellbeing

Inquests can make members of staff very anxious, especially if they haven’t been involved in one before. One of the reasons why this guide has been written is to give staff members more of an idea about why inquests happen and what is involved, in the hope that knowing this will provide some reassurance.

If you are concerned about your wellbeing, please speak to either your manager, HR or an appropriate healthcare provider (eg your GP).

Information about the Trust Employee Assistance Programme can be found at <https://elft.workplacewellbeing.com/>. The 24/7 contact phone number for them is 0800 030 4302.

There is also an independent support programme 'Keeping Well – North East London' (KWNEL). Details can be found at https://keepingwellnel.nhs.uk/who-we-are/about-us/?dm_i=1TXQ%2C822X6%2CVW4J4%2CWZ1HT%2C1.

The Trust Legal Team

ELFT has an experienced legal team who will support you through the inquest process. If you have any questions then please get in touch.

If you have been contacted by a member of our team then please try to reply to them. If they are on leave and you need a response before they return, then please check to see if their out-of-office message gives alternative contact details.

If you have an urgent query, please contact Gregory Smith (Trust Solicitor) or Christina Helden (Associate Director for Legal Affairs).

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Jargon

Throughout this guide, efforts have been made to set out some of the more common 'jargon' used by the Courts and lawyers in connection with inquests. There is also a summary below. If you have any questions about the terms used, then please don't hesitate to contact the Trust's legal team.

Adjournment – A pause in the proceedings. This can be either during a hearing (eg '*we will now adjourn for an hour to have lunch*') or before a hearing takes place at all (eg '*the hearing was supposed to be in September but it was adjourned until November in order to get more witness statements*').

Affirmation / 'Affirming' – This is a promise given by a witness to tell the truth, the whole truth and nothing but the truth when they answer questions at a hearing. It is a non-religious promise.

Being 'released' – This means that a witness is no longer required and can leave an inquest hearing.

Bundle – This is a collection of all of the documents that the Coroner has gathered together for the inquest. It could include witness statements, investigation reports, a post-mortem report and any other relevant document.

Conclusion – This is given by the Coroner at the end of the inquest. It sets out the Coroner's findings.

Coroner – The Coroner is the person 'in charge' of the inquest. They are typically lawyers but some have clinical backgrounds. Although they are not called judges, it is a 'judicial appointment' and they have a range of legal powers.

Counsel – This is another term for barrister. *‘We have received advice from our external Counsel that the document in question needs to be shown to the Coroner’.*

Disclosure – This is used both as a noun and a verb. It refers to the passing of documents between the Court and the Trust / others. *‘We have disclosed your witness statement to the Court’.* *‘We have not yet received full disclosure from the Court’.*

Interested Person aka ‘IP’ – This typically means anyone who has a close connection to the deceased (for example their family members) or organisations who either had a close connection or who may be criticised by the Coroner. *‘The Coroner has given the family, ELFT and the Local Authority the status of Interested Persons’.*

Oath - This is a religious promise given by a witness to the relevant God/Gods to tell the truth, the whole truth and nothing but the truth when they answer questions at a hearing.

Prevention of Future Deaths / ‘PFD’ – This is the term for a Coroner’s duty to explore if there is a risk of someone dying in the future due to something uncovered at the inquest. If so, then the Coroner will send a formal notice to them which must be responded to within 56 days. *‘The Coroner is considering making a PFD against the Trust, unless we can reassure them that improvements have been made.’*

Record of Inquest – This is the formal paperwork completed by the Coroner after the inquest, which sets out their conclusion.

Rule 23 – This is a legal rule which allows the Coroner to read out a document at an inquest hearing without needing the author of the document to be present. *‘The Coroner is going to read out Dr Smith’s statement under Rule 23, so she won’t need to attend the inquest hearing’.*

Submissions – These are essentially legal arguments made by the Interested Persons. *‘The Family have made submissions that this inquest should be heard with a jury’.*

Witness Summons – This is a formal document saying that a witness has to attend Court at a particular date and time to give evidence. If the witness does not attend at the specified time without a good reason, there can be legal and professional consequences for them. *‘The Court has sent a Summons for you to attend the inquest. Please sign it and return it to the legal team.’*

Inquests – an overview

Key points

- Coroners automatically hold inquests when someone dies an ‘unnatural’ death (eg from suicide or an accidental drug overdose)
- Most inquests last for a day or less and are heard by the Coroner on their own. A minority take longer and may be heard by a jury as well as the Coroner
- Coroners (or a jury) can be critical of care but can’t say that someone was negligent

If a person dies in certain circumstances (for example by suicide, or if they are in Police custody) then an inquest will automatically take place.

