

5

PARTICULAR CIRCUMSTANCES OF DEATH – WHAT ELSE DO YOU NEED TO KNOW?

- Deaths in police custody
- Deaths in prison
- Deaths involving medical treatment
- Work-related deaths
- Carbon monoxide and fire related deaths

DEATHS IN POLICE CUSTODY

Read this sheet with the general sections in the pack. This section gives you specific extra information about the investigation of deaths that occur in police custody.

What is a death in police custody?

When someone dies as a result of (some) contact with the police it is called a death in police custody. This covers deaths during the course of arrest, on the street, in a police van, by police shooting, during police pursuit, in the police station, and deaths in hospitals of those who had previously been in police custody. The official definition of a death in police custody is any death of someone detained in a police station and anyone in the hands of the police or whose death resulted from the actions of a police officer in the purported execution of his or her duty.

Will there always be an inquest?

Yes, if there is not a criminal prosecution. A death in police custody is automatically referred to the coroner and the inquest will always be held with a jury.

Should I contact INQUEST?

Yes, for specialist advice and support throughout the whole process that will follow the death.

Will there be a post mortem?

Yes and it is usual practice that there is a post mortem done almost immediately. This will be carried out by a Home Office pathologist. Sometimes two pathologists will be present at the initial post mortem – one for the Chief Constable or in the case of London the Metropolitan Commissioner, and one for the coroner. If you have any concerns about the way someone died you should consider whether a second post mortem should be carried out (see section 2). This is particularly important in cases following the use of force

by police officers, eg use of CS, restraint and firearms.

Should I contact a solicitor?

Yes. You should contact INQUEST who will either work with your own solicitor to help if she/he has not dealt with a death in police custody before or put you in touch with a solicitor in your area who has relevant experience.

Your solicitor should take a detailed statement from you about what you know about the circumstances of the death. If you have not been able to find a solicitor immediately you should keep a note of all the relevant information about the circumstances to assist you in making a statement to your solicitor when you have one.

Your solicitor should then request a copy of the custody record from the police, which you are entitled to, and request any medical records.

Will the Police Complaints Authority (PCA) be involved?

The PCA policy on bereaved families

After the death it is usual that it is reported to the PCA – which is a government body set up in 1986 to supervise the investigation of complaints against the police and investigate deaths in custody. It is not a statutory requirement that all deaths in custody are reported to the PCA but in practice this is usually the case. The PCA will appoint one of its members, who are lay people, to supervise the inquiry which is carried out by the police themselves and led by a Senior Investigating Officer (SIO). In some cases the investigation is carried out by a different police force but this is not always the case. The police will investigate the death on behalf of the PCA and will gather evidence in the usual manner. This inquiry has to be completed within 120 days, although in complex cases the time may be exceeded.

In April 2004 the PCA will be replaced by a new government body – the Independent Police Complaints Commission (IPCC).

The IPCC will have a similar role to the PCA but there will be greater use of non-police investigators in many deaths in police custody.

What kind of investigations will take place before the inquest?

The investigating police force should take evidence from everyone involved in the events leading up to the death including from the family of the person who has died. It is advisable for families to arrange to see the police officers with their solicitor, or to prepare a statement with their solicitor to give to the Investigating Officer. The evidence gathered during the course of this inquiry forms the basis of the Investigating Officer's report that is passed, with the documentary evidence, to the PCA at the end of the investigation. If they are satisfied with how the investigation has been conducted they will issue a certificate of satisfaction.

At this point the report and evidence will be passed to the coroner, the Chief Constable of the police force under investigation and the Crown Prosecution Service (CPS). The CPS will then consider whether any criminal charges should be brought against the officers involved. Prosecutions are extremely rare. You should be given written reasons for this decision, which can be challenged. You should seek legal advice on what to do. It is usually the case that criminal charges are not brought. The very fact that an inquest is held means it has already been decided no one is criminally responsible for the death. This can be reviewed after an inquest and particularly where a verdict of unlawful killing is returned.

