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Briefing: Attending the Coroner's Court as a witness and how to give evidence

Introduction

Being involved in the unexpected death of a patient may be one of the most difficult professional situations you will face. You will have to deal with an event at both a personal and professional level that is likely to have caused you and your colleagues great distress and shock.

You may well have already gone through an internal investigation in some form much nearer the events. Inquests should be held within 6 months of the death (or at the most 12 months). This can feel like a long time after the death and you will be required to replay events that you may well wish to put behind you.

This guidance is intended to explain some aspects of the inquest process to you and give you some practical advice for giving your evidence in court.

It is normal to have fears or concerns about giving evidence at an inquest even when there is no question whatsoever that your professional actions were correct and no one is likely to be critical of your involvement in the events.

It is hoped that knowing more about what is to happen at the inquest will reduce your anxiety levels, give you more confidence about your role at court and enable you to give the family and friends as full an account as possible of the events that have led to the death of their relative and loved one.

Common concerns of witnesses

- Not understanding the legal process
- Not understanding what will be expected of you
- Concern that others will blame you or fear you will be blamed by the organisation
- Feeling professionally inadequate
- Feeling guilty that the patient died
- Fear that you will not be able to speak in the witness box
- Feeling that you will not explain yourself properly when giving evidence
- Fear of being cross-examined harshly
- Concerns about seeing the family in court and not knowing whether or not to speak to the family
- Concern that your clinical records are inadequate or do not show all that occurred
- Concern about press reporting
- Fear of being made to look incompetent
- Fear of another unexpected death

The inquest process

The inquest is an inquiry to establish who the deceased was, when they died, where they died and how they came by their death. "How" can include the cause of death and the immediate events and circumstances that led to the death. On occasions, but only rarely, the inquest can also include an investigation into the wider circumstances including systems and procedures which may have contributed to the death. If we are instructed, we will brief you before you give evidence as to the extent of the investigation and what questions may be permitted. It is an important part of our role to ensure that you understand the scope of the issues which you are likely to be questioned on.

There are no "parties" or "sides" at an inquest – it is an inquiry not a trial. All witnesses are considered the coroner's witnesses.

Witnesses usually sit throughout the whole hearing. The coroner is in charge of the order in which evidence is given by the witnesses although normally a coroner will call witnesses in chronological order following the pathologist.

Evidence is given on oath. You will be asked to swear on a holy book or affirm that you will tell the truth, and you can choose either option.

Preparing for the inquest

Your evidence

You will have already provided a statement to the coroner or to an internal inquiry which will have already been provided to the coroner, the family and any other interested persons.

These statements are an outline of your evidence to assist the court; they act as a guide for the coroner. They are an aide memoir for you. However, your evidence is what you say orally on oath in the witness box.

We have prepared corporate guidance on preparing a witness statement for an inquest.

You should refer to the nursing or clinical notes which you made when preparing your statement and considering your evidence.

Refresh your memory

Before attending the hearing, it is advisable to refresh your memory of events from your witness statement and from the clinical records.

Make sure you have copies of any witness statements you have made. In the Coroner's Court (as opposed to other courts) it is permissible for you to have your statement with you when you give evidence. Indeed, the coroner may ask you to read your statement out.

The clinical records should be available to you in the Coroner's Court in order to refresh your memory or to deal with particular questions. You should check the medical records will be available in the court. It is your responsibility (if you are relying upon the notes) to make sure they are available. If in doubt contact the trust's legal services.

It is often a good idea to read through the records before you go to court, so you are familiar with them.

Plan ahead

Plan what to wear – it is a formal occasion so you should dress smartly. A good "rule of thumb" is to wear what you would consider as appropriate attire for a job interview. Uniforms overalls and "scrubs" are best avoided!

Ensure you know where the Coroner's Court is and have checked travel and parking arrangements.

On the day

- Allow extra travel and parking time.
- You might want to meet colleagues for a coffee before court to settle your nerves and feel supported.
- When you get to court, tell the Coroner's Officer who you are and which inquest you are attending.
- Remember to maintain a professional demeanour both outside and inside the court room – nerves can make you laugh and smile inappropriately.
- Expect to come into contact with the family.
- Expect the press to be present – it is a public court. Deaths in local hospitals and care organisations are often reported in local newspapers even where there are no criticisms. Be careful that the press do not overhear any conversation you have with others.
- The inquest will be recorded – any microphones you see will be for this purpose and not for amplification so please ensure that you speak up.
- The inquest is a public hearing, and witnesses are usually permitted to sit in court and watch the proceedings should they wish to do so. You may generally enter and leave the court room at any time and should do so as quietly as possible. Ideally, you should wait for a break in the proceedings.
- Switch off your mobile phone!