Inquests are controlled by Coroners. The law says that Coroners *must* hold inquests to investigate certain types of deaths. This means that they don't get to pick and choose which ones to look at. So just because a Coroner is investigating a death doesn't necessarily mean that anyone has done anything wrong, or that the death could have been prevented. Most of the time, it just means that the circumstances of the death have automatically triggered an inquest.

Inquests are investigations which typically set out to answer various questions – *who died, when and where they died, how they died, and what was the cause of death*. The Coroner will package up the answers to these questions into a 'conclusion' at the end of the inquest.

Although inquests are usually very rare occurrences for individual members of staff, they are very common for the Trust, which deals with approximately 150-190 inquests a year. This means that the Trust (and quite possibly some of your colleagues) have lots of experience in supporting members of staff throughout the process.

Most inquests happen within six months of a person's death, although they can take much longer if the circumstances are more complicated (for example, if there are other organisations involved such as the Local Authority, another healthcare provider or the Police/Ministry of Justice for example).

Most inquests last for a day or less. If the circumstances are more complicated then they can take longer. Even if an inquest lasts for a week (for example) it's very unusual for a witness to need to come along on more than one day.

A minority of inquests are heard in front of a jury. This tends to be when someone dies unnaturally while they are under state control – for example, detained under the Mental Health Act or in prison. When this happens it's the jury, rather than the Coroner, which forms a conclusion at the end of the inquest. The Coroner remains responsible for managing the hearing, and must give the jury guidance on what they can say in their conclusion.

Longer inquests or ones heard in front of a jury tend to be more complex. Again, this doesn't necessarily mean that anyone has done anything wrong, or that the death could have been prevented.

Both Coroners and juries are forbidden from concluding that anyone was negligent, or that a criminal offence has taken place. However, they can still be critical of the care someone received (if applicable). Sometimes, good care is highlighted in conclusions – demonstrating that inquests are supposed to be about what actually happened, without a focus purely on anything that didn't go well.

Preparing a statement

Once the Trust is aware that an inquest will be taking place, the Legal Team will contact members of staff who were involved in the patient's care and ask them to prepare a statement, which will then be sent to the Coroner.

Separate guidance on preparing a statement will be sent to witnesses and is also available on the Legal Affairs website. Further advice can be sought from the legal team.

Sometimes, if colleagues no longer work for the Trust, we might ask someone that wasn't directly involved in someone's care to write a statement based on the notes.

In some cases, Coroners will read the statement and decide that they don't need any further information from the author. However, it's very common for a Coroner to ask a witness to attend an inquest in person to give evidence. Again, it's important to remember that this doesn't necessarily mean that Coroner is concerned about anything that the witness did. Very often, they just want to understand the rationale for decisions or what the other options were.

Attending a hearing to give 'live' evidence

Key points

- The Trust's legal team will meet with you before the inquest to make sure you are prepared
- At the inquest the Coroner will ask questions first, then the deceased's family can ask questions, then representatives from any other organisation and finally the ELFT lawyer
- Although their questions can be uncomfortable, family members aren't allowed to be abusive
- Answering questions doesn't usually take more than 15-45 minutes. If it does last longer, there will be breaks offered (and you can also ask for them)
- After you've given evidence you can usually leave the Court or stay to hear the Coroner's conclusion

If you are asked to attend a hearing to give evidence (or we're not sure if you will be asked) then a meeting will be arranged with the Trust Legal Team before the Inquest. At this meeting one of the Trust's lawyers will go over many of the points covered by this Guide and see if there are any questions, and will discuss any areas which they think the Coroner might be interested in. This gives witnesses a chance to think and talk things over in a 'safe space' before the inquest, which will hopefully help them to organise their thoughts. Staff are welcome to invite eg a service manager or colleague to these meetings for support.

