

Inquests Overseas: Common issues and how to get around them.

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"Inevitably a coroner conducting an inquisition into a death abroad will be faced with difficulties of evidence and so on, but that must have been so ever since the statute of George II ... Coroners are well experienced [in] dealing with such problems."

R v West Yorkshire Coroner, ex parte Smith [1983] QB 335, per Lord Lane CJ

Inquests and inquiries into deaths that occurred out of the jurisdiction give rise to a number of particular complexities. This article looks at some of the issues that practitioners may want to consider when acting in an inquest involving a foreign death.

When will there be an inquest?

Since the decision of the Court of Appeal in R v West Yorkshire Coroner, ex parte Smith [1983] QB 335, coroners in England & Wales have been under a duty to investigate a death that

occurred overseas if the body is repatriated and the circumstances require.

This duty is now reflected in s.1 of the Coroners and Justice Act 2009 ("CJA 2009"), which requires coroners to investigate deaths overseas which are reported to them if it appears that:

- The death was violent or unnatural
- The cause of death is unknown, or
- The person died in prison, police custody, or another type of state detention.

Coroners' investigations typically include a post-mortem examination, to help establish cause of death and potentially to gather forensic evidence. Depending on where the person died, the authorities in that country may have already carried out a post-mortem before the bodies are repatriated. But the standard of post-mortem reports and the time taken to produce them varies greatly from country to country. It is not unusual, therefore, for a coroner to request a further post-mortem examination upon repatriation for the purposes of the investigation.

Under s.6 CJA 2009, the coroner conducting the investigation is required to hold an inquest into the death unless this is no longer required after the post-mortem examination.

Although not the focus of this article, there are also circumstances where the State may be required to conduct an inquiry or investigation into a death abroad under Article 2 and / or 3 of the ECHR. The Iraq Fatality Investigations were established on the order of the High Court to conduct inquest-type investigations into the facts and circumstances of civilian fatalities in Iraq during the period of British occupation: R (Ali Zaki Mousa and Ors) v Secretary of State for Defence [2012] EWHC 1412 (Admin). These investigations are non-statutory and do not come under the CJA 2009, but give rise to similar issues outlined in this article and may be of interest to practitioners working in this field.

How to get evidence before the coroner?

Coroners have statutory powers, in addition to powers at common law, to compel evidence. But issues arise where the evidence or witnesses in question are located overseas.

Paragraph 1 of Schedule 5 to the CJA 2009 gives a coroner power to summon witnesses and to compel the production of evidence for the purposes of an investigation (paragraph 1(2)) or an inquest (paragraph 1(1)) by way of written notice. However, this power does not reach beyond the jurisdiction.

Coroners must therefore rely on other tools to obtain evidence from witnesses and organisations overseas relevant to the investigation or inquest.

Request to overseas authority

The primary tool at the coroner's disposal is to seek relevant information from the appropriate foreign authorities. Requests will usually be initiated by the coroner as part of her inquiries, but legal representatives should consider making submissions on evidence to be requested and the requesting process to ensure relevant documents are sought.

The information the coroner may request will of course vary from case to case, but typically might include copies of autopsy and toxicology reports, death certificates, CCTV footage, police reports and witness statements.

Requests for information for information from foreign authorities can be routed through the Foreign, Commonwealth & Development Office (FCDO)'s Consular Directorate's Coroners' Liaison Officer (CLO): s.9, Memorandum of Understanding. But coroners

may also make formal requests directly to foreign authorities, or engage CPS prosecutors to assist in obtaining documents from abroad.

The level of compliance and the extent and rapidity of disclosure from overseas can vary greatly depending on the circumstances of the case. In Dorish Shafi v HMC for East London [2015] EWHC 2106 (Admin), Bean LJ and The Chief Coroner (His Honour Judge Peter

Thornton QC) sitting in the High Court considered coroners' obligations when evidence available abroad is not forthcoming. In Shafi, a family member of the deceased challenged the adequacy of the coroner's approach to obtaining CCTV material that was not forthcoming from Dubai. The coroner had made a formal request and a further eight documented requests for the CCTV footage, before deciding that the inquest should proceed without.

Bean LJ refused to criticise the coroner's approach, holding that "*there is only so much that a coroner can do to obtain evidence from a foreign state, however friendly*" [26]. He emphasised that "*it is not in the public interest for requests by coroners for information or further information to remain outstanding for an indefinite period of time just in the hope that more information may be forthcoming*" [32].