If there is going to be an inquest the coroner will then decide if more inquiries need to be made in addition to those carried out by the police. She/he will already have the documents deemed relevant from the PCA supervised police inquiry by the Investigating Officer.

The coroner will then set a date for an inquest. This can be months or even years after the death occurred.

What information will I be given during the investigation?

Following the death, you will be visited by a representative of the PCA and the SIO. They will explain their roles to you. A Family Liaison Officer (FLO) may be assigned who is supposed to offer advice and support about the process. You should be given information about how the investigation is progressing. This can vary depending on the police service involved.

Will I be able to find out the results of the Police Complaints Authority supervised inquiry?

Unlike other inquests you will be able to ask for access to the evidence gathered during the inquiry. The guidance on pre-inquest disclosure issued by the Home Office to all police forces in April 1999 urges them to be as open as possible. Once it has been decided to go ahead with the inquest and all other procedures have been completed you can ask to see the documents gathered during the investigation. These must be given to you at least 28 days in advance of the inquest. The coroner has to agree to disclosure of the documents and it is not a right. Your solicitor and INQUEST can advise you about the procedure.

Disclosure can assist lawyers in preparing for the inquest and in ensuring all relevant evidence is called. This is particularly relevant in contentious cases where use of experts may assist the jury in deciding on verdicts – e.g. police shooting, use of restraint.

Can I use these documents for campaigning or talking to the media before the inquest?

No. You or your solicitor may have to sign an Undertaking of Confidentiality which means that only you, your family and your legal advisors can see the documents and they can only be used for preparing for the inquest.

Will any decision be made about disciplinary action against the police officers involved?

Once the PCA-supervised inquiry has taken

place the investigating force will prepare a final report for the PCA and this will be considered along with the evidence to determine whether any disciplinary action should be taken against any of the officers involved with the death.

A decision will not usually be made until the inquest is over although they sometimes announce an interim decision before the inquest.

Who will be represented at the inquest?

The Chief Constable, or in London, the Metropolitan Commissioner, is usually legally represented. Sometimes the individual police officers are also represented separately. If a police doctor has been involved they may also be represented, as may hospital staff if the deceased was taken to a hospital before death.

Will disciplinary action be taken after the inquest?

The PCA will review the evidence heard at the inquest and make a decision on whether disciplinary charges should be brought against any of the officers involved in the death.

After the inquest

There may be matters you wish to bring to the attention of:

The European Court of Human Rights;
The Home Office Minister with responsibility for the police.

You can discuss these options with your solicitor and INQUEST.

Who else might help?

INQUEST;
United Friends and Families Campaign.

Addresses and telephone numbers are in the section on Organisations.

DEATHS IN PRISON

Read this sheet with the general sections in the pack. This section gives you extra information about the investigation of deaths that occur in prison.

What happens if my relative dies in prison?

You may be informed of the death by the prison service through a phone call or a visit to your home, or by a police officer. If it is not the prison who have informed you, they should give you contact details of a contact person at the prison. The prison should inform you that the body has been taken to a hospital or mortuary and the death reported to the coroner and the police. They should also give a copy of a leaflet from INQUEST.

Who should I contact at the prison to find out more information?

The prison should appoint a senior member of staff to be the family's main point of contact in the prison. They should be able to explain what will happen and provide information about where to get further assistance. The named person should give you a factual account of the events leading up to the death and how your relative was discovered.

There is a Prison Service Standing Order, which details how you should be treated and the information that you should receive from the prison.

Will I be able to visit the prison and see where my relative died?

The prison should invite you to visit if you want to.

Will there always be an inquest?

Yes, if there is not a criminal prosecution. A death in prison is automatically referred to the coroner and the inquest will be held with a jury.

Should I contact INQUEST?

Yes, for advice and support throughout the whole process which will follow the death.

Will there be a post mortem?