We will let you know the date of the inquest as far ahead as possible. If there are any reasons why you can't attend the inquest then please let us know immediately. Coroners may wish to see evidence of flight/hotel bookings for holidays, or even letters confirming medical appointments that clash with the inquest. These don't usually get sent to any other people such as the family of the deceased.

We will normally send witnesses a 'bundle' of information before the inquest. This bundle will contain all of the statements and reports that the Coroner has collected for the inquest. As well as statements from ELFT staff (and any internal investigation reports that have been produced), this could include statements/reports from a pathologist, the ambulance service, the police, the deceased's family and any other organisation that was engaging with them towards the end of their life. It's not usually necessary to read everything in the bundle, although we recommend reading any 'ELFT' documents (and we might point you towards any other key ones which you might be asked

about). It may well have been some time since you wrote your inquest statement, so it's important to read it again very carefully before the inquest.

The Trust will almost certainly have conducted some kind of internal investigation into the patient's death. If there is anything in the investigation that you have a significantly different view about – especially if it relates to care that you provided – then it is really important to raise this with the Trust legal team at this meeting (or ideally, in advance of it).

Some Coroner's Courts automatically send some formal paperwork called a 'Summons' to witnesses. This document can look intimidating as it talks about criminal penalties if people don't turn up to Court, but in practice as long as witnesses attend the inquest (or have a very good reason for not attending) there is no problem. The Summons will need to be signed and sent back to the legal team.

Make sure that you read through your statement and any other relevant documents (for example the Trust's SI report and/or the relevant medical records) the day before the inquest so they are fresh in your mind. Please try to bring a printed copy of your statement with you on the day.

Witnesses will be given a place and time to meet on the day of the inquest by the Trust legal team. When you arrive, there will usually be members of Court staff present who will direct you to where you need to go. Most Courts will have a room where ELFT staff and their legal representative can speak in private.

The Court staff will indicate when it is time to go into the actual Courtroom itself (where the hearing will take place). Court staff or the Trust's legal representative will show you where to sit, and where the witness box is located. Courts vary in terms of their layout, but generally speaking the legal team(s) will sit in the middle of the room, with witnesses sitting at one end and the Coroner sitting at the opposite end of the room.

Normally, a member of the Court staff will announce the Coroner's arrival and ask people to stand up. Some Coroners are less formal than others and don't bother with this. If in doubt, just do what the Trust's lawyer does.

The Coroner will introduce themselves and the other people / organisations involved in the inquest, who are known as 'Interested Persons'. They will typically explain the purpose of an inquest (as set out above). There might be some preliminary issues discussed with the representatives of the Interested Persons.

Sometimes the family members of the deceased person will instruct a lawyer to represent them at the inquest. This isn't something to worry about, and in many ways it just puts them on an equal footing with the Trust (which will have at least one lawyer there to represent the Trust and any Trust staff who are giving evidence).

If the inquest is taking place in front of a jury then there will be some additional matters that the Coroner goes through, but these are nothing that you need to worry about.

The Coroner will then start going through the evidence that they have collated. Much of this will be written evidence prepared by people who aren't attending the inquest in person. As those people aren't at the inquest, the Coroner will read out their statements (or sometimes ask the lawyers to do this for them). They may refer to doing this 'under Rule 23 of the Coroner's Rules' – you do not need

to know anything about this, but it is mentioned so you are familiar with the legal jargon that might crop up.

When the Coroner is ready to hear evidence from you, they will say something along the lines of 'I now call ABC to give evidence' or 'I would now like to hear from ABC'. When you hear this, please get up from where you have been sitting and make your way to the witness stand/table. You will need to decide whether to 'swear an oath' or to 'affirm' (also known as 'taking the affirmation') that you will tell the truth, the whole truth and nothing but the truth. The only difference between 'swearing an oath' and 'affirming' is that 'swearing an oath' is a religious promise made with the appropriate Holy Book, whereas an 'affirmation' is a secular promise. If you do want to swear an oath with a Holy Book, the Court will have a copy of the relevant book. Some Courts ask witnesses before the hearing if they would like to swear an oath or affirm, but some do it just before they give evidence. Some provide a card with the appropriate writing on it to the witness for them to read out, and some speak the words to the witness and ask them to repeat them.