The judgment sets out that that to satisfy the requirement to hold a sufficient inquest, the coroner must:

- First make "*all reasonable efforts to obtain sufficient relevant information*" [27];
- Then exercise her or his discretion to hold the inquest when there is either sufficient information available or further requests for information are not likely to be productive [28], [33];

When deciding whether to proceed, the coroner must exercise this discretion carefully and in light of all information available, giving consideration to any submissions made by interested persons and in particular the family of the deceased [31].

Written and oral evidence from overseas

The fact that the coroner does not have the power to *compel* evidence from overseas does not mean that evidence given voluntarily cannot be admitted. The coroner may invite evidence from witnesses overseas and it is not uncommon for foreign-located organisations and witnesses to participate in inquests.

In practical terms, attendance can be facilitated by Rule 17 of the Coroners (Inquests) Rules 2013 ("the 2013 Rules"), which permits the coroner to direct that a witness may give evidence via video link where appropriate.

If an overseas witness cannot or will not attend the inquest (either in person or via videolink), the coroner may be able to use Rule 23 of the 2013 Rules to admit evidence by way of written statements. However, to ensure that the requirement for sufficiency of inquiry within the meaning of s.13 of the Coroners Act 1988 is satisfied, Rule 23 can only be relied upon where all reasonable steps have been taken to try and secure the attendance of relevant witnesses: Shafi [36]-[51] (see also R (Paul) v Assistant Deputy Coroner of Inner West London [2007] EWCA Civ 1259, considering the position under the 1984 Rules).

Use of Interested Persons

The creative designation of Interested Persons (IPs) is another tool available to the coroner to secure evidence from overseas. This is particularly pertinent for inquests into the death of holiday-makers, where the deaths commonly involve a foreign hotel or activity provider.

An IP is defined by list at s.47(2) of the CJA 2009. In addition to family members and those who may have caused or contributed to the death of the deceased, the definition includes any other person who the coroner thinks has a sufficient interest.

Although much will depend upon the type of holiday and the contractual arrangements between providers, it is common for tour operators to have powers to compel evidence from their foreign suppliers. Representatives may consider inviting the coroner to designate a tour operator as an IP to make use of these powers in appropriate cases.

Case management

A coroner may at any time hold a pre-inquest review (PIRH) during the course of an investigation and before an inquest hearing under Rule 6 of the 2013 Rules.

While the Rules do not prescribe the circumstances in which a PIRH should be held, deaths overseas are very likely to require one given the common issues relating to witnesses and disclosure from overseas and the timing of the inquest. A well-organised PIRH with brief reasoned decisions afterwards can provide an opportunity for IPs and their representatives to make submissions and aim to resolve such issues.

Reports to Prevent Future Deaths

Paragraph 7 of Schedule 5 of the CJA 2009, gives coroners a duty to make reports to a person, organisation, local authority or government department or agency where the coroner believes that action should be taken to prevent future deaths. The report is sent to

whoever the coroner believes has the power to take such action and the recipient then has 56 days to respond: Regs. 28 and 29, 2013 Regulations.

The coroner's duties in this regard are not abrogated because a death occurred overseas, and PFD reports can be made to foreign-based IPs where appropriate. And of course, there may well be lessons to be learned for organisations and agencies at home arising out of such an inquest. But it goes without saying there are practical limits to the reach of PFD reports where the relevant recipients are not subject to the obligation to reply.

The leading example of a PFD report being addressed to a foreign IP is the Shepherd Inquest [Shepherd-2015-0338.pdf](https://www.judiciary.uk/wp-content/uploads/2015/03/Shepherd-2015-0338.pdf), which touched upon the tragic deaths of two children from carbon monoxide poisoning in their hotel room in Corfu. The Greek hotel group was an IP to the proceedings, and PFD report was addressed to them alongside the British tour operator, travel industry bodies and government departments. The matters of concern outlined in the report were, however, focused primarily on actions that could be taken by the British recipients to ensure health and safety standards overseas, with only limited comment directed to the hotel's failings.

By contrast, the foreign hotel was not an IP in the Tunisia Sousse Inquest into the terrorist attack at the Imperial Marhaba Hotel. Despite a number of potential overseas failings coming to light, HHJ Loraine-Smith's PFD report was addressed only to British government authorities and travel industry organisations, and focused on changes required at home.

As for any inquest, representatives will want to have in mind potential PFD outcomes from a very early stage. Where there is a foreign dimension, practitioners will want to be particularly careful to consider strategically whether foreign parties should be added as IPs and the impact this may have on the inquest outcome.

Conclusion

Any inquest can be upsetting for those involved, and the heightened complexities that can arise where the death occurred abroad can give rise to additional stress. Through building a familiarity with how to navigate these obstacles, practitioners can assist clients through the process and secure outcomes in their best interests.

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