Yes, and it is usual practice that there is a post mortem done almost immediately. This will be conducted by a Home Office pathologist. If you have any concerns about the death you should consider whether a further post mortem should be carried out (see Section 2 on post mortems). This is particularly important where the death followed the use of restraint, or concern about medical care or treatment.

Should I contact a solicitor?

Yes – you should contact a solicitor quickly who has experience of the law in relation to prisons and inquests. You should contact INQUEST who will either work with your solicitor to help if she/he has not dealt with a death in prison before or put you in touch with a solicitor experienced in prison deaths.

Your solicitor should take a detailed statement from you about what you know about the circumstances of the death. If you have not been able to find a solicitor immediately you should take a note of all the relevant information about the circumstances to assist you in making a statement to your solicitor when you have one.

Your solicitor should then request copies of the relevant documents such as medical records from the Treasury Solicitors Department before the inquest. The Treasury Solicitors Department are responsible for legal preparation for inquests on behalf of the Prison Service.

What investigations will take place?

After someone has died in prison the police will be called and initial inquiries made. If the police decide there are no suspicious circumstances there will be an internal Prison Service inquiry that is usually conducted by a governor from another prison. The investigating officer should give you an opportunity to discuss your concerns etc.

Will I see the result of the internal inquiry?

A new policy was issued in April 1999 which

allows you to see a copy of the internal investigation report before the inquest. Once it has been decided to go ahead with the inquest and all other procedures have been completed you can request to see the documents gathered during the investigation. You may have to sign an Undertaking of Confidentiality that means you, other members of your family and your legal advisors will only use the report to help in preparing for the inquest.

What investigations will take place?

After someone has died in prison the police and the coroner will be informed and initial inquiries made. The police investigate every death in prison custody both on behalf of the coroner and to assess whether there are any suspicious circumstances. There will also be a Prison Service investigation conducted by a governor from another prison. They should make contact with you and explain the purpose and remit of the investigation and give you the opportunity to discuss any of your concerns about your relative's death and matters you think should be looked into. You may wish to have your solicitor or someone from INQUEST with you at this meeting.

The Prison Service is currently reviewing the way it investigates deaths in prison and there are proposals for more independent investigations and greater involvement of families.

Can I use these documents for campaigning or talking to the media before the inquest?

No, not if you or your solicitor have signed the Undertaking of Confidentiality discussed above – this means only you, your family and your legal advisors can see the documents and they can only be used for the inquest. It can assist you and your solicitor in ensuring that all relevant witnesses are called.

If the police are carrying out a full inquiry what will happen to that?

The report and file will be passed to the

Crown Prosecution Service who will decide if criminal charges are to be brought, which is very rare. If it is decided not to prosecute anyone in relation to the death there will then be an inquest. The coroner will already have the file.

Who will be represented at the inquest?

It is usually the case that the Prison Service is legally represented, as sometimes are individual prison officers. If a prison doctor has been involved they may also be separately represented.

How do I get my relative's property back?

The coroner or the police will take the decision about what property needs to be retained for evidence. The prison should release any cash or property not needed as evidence when the coroner authorises them to do so. Most items can be released at an early stage and the prison should contact you to let you know when you can recover the deceased's belongings. Unfortunately personal items such as letters and other writings are usually amongst those needed as evidence and this sometimes means the intended recipient of a letter written by the deceased may not be able to obtain it until quite some time after the death. The coroner may recognise that this can cause a great deal of additional distress and use his/her discretion to release a copy of any such letter earlier on.

After the inquest

There may be matters you wish to bring to the attention of:

The Prisons Inspectorate;
The Prisons Ombudsman;
The Parliamentary Ombudsman;
The European Court of Human Rights;
The Prison Service Safer Custody Group;
The prisons minister.

You can discuss these options with your solicitor and INQUEST.

DEATHS INVOLVING MEDICAL TREATMENT

This section gives you specific extra information about the investigation of deaths that occur in circumstances where medical care may be an issue.