It can be very difficult to predict how long you will be giving evidence for. The average is probably 15-45 minutes, but it could be as short as a few minutes or (in very rare cases) stretch into several hours.

At a minimum, you can take your witness statement with you and refer to it while you're giving evidence. In more complex inquests, there might be bundles of other documents on the witness stand/table as well. If something isn't there and you would like to refer to it, you can ask the Coroner to make it available to you.

Once you've sworn an oath / taken the affirmation, the Coroner will start to ask you some questions. Sometimes these are very broad 'open' questions along the lines of 'please tell me how patient XYZ came into your care'. This information will almost certainly be in your witness statement or another one of the Trust's reports, and it's absolutely fine to refer to a document before giving your answer.

Sometimes Coroners ask very focused or 'narrow' questions, for example 'Mr ABC had a diagnosis of depression, didn't he?' These questions can feel as if the Coroner is looking for a 'yes or no' answer, but if you think that some additional information is necessary then do provide it.

A lot of the information that the Coroner will ask you about will be contained in your statement. On the one hand, this is good news as you will have your statement with you. However, sometimes witnesses get slightly frustrated as they suspect that the Coroner is wasting their time by asking the question, when they could just look at the statement. This frustration can make the experience of giving evidence unpleasant, so do bear in mind that the Coroner will have read your statement in advance and is only asking the questions about what is in it for the benefit of anyone at the inquest that hasn't seen a copy.

Once the Coroner has asked their questions, the family (or their lawyer, if they have one) will be allowed to ask any questions that they have. Inquests can be very emotional experiences for family members and sometimes they can ask questions in a tense or accusatory way. Coroners will intervene if things become more heated, or if questions become abusive. In extreme circumstances, Coroners will order anyone that is causing trouble to leave the Courtroom. This kind of situation is extremely rare, and will almost certainly not arise. It is mentioned here just for completeness.

Family members (or their lawyer) can't repeat questions that the Coroner has already asked, and they can only ask questions which are relevant. This means they can't ask questions about historical care which they're not happy about (eg 'why wasn't ABC sectioned in 2008?'). The Coroner or the Trust's lawyer will usually intervene if duplicated or irrelevant questions are being asked.

Once the family (or their representative) has asked their questions, representatives of any other Interested Persons have the opportunity to ask questions. Whether they will do so usually depends on the particular circumstances of the patient's death.

Lastly, the Trust's lawyer will have an opportunity to ask you any questions that they have. As they work for the Trust, they will only be asking about things which they know will paint you or the Trust in a positive light, so there is no need to worry about why 'your lawyer' is asking you things.

If there is a jury present then the Coroner will probably ask them if they have any questions. These will be written down and then asked by the Coroner on their behalf.

Coroners will typically give witnesses breaks if their evidence is taking a long time. If you need a break then it is fine to ask the Coroner for one. During any breaks (including the lunch break) you won't be able to speak to anyone about the inquest if you are still in the middle of giving evidence. You can talk about other things, although it is probably safest to avoid talking to other people at all until after you've finished giving evidence.

Once all of the questions are over, the Coroner will indicate that you are finished by saying something like 'that concludes your evidence' and/or 'you are now released'. They will normally tell you that you are free to leave, or that you can stay if you wish. This is a very real choice and there is no pressure either way. It is absolutely fine to just get any belongings and walk straight out of the door. Equally, you can return to where you were sitting at the back of the room. If you do leave, you'll still find out 'what happened' at the end of the inquest (whether it finishes that day or not) so don't feel like you have to stay in order to find this out.

Once all of the evidence is completed (meaning there are no more documents that the Coroner needs to read out, and there are no more witnesses giving evidence at the inquest), the Coroner will usually ask the Interested Persons (or their legal representatives) for views (also called 'submissions') about the conclusion that the Coroner can deliver. You won't need to do anything – this is just mentioned for completeness.

