



CHIEF CORONER

CHIEF CORONER'S GUIDANCE No. 38

REMOTE PARTICIPATION IN CORONIAL PROCEEDINGS VIA VIDEO AND AUDIO BROADCAST

1. This note is to give guidance to coroners about conducting hearings with participants accessing the hearing remotely whilst the coroner is physically present in court. Coroners are also referred to the following Chief Coroner's Guidance No.35 – Hearings during the pandemic. This guidance will be reviewed periodically. It is used at this time to assist with management of the impact of the pandemic on court proceedings.
2. The current position is as follows, further detailed below.
 - (a) It is permissible to hold a partially remote hearing;
 - (b) It is unlawful to livestream any proceedings from a coroner's court;
 - (c) It is permissible to use live video to hear evidence from witnesses and/or for participation by interested persons;
 - (d) It is permissible to use audio only lines to enable public and/or press participation, as long as the coroner has expressly disapplied s9 of the Contempt of Court Act 1981 and given a warning as to recording etc;
 - (e) The coroner must him/herself physically be present in the court when conducting any hearing.
3. A general note on terminology –
 - Partially remote hearing – where the coroner is physically present in the courtroom but other participants in the proceedings (not the public or press) are accessing the proceedings remotely.
 - Broadcasting or livestreaming – the transmission of live video (including audio) to the public (including the press) over the internet.
 - Live video – live video (includes any form of video communication over the internet or otherwise) between the court and the relevant party. This includes 'video-link' within the meaning of Rule 17 of the Coroners (Inquest) Rules 2013.
 - Public participation – the ability of members of the public or the press to access court proceedings.

4. Open justice, meaning public access to justice, is the fundamental principle underpinning the way in which all courts deal with any remote hearing. However, the current pandemic has necessitated the increased use of partially remote hearings. Response by coroners to the pandemic must ensure that there is public access to hearings whilst acting within the framework of the law.
5. The Coronavirus Act 2020 introduced provisions to facilitate public participation either via video or audio broadcast in wholly remote hearings. The provisions do not create a power to broadcast or livestream proceedings. The Act amends existing legislation. There was no amendment to the statutory scheme governing coroners' courts and so does not apply to any coroners' court hearing.

The physical presence of the coroner in the court

6. It is the Chief Coroner's view that the coroner must be physically present in court at all times during a hearing and should not be conducting wholly remote hearings. Coroners are under an obligation to hold an inquest in public (Rule 11), see Chief Coroner's Guidance No. 3 and 9. This satisfies the requirement for open justice.

Partially remote hearings

7. There is an inherent jurisdiction for coroners to permit some remote participation in proceedings to take place. Partially remote hearings are considered to be an extension of the hearing which takes place in a physical courtroom. This was preserved in statute through the Coroners (Inquest) Rules 2013 at Rule 17 which makes specific provision for witnesses to give live evidence via video-link. Coroners may wish to note that making a direction for a particular witness to give evidence by video-link is justified where to do so 'would improve the quality of the evidence given by the witness or allow the inquest to proceed more expediently' (Rule 17(2)). In the same way, there is no problem relaying a live feed from a main courtroom hearing an inquest to a secondary courtroom holding, for example, members of the press or public (as has occasionally happened in high profile inquests). The recent case of *R (Spurrier) v Secretary of State for Transport* [2019] EWHC 528 (Admin) explicitly acknowledges that this is permitted as "the second court is simply an extension to, and thus part of, the court, subject to the usual rules and restrictions that a court can and does impose."¹
8. The current pandemic has increased the need to use technology to facilitate remote participation in hearings. It is the Chief Coroner's view that partially remote hearings should take place wherever possible, if the technology allows, it is in the interests of justice and its use is consistent with the administration of justice. Each senior coroner must consult with their own relevant local authority to ensure that there is adequate technology in place.
9. This should not inhibit the use of physical courtrooms in line with social distancing guidelines and as long as they can be accessed and used safely. The coroner must be present in court for all hearings and to satisfy the principles of open justice, the courtroom as far as possible should remain accessible to professional participants, interested persons, witnesses and in particular must be open for the public and the

¹ Spurrier, para 30.

press even if partially remote participation is taking place during a particular hearing. Social distancing may of course limit the number of people it is possible to have in the public gallery and in court generally. It has always been the case that there may be a restriction on how many people safely can be accommodated within the precincts of the court, and this may be heightened in the period of the pandemic with government guidance on social distancing.

10. Under a coroner's inherent common law jurisdiction to manage their own proceedings, any participant in the court hearing can apply to take part in those proceedings remotely. 'Participant' includes: witnesses, interested persons (including their legal representatives). For the avoidance of doubt, the Chief Coroner is of the view that interested persons are able to give evidence and participate in this way by live video.