If I think there was medical negligence involved in the death, will that be determined at the inquest?

No. The inquest is not the forum for determining any kind of liability for the death and if you think there was medical negligence you need to obtain legal advice from lawyers with expertise in this area. You can find out about these lawyers from the Community Legal Service or the organisation Action for Victims of Medical Accidents. They can then advise you on other legal options and also on preparing for the inquest.

What is medical negligence?

As we have said earlier, the kinds of words commonly used often have a different meaning in law and therefore when dealing with inquests. In this case the easiest way to define negligence is an accident for which someone is to blame.

How do we judge whether someone is to blame?

It is important to understand that the law defines medical negligence as the failure on the part of the doctor to reach the accepted standard of medicine. In order to have a successful claim in medical negligence it has to be proved on the balance of probability that:

1. the doctors failed to treat in accordance with the accepted standard;
2. the failure caused some "damage".

If a "responsible body" of medical practitioners say that the treatment received or lack of it was adequate then there is no negligence. Even if there were failings but the outcome to the patient would have been the

same, there may, in law, be no damage for which there can be compensation and consequently no legal claim.

What should I do if I think the death was due to medical negligence?

If you believe that negligent medical treatment may have contributed to the sudden and unexpected death of a friend or relative and you are unsatisfied with any explanation put forward by the medical staff concerned you may wish to make a formal complaint against the hospital. It may be advisable to contact Action for Victims of Medical Accidents for advice on who can assist you with this procedure. From December 2003 you may also want to contact the Local Patients Forum which is linked to the Independent Complaints and Advocacy Service who would be able to help you with the hospital complaints procedure.

It may be that you decide that the complaints procedure is not appropriate. In this case it is advisable to contact a solicitor. Several firms of solicitors will arrange for a free consultation when you can discuss a potential claim in medical negligence as well as whether an inquest is appropriate. It is particularly important to seek legal advice if the coroner appears at all reluctant to act on any information that you have given him or her. Medical negligence is a very specialist area of law and it is important to seek the advice of lawyers who have experience in this area. As we mentioned earlier, you may want to contact the Community Legal Service or the group Action for Victims of Medical Accidents to get advice from a specialist firm.

What needs to be done before a medical inquest?

As in all inquests it is important to obtain as much information as possible prior to the hearing. It is vital that whoever is asking questions at the inquest is as well prepared as possible. If a solicitor has decided that there is a case in medical negligence which is worth

investigating and the family is entitled to public funding, then the public funding certificate will cover much of the pre-inquest work.

However, public funding is unavailable for representation at the hearing itself. A “medical” inquest differs from others in that more information may be made available by the coroner prior to the hearing itself. In particular, the next of kin/personal representatives of the deceased are entitled to copies of the deceased’s medical notes and records under the Access to Medical Records Act 1990. Once these records have been obtained a solicitor may instruct an independent medical expert to provide a report on any possible negligence. This can be of valuable assistance at the hearing itself.

How can I assist the solicitor?

It is also important that the family compile their own account of the facts surrounding the death, and requests can be made to the coroner via the coroner’s officer to call evidence which the family believe is relevant to the cause of death. However, ultimately it is the decision of the coroner as to the evidence she/he will allow to be heard subject to a review by the administrative court if appropriate.

It is advisable that the family appoints a spokesperson. If the family is to be represented, a meeting should take place and the family should list all the areas that they would like their representative to cover and the questions that they would like to ask.

The inquest

As we have said earlier in the pack, it is vital to understand that the inquest is not like an ordinary court of law. The coroner is prohibited from deciding any issues of civil or criminal liability on the part of a named individual. The inquest is purely a fact-finding mission. As a result it is often frustrating for the family if the coroner decides to take an unnecessarily restrictive view on her/his role in simply establishing the facts surrounding

the death and many questions are disallowed on the basis that they are not relevant.