Once Coroners have heard any legal submissions, they will normally take a short break (known as an 'adjournment') to consider these and to prepare their conclusion. Once they are ready they will come in again and deliver it to the Court. Once this has happened, they will offer condolences to the family and say that the inquest is concluded. A member of the Court staff will ask everyone to stand, and the Coroner will leave the room (unless they are taking a very informal approach in which case they will just stay where they are without people standing up. As mentioned above – just do what the Trust lawyer does).

If the inquest is being heard with a jury, then after receiving legal submissions the Coroner will instruct the Jury on how to approach things and then send them away to come to a conclusion.

After the inquest, the Trust lawyer will talk through what the conclusion 'means' and answer any questions that you might have.

Once the inquest hearing has taken place, that is usually the end of the matter. In a minority of cases the family members might make a claim for compensation against the Trust, but this is not something to be unduly concerned about. Claims for compensation are always made against the Trust rather than against individual practitioners, and they are handled by experienced lawyers on behalf of NHS Resolution. ELFT has never had a claim for compensation go to trial, meaning that it is virtually guaranteed that you will not have to give evidence in Court again. Typically, your involvement if there is a claim will be limited to possibly preparing a slightly different witness statement and speaking to an expert witness.

Any other legal proceedings following inquests are exceptionally rare.

'Remote' Inquests

Sometimes witnesses will give evidence to an inquest online over Teams (or similar). This doesn't affect the majority of the above advice (obviously there is no need to stand up when the Coroner comes in etc). There are however some practical considerations to bear in mind.

Firstly, make sure that you are joining the inquest from a quiet space where you will not be disturbed, and where there is a reliable internet connection. Ideally you will be alone when you give evidence, and if this isn't possible then anyone else in the room must not try to 'help' you with any answers to questions. If they did so, both of you could be in serious trouble.

You'll be able to keep in touch with the Trust lawyer before and after your evidence (but not during, for the above reasons) via email or similar. This can be discussed before the inquest at the pre-meeting.

At a bare minimum, you will need to have your camera 'on' while you are giving evidence. This is a legal requirement for giving evidence online, so it's essential that the camera you'll be using is in good working condition.

Make sure that there is a suitable background (not a film poster for example) and use common sense in general (drinking tea out of a mug with a humorous message printed on it will not be well received).

General Conduct at Hearings

It's important to dress smartly on the day to show respect to the deceased person's family and to the Court.

If you would like to offer condolences to the family then this is fine, as long as you feel comfortable doing so.

If you are sitting at the back of the Court waiting to give evidence it can be tempting to talk to colleagues who are also there. Please try to limit this to really important points only, and please remember that family members might be able to hear you. Similarly, during adjournments or lunch breaks, please be mindful about whether the family (or anyone else that's not from ELFT) can overhear what you are saying.

Please don't eat in the Courtroom as this looks disrespectful.

If you need to pass a message urgently to the Trust's lawyer, then it is fine to quietly pass a note to them.

Giving Clear Evidence

Key points

- You must always tell the truth, and you must put your answers into context
- You have 'permission to disagree' with the Coroner, if that is the truth
- Inquests are not a memory test or a speed test. Take your time and look at your statement if that will help you answer
- Don't be defensive

The 'Golden Rule' of evidence is always to tell the truth (and this is the promise that you will have made at the start of your evidence either by swearing an oath or taking the affirmation). It is the Trust's absolute expectation that you will tell the truth. Deliberately misleading the Court would be a criminal act and there could also be serious consequences for your professional registration and/or employment with the Trust.

This also means that if you don't know the answer to something, then that is the truthful answer that you must give.

If you can't remember doing something (and it's not documented) but you are confident that you would have done it because it was your usual practice to do it, then you can explain this (as long as you are transparent about the fact that you can't actually remember doing it).

Sometimes telling the truth can put yourself, a colleague or someone else in an awkward situation. Unfortunately this can't be helped, and you must always tell the truth.