Livestreaming court proceedings for the purposes of public participation

11. The taking of photographs, including screenshots, video recordings or broadcasts of hearings, including filming, in any court of justice in England and Wales is prohibited by s41 of the Criminal Justice Act 1925 which expressly applies to coroners' courts (41(2)(a) of the 1925 Act). The Supreme Court, by way of amendment by the Constitutional Reform Act 2005, is excluded from the restrictions.
12. It is well understood by coroners that traditional forms of broadcasting (e.g. filming by the press inside a proceeding for live or recorded transmission using professionally operated equipment) are prohibited in court. However, it is important to make clear that any sort of live or recorded video from court of a pre-inquest review hearing, inquest hearing or any other form of hearing, generated by whatever means, which is broadcast via the internet or otherwise and which the public (including the press) can view is also prohibited. The technological medium or platform via which broadcasting is achieved makes no difference. The recent case of *Spurrier* explicitly considered the legality of broadcasting proceedings. In that case the claimants had made an application to livestream proceedings on the internet because they argued it was in the public interest to do so.
13. The Court found that parliament has imposed restrictions on the publication of court proceedings which constrain any inherent jurisdiction of a court to regulate its own procedure. Any exceptions to this statutory regime (such as the proceedings of the Court of Appeal which are regularly broadcast by livestreaming) are expressly made in primary legislation.
14. The Divisional Court found that the statute is "unambiguously clear" (para 23) and that any livestreaming, visual or sound recording is prohibited whether transient, semi or permanent recordings. The Court found that "the statutory provisions express the will of Parliament that, generally, court proceedings should not be broadcast, save for the exceptions made either by statute... or Order... which have been approved by Parliament. It includes both recording and broadcasting of proceedings." (para 26).
15. This means that whichever technology platform is used in order to facilitate remote access to the hearing for participants must not inadvertently livestream, broadcast or record proceedings.

Audio broadcasting of court proceedings for the purposes of public participation

16. Section 9 of the Contempt of Court Act 1981 prohibits, amongst other things, the use of any tape recorder or other sound recording instrument in a court, except where expressly permitted by the court. It applies to all courts and tribunals that exercise the judicial power of the State (s19 of the 1981 Act) and thus applies to coroners' courts.
17. Section 9(2) makes it a contempt of court to broadcast recordings of court proceedings to the public.

Public access to hearings by members of the public and the press

18. Open justice requires that the public are able to access a hearing. This is given a statutory basis for coroners' courts in Rule 11(3) of the Coroners (Inquest) Rules 2013. See also Guidance No.25 – Coroners and the Media.
19. Caselaw holds that where the press is afforded access, proceedings are deemed to be in public. The rationale for this is that the press are members of the public and the press have been acknowledged to be the representatives of the public.²
20. Coroners must be physically in the courtroom. Therefore, it may be that access to the public can be facilitated by allowing people into the courtroom to hear the proceedings. In the current pandemic reasonable access may be limited due to the need for the environment to be compliant with health and safety measures to ensure adequate protection. (On this please see also paragraph 9 above).
21. Access to the public or press remotely can only lawfully be given by way of audio transmission if the coroner expressly disapplies s9 of the 1981 Act. There is an absolute statutory prohibition of members of the public or press having access to a visual broadcast, including a livestream of proceedings.

The practical application to coroners' courts

22. Coroners must be physically present in court for all hearings.
23. Coroners can order a partially remote hearing. If they are to do so, they need to give those affected an opportunity to make representations and will need to consider those alongside an interests of justice test. If making such a ruling coroners should set out their reasons to IPs at the conclusion of any PIR or in writing by letter or email.
24. Coroners are advised to make it clear to all parties concerned that whether someone is present physically in court or remotely will not affect their determination of any issues that arise or any conclusion they may come to. The usual warnings should be given, for example that witnesses should not confer on their evidence.

² R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs [2010] EWCA Civ 65; [2011] QB 218.

25. Partial remote hearings are for obvious reasons generally not suitable, save in the most exceptional and limited circumstances, for any jury inquests.
26. Coroners cannot use live video, livestream or any other form of visual broadcasting device to provide access to either the public or the media from outside the court building. It is prohibited by s41 of the 1925 Act. It is permissible to relay a live feed from a main courtroom hearing an inquest to a secondary courtroom (see paragraph 7 above).
27. Coroners cannot provide an audio link to facilitate access to either the public or the media from outside the court building because s9 Contempt of Court Act 1981 prohibits it except by express leave of the court. For leave to be given the coroner should give permission for the use of such an audio device for use in the court building and hence to vary the effect of s9 of the 1981 Act. The coroner should make clear that the variation of disapplication of s9 only applies to access to the hearing and that it remains a contempt of court to record, play, dispose or publish a recording or transcript of proceedings.

A suggested warning or similar form of words to be read out at the start of any inquest proceedings –

“I hereby give permission for the use of the audio device/link to be used in this court building and therefore I vary the effect of s9 of the Contempt of Court Act 1981. This disapplication only applies to access this particular hearing. It remains a contempt of court to record, play, dispose of publish a recording or transcript of the proceedings. That means it is a criminal offence to make or attempt to record or broadcast these proceedings.”

28. Coroners can allow witnesses, interested persons and other participants to participate in a hearing via live video or any other form of video participation or audio link.

A suggested warning or similar form of words to be read out at the start of any inquest proceedings -

“I hereby give permission for the use of live video to enable participants to access these court proceedings. It is a contempt of court to record, play, dispose of publish a recording or transcript of the proceedings. That means it is a criminal offence to make or attempt to record or broadcast these proceedings.”

29. This Guidance is provided to make coroners aware of the parameters of the law. It is not an instruction (and is not capable of being an instruction) that coroners should hold partially remote hearings in all cases.

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CHIEF CORONER

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