After the inquest

An inquest is obviously a distressing experience for the family of the deceased. After the inquest the relatives may not wish to investigate further the circumstances surrounding a death. However, as has already been said, the role of the inquest is not to decide who was to blame. If the family want to make a civil claim against any of the medical staff involved in the treatment of the deceased they should seek advice from a solicitor if they have not already done so, who will be able to advise then on the merits of any potential claim.

Who else might help?

Action for Victims of Medical Accidents (AVMA).
Address in the section on Organisations.

WORK-RELATED DEATHS

Read this sheet with the general sections in the pack. This section gives you specific extra information about the investigation of deaths that occur at work.

What is a work-related death?

This is a death that takes place as a result of an incident at work or the result of other people carrying out their work. It covers:

- the death of a worker during the course of his or her employment;
- the death of a member of the public from work activities;
- the death of a member of the public in an incident like a train crash.

Some deaths in road traffic incidents might also be work-related, if for example an incident involved a commercial vehicle with defective brakes or where the driver had worked very long hours.

The role of the regulatory authorities

Almost all work-related deaths will be reported to either the Health and Safety Executive (HSE) or the Environmental Health Department (EHD) of the local authority where the death took place. If the death takes place at sea, the Marine and Coastguard Agency (MCA) will be the responsible agency.

The regulatory agency – which in most cases will be the HSE – has two initial responsibilities:

- to make sure that there are no continuing risks and make the situation safe;
- to undertake a criminal investigation.

Your solicitor

You may find that your solicitor is solely interested in issues relating to compensation, whilst you are concerned about issues of accountability. Compensation is of course crucial, but since the insurance companies pay for it, the responsible company is not affected. That is why it is important to ensure that the investigation by the police and the

regulatory agencies is rigorous and that proper consideration is given to whether the company and/or an individual should be prosecuted.

If you are concerned that your solicitor is only knowledgeable about compensation issues, then contact INQUEST or the Centre for Corporate Accountability (CCA) who can advise him or her on what other action can be taken on your behalf.

Your trade union

If the bereaved person was a member of a trade union, the union may provide you with free legal representation at the inquest and assist you in your claim for compensation. It is important that the trade union carries out its own investigation into the circumstances of the death and the safety history of the company involved.

The criminal law

There are two sorts of offences that could have been committed in relation to a work-related death:

- an offence under regulatory law like the Health and Safety at Work Act or the Merchant Shipping Act. These offences require evidence of negligence;
- an offence of manslaughter, which requires evidence of gross negligence.

Either a company or senior company officer can commit these offences.

The criminal investigation

A procedure was established in April 1998 in relation to the investigation of work-related deaths. A CID officer should come to the scene of the death and undertake an “initial assessment” of whether a full-scale manslaughter investigation should take place. If the officer decides against it, the case is referred to the HSE or EHD or MCA inspector (who should also have attended the scene of the death) who will determine whether a health and safety offence has been committed. This inspector can refer the case back to the police if there is “evidence that

indicates that manslaughter may have been committed”.

The investigation: what should you expect?

This procedure is not well known in some police forces. In addition, the police investigation may not be as thorough as you would hope. If you have any concerns, contact INQUEST (or the CCA).

The HSE investigation often fails to look properly at the conduct of company directors and senior managers. Again if you have any concerns contact INQUEST (or the CCA).

The inquest

If a manslaughter investigation is taking place, a full inquest will be delayed until it has been concluded. If the Crown Prosecution Service decide not to press any manslaughter charges, the inquest can take place. If a prosecution does take place, the inquest will again be postponed until it has been completed and it is then up to the coroner to decide after the trial whether there will be an inquest. It is extremely unusual for there to be an inquest after trial.

If there is no manslaughter investigation, and only the HSE is investigating, the inquest will take place prior to the HSE deciding whether or not to prosecute. This is usually three or four months after the death.

Witnesses

Some coroners fail to ensure that all the witnesses that you might wish to see giving evidence are called to the inquest. In particular, coroners often fail to call company directors or managers. This often means that crucial evidence indicating failures on the part of the company is not always heard at the inquest. This can mean that a jury is prevented from returning an “unlawful killing” verdict even when this might seem appropriate.