Although rare, sometimes a Coroner will try to get you to change your answer. You should always reflect on any reason they give for this, and whether you actually might change your mind as a result. However, if the truth is that you haven't changed your mind, then that is the truthful answer that you must give. To put it another way, you have 'permission to disagree' with the Coroner if that means you will be telling the truth.

Your oath or affirmation is not just to tell the truth, but also to tell the *whole* truth. This means that you should try to put your answers in context where this is needed. Take the following fictional scenario for example. Patient ABC is struggling with anxiety and both they and their family want them to receive psychological input. The MDT agrees that Patient ABC should be referred to the CMHT psychologist. However, the referral is not made because of an administrative mistake, and Patient ABC unfortunately takes their own life four weeks later.

If asked about this hypothetical referral by the Coroner, it would be a truthful answer to say that the referral should have been made, but wasn't because of the administrative mistake. However, there might also be extremely important contextual information which should be brought to the Coroner's

attention so they can understand how significant (or not) this was. For example, if the waiting list for the psychology service was six weeks at the time, then even if the referral *had* been made then Patient ABC wouldn't have been seen before their death.

Inquests are not a memory test, and they're not a speed test. A Coroner would much rather wait for you to refer to your statement and give a correct answer, than receive a quick 'off the top of your head' answer which turns out to be wrong. It's absolutely fine to say something like 'I'm just going to refer to my statement' and to then take as much time as you need finding the information before answering.

Coroners sometimes ask if you would have done something differently, now that you have the benefit of hindsight. If you would have done something differently as you now have some information that you didn't have at the time, then it is very important to explain to the Coroner what this information is.

If you are asked several questions at once, or you don't hear the whole question, then it is absolutely fine to ask for the question to be broken down into smaller parts or repeated. It doesn't matter who has asked the question.

Being asked lots of questions about clinical care can sometimes make witnesses feel quite defensive. Although this is a natural reaction, it can come across badly in Court. It's always best to stay calm and to answer in a reflective, considered fashion – even on the rare occasions where it can feel like the person asking questions is trying to 'score points'. Treating the questioning like a challenging job interview might help. If there is something which didn't go to plan, it is advisable to be upfront about it.

Frequently Asked Questions

-Can I claim expenses for attending?

The Trust legal team does not directly pay expenses for attendance. It is our expectation that your employing service would cover the reasonable costs of attendance.

-Should I notify my Medical Defence Organisation / Union?

Although it will not be necessary in the vast majority of cases to do so, the Trust legal team has no objection to you discussing the inquest with your MDO or Union (as applicable). If they wish to offer you legal support then we are happy to work with whoever they provide, although in the event of a disagreement about next steps we would not be able to continue to represent you if you chose to ignore the Trust's advice. This would probably mean that you would have to be an 'Interested Person' on your own at the inquest, which might not be perceived well by others.

-I am very busy – do I really have to write a statement / attend the inquest?

It is the Trust legal team's expectation that current or former staff who are asked to write a statement or to attend an inquest will do so unless there are exceptional circumstances (which should be brought to our attention immediately). Please note that Courts have the legal power to compel witnesses to provide statements or to attend, and it can be a criminal offence not to do so.

-When will I know if I have to attend the inquest?

Some Courts are better than others at notifying us about whether a witness needs to attend the inquest hearing. The Trust legal team will endeavour to find out as soon as possible – and will chase the Court for updates – but please note that in some cases we do not hear until the day beforehand.

-If I have been asked to attend, do I have to attend every day?

Usually a witness will only have to attend on a specific day, which we will be notified about in advance (although sometimes this is only confirmed at very short notice). In rare cases someone might have to attend for two days, typically one after the other.

-How long will I be giving evidence for?

It can be very difficult to predict how long you will be giving evidence for. The average is probably 15-45 minutes, but it could be as short as a few minutes or (in very rare cases) stretch into several hours.

-Can I offer condolences to the deceased's family?

This is absolutely fine as long as you are comfortable to do so. Please note that there is no obligation to do this.

-What do I call the Coroner?

Coroners are called 'Sir' if they are male and 'Madam' or 'Ma'am' if they are female.