Giving your evidence

The order of events

You will usually be asked to confirm who you are, your name and occupation.

The coroner usually starts by asking questions of the witness. These usually follow the witness statement(s) you have provided. He may ask you to read out your statement and then add additional questions subsequently.

The family (or their lawyer) will usually be given an opportunity to ask you questions next, followed by other "interested persons" if there are any present at the hearing. Normally your solicitor (if present) will have an opportunity to ask questions at the end.

After you have given evidence, you may usually leave court unless the coroner says otherwise. It is possible for you to ask the coroner if you may be released and allowed to leave. In most cases the coroner will agree. However, you do not have to go if you would prefer to hear the evidence given by other witnesses. It is best to wait until the next break in proceedings before exiting the court room.

At the end of the inquest, the coroner (or jury if there is one) will come to a factual conclusion about when, where and how the deceased died.

The conclusion will not determine there was a criminal act on the part of a named person, nor may it decide matters of negligence. In practice the conclusion cannot blame identified individuals.

The inquest process is an important opportunity for the family to learn as much as they can about how their relative died, from those who were involved in events.

Answering questions

- Taking the oath. It's a point of good practice to acknowledge the relations if they are present once you have taken the oath. It shows that you have some empathy with them and that you look sincere and genuine (which you will be).

- Make sure you listen carefully to the questions you are asked. If you do not hear or understand the question, ask for it to be repeated or explained.

- You should consider your answer very carefully and do not "blurt out" the first thing that comes to mind. Especially if the question seems easy! Wait and consider your answer, if necessary, refer to the statement or to records. If you like, you can always ask the lawyer to repeat the question – it can buy you some time. If you ask someone to repeat the question, then that individual will tend to think that you don't understand and may well re-phrase the question which will give you thinking time.

- Answer the question you are asked and nothing more. Do not answer the question you think you were asked or the one you would like to have been asked, or the one you think you will be asked next.

- Beware of pauses. When you have finished your question if there is a pause and the lawyer does not ask another question, do not be tempted to fill the silence. It is a technique of advocates to remain silent when a witness has finished answering a question. This is a way of embarrassing the witness into giving out further information. No one likes silences and therefore you might feel obliged to fill the silence by proffering further information. Avoid that temptation at all costs. Do not volunteer information once you have finished your answer, pause and look at the advocate if necessary. Be polite and wait for them to ask the next question.

- Do not venture an opinion unless you are asked for it. However, if appropriate it is not unreasonable to give an opinion within your area of expertise or experience.

- Do not be tempted to comment on the provision of a service and to criticise your colleagues.

- If you are asked to comment or to deal with an area which is not within the scope of your expertise, then say so and decline to answer.

- Do not guess or make assumptions about what others did or might have done – stick to what you know from your own experience.

- The hearing is not an exam or memory test! If you need to look something up in the clinical records or in your statement – do so.

- If you do not know the answer – say so. If you have forgotten something that is written in your statement, just say you have forgotten the detail and ask if you may refer to your earlier statement.

Remember that the purpose of the inquest is to determine the name of the individual, when and where they met their death and how (and sometimes, in what circumstances) they met their death. Whilst it may be appropriate for you to comment upon how someone met their death (without criticising the care and treatment, diagnosis etc), it is not appropriate for you to be asked questions which would either directly or indirectly attribute blame or fault to any system or individual. If such questions are asked, then it may be appropriate for your solicitor or indeed for the coroner to interrupt and prevent inappropriate questions.

Also remember that the family, coroner and jury (if there is one) may have little experience of health and care systems, culture and practice. Think of it as being your task to explain to the family what you know about what happened, so they understand more about the circumstances in which their relative died.

Top ten tips

Prepare adequately – re-familiarise yourself with your statement, the clinical records and any other relevant documents e.g. protocols, policies.

Decide beforehand whether you wish to swear an oath or affirm.

1. The coroner is referred to as “sir” or “ma’am”.
2. Address all answers to the coroner and jury, if there is one.
3. If you do not understand a question, say so.
4. If family members ask questions in a confrontational manner – do not become defensive – answer the question as fully and simply as possible. Be polite and understanding.
5. If you have any comments on hearing other witnesses’ evidence, pass these on to the legal representative.
6. Acknowledge the family at the inquest – the inquest experience is very stressful and upsetting for them too!
7. If your evidence is likely to be complex or difficult to explain, consider the use of props e.g. diagrams.
8. Do not forget to claim your expenses from the Court Officer following the inquest. This ranges from travel expense to a fixed amount for providing a report.

Mills & Reeve inquest support

Visit our inquest support webpage for guidance and short videos to help you prepare for and navigate the coronial process.

Explore our inquest support resources

Watch our inquest videos

Contacts

Feel free to contact our inquest specialists as any time



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