Your solicitor should write to the coroner requesting which witnesses should be called. Contact INQUEST (or the CCA) for further guidance.

Can I see the documents created during the investigation?

No, there is no pre-inquest disclosure. Unlike inquests into deaths in police and prison custody, the regulatory authorities like the HSE refuse to hand over any documents prior to the inquest even on a basis of confidentiality.

The verdict

The verdicts that can be left to a jury, if the evidence supports it, after a workplace death inquest are:

- unlawful killing – where a worker died as a result of conduct on the part of some individual considered to be “grossly negligent”;
- accidental death – which covers a large range of situations, from a mishap to a death caused by conduct which would be considered to be negligent but is not so negligent that a verdict of unlawful killing is appropriate;
- open verdict – when the evidence given does not disclose enough about how a worker died e.g. there was no eyewitness.

The HSE prosecution

The HSE will decide after the inquest whether to prosecute for health and safety offences. It only prosecutes companies in 20% of workplace deaths, even though many think that the figure should be much higher. Furthermore, 70% of these prosecutions take place in the magistrates court rather than the crown court where there is an unlimited fine. The failure to prosecute in the crown court has meant that the average fine for a conviction following a workplace death is just over £18,000.

In addition, the HSE very rarely prosecutes senior managers or directors. Between 1996 and 1998, the HSE did not prosecute a single manager or director relating to any one of over 500 workplace deaths.

It is therefore important to make sure that you monitor carefully the decisions made by the HSE. In particular:

- make sure that they have considered properly whether to prosecute a company director or manager;
- make sure that, if they prosecute, they make attempts to get the magistrate to refer the case to the crown court.

Contact the CCA or INQUEST if you require any assistance.

The HSE's policy on bereaved families

The HSE has a policy of providing information to bereaved families. In every case, an HSE inspector should make contact with you both by letter and personally. It is also the HSE's policy to “explain HSE's involvement, give details of the investigation, its conclusions, including the circumstances of the death and explain what action is to be taken and the reasons for such actions”.

Make sure that you make use of this right to be kept informed by the HSE of what they are doing. Don't feel shy of making your views known to them or providing them with any information that you feel might assist them. It is our experience that often families may get to know of information that is not known by the HSE.

CARBON MONOXIDE AND FIRE RELATED DEATHS

Read this sheet with the general sections in the pack. This section gives you specific extra information about the investigation of deaths that occur in these circumstances.

Will there be a jury at the inquest?

Not automatically. It is important to ask the coroner, through your solicitor if you have one, whether there is to be a jury inquest.

What should we say to the coroner about witnesses to call?

Although, as we have said in the section on inquests, the family has no right to call witnesses of their own. It is important, if appropriate, to provide details of any relevant witnesses to the coroner. When you or the solicitor are liaising with the coroner's officer/coroner over witnesses make sure you also suggest those which may seem obvious like the landlord/lady of the property, gas/fire officer etc.

What documents will I be able to see before the inquest?

As we said earlier, the deceased family has no right to advance disclosure of evidence. However, despite having no right, the solicitor should try to get as much information as possible from:

- the coroner;
- the police;
- the hospital;
- the Health and Safety Executive;
- British Gas (CO cases);
- The fire brigade (fire cases).

Should I/my solicitor instruct any other experts?

Consideration should be given to using additional experts to pathologists and toxicologists, e.g. consulting engineers,

product safety experts, and other medical experts.

Your solicitor should ask the coroner if appropriate to call expert witnesses whose reports you submit. It is a matter for the coroner's discretion to decide whether to call such evidence but she/he should do so if the evidence is relevant to the remit of the inquest. In the absence of advance disclosure of information or documentation this can help in the preparation of the inquest.

Who else might help?

CoGas Safety, an organisation with specialist experience of these deaths.

Contact details in Section 8.

