



Investigating deaths caused by medical treatment Coroners and Inquests

If you believe that someone close to you has died as a direct consequence of poor medical treatment - either a failure to provide treatment or the treatment was mismanaged - then you should report your concerns to the local Coroner. The Coroner is responsible for investigating any death reported to him. If the Coroner is not satisfied that the person died from natural causes or the cause of death is unknown, s/he must hold an inquest, a public hearing, to investigate and establish the cause of death. Very often an inquest can be far more beneficial to the family than an action for compensation in the civil courts. It can provide an opportunity for the family to ask those involved in the treatment and care of the deceased searching questions about the circumstances surrounded the deceased's death.

What do I need to do?

Contact the coroner for the area in which your relative died as soon as possible after the death as the Coroner will normally want to arrange a post-mortem examination of the deceased's body. You can find details of your local Coroner's Office in local directories, from your local NHS Trust, or Citizens Advice Bureau.

Clearly communicate your concerns to the Coroner (you will normally be dealing with the Coroner's officer). It may assist to put your concerns in writing.

Consider approaching a specialist clinical negligence lawyer for advice and representation. You will need to do this as earlier as possible so that the solicitor can approach the Coroner at an early stage and be able to advise you about whether a second post-mortem should be obtained. Details of solicitors can be obtained from AvMA.

Obtain copies of the deceased's medical records under the Data Protection Act 1998. Seek free advice from organisations that will be able to offer advice on the medical issues e.g. AvMA or organisations specialising in the particular medical condition.

Ask the organisation who had been providing the treatment about any internal investigation into the death, whether you can be involved, or whether the information can be shared with you. It is your right to force an investigation by making a formal complaint. The fact an Inquest is to be held should not prevent your complaint being dealt with in the normal way.

What will happen next? - The Coroner's investigation.

Post-mortem: the Coroner should arrange a post-mortem examination by a pathologist. (You cannot refuse a Coroner's post-mortem but you can request that the deceased's religion be taken into account.) It is AvMA's experience that not all Coroners' post-mortems are of the highest standard. If you are concerned about the accuracy of the post-mortem you may want to consider instructing your own independent pathologist.

Alternatively, you can try and persuade the Coroner to arrange a second post-mortem. A clinical negligence solicitor would be able to advise you on this.

When will an inquest be held?

After completing his or her enquiries, the Coroner will reach a decision as to whether he or she is required under the Coroner's Rules to hold an inquest. If the Coroner determines that death was due to natural causes, he or she will issue a death certificate, the body will be released for burial or cremation and the inquiry will be brought to a close.

An inquest must be held if there is reasonable cause to suspect that the deceased died:

- A violent or unnatural death
- A sudden death where the cause is unknown
- In custody
- In circumstances where other statutes (laws) require an inquest e.g. criminal cases

The Coroner should hold an inquest where there is reason to believe that negligent medical treatment may have caused the deceased's death. However, many medical deaths are not subject to an inquest or the inquest if held is very limited in the issues it investigates. It may therefore require some considerable persuasion on the part of the family and/or their legal advisor of the necessity for holding a full inquest.

The inquest will normally be 'opened' and then adjourned for further enquiries before the full inquest takes place. This can take from three to six months and sometimes longer.

What costs will be involved

An inquest is a public inquiry and relatives will only incur costs if they decide to carry out their own independent investigations. Such costs include:

- Investigations undertaken by a lawyer
- Representation by a lawyer at the inquest
- Any independent medical reports obtained by the family
- Obtaining copies of medical notes and records

Funding Legal Advice and Representation at the Inquest

There are a number of options for funding legal representation including:

Privately funding (costs can range between £500 to £3,000 depending on the extent of the investigations undertaken). There are some solicitors who may be prepared to provide assistance at a reduced cost depending on the particular circumstances of the case.

Public funding ('legal aid') but only under certain exceptional circumstances.

Legal Expenses insurance (included in some insurance policies).

Occasionally the NHS Trust concerned may assist with funding where it is recognised that the conduct of the Trust can be fairly criticised.

If you cannot afford legal representation, you can nominate a family member or friend to represent the family at the inquest. If you know someone with medical knowledge this could be particularly useful. Alternatively, you could write a list of questions that you would like the Coroner to address at the Inquest.

What happens at the inquest?

An inquest is a public hearing, conducted by the Coroner. Most inquests are conducted by the Coroner without a jury. However, the Coroner should summon a jury to an inquest where it involves a death in custody or it concerns a matter of public interest. This defined as: 'where the death occurred in circumstances, the continuance or possible recurrence of which is prejudicial to the health or safety of the public or any section of the public'. The family or legal representative may want to write requesting that an inquest be held on the basis that it is in the public interest to do so. Thereafter the Coroner can be advised that a jury must be summoned.

At the inquest, the family can represent themselves or be represented by a solicitor or barrister. (The healthcare provider involved will normally be legally represented.) The Coroner will decide which witnesses to call but it is open to you to make representations to the coroner if you feel additional witnesses should be called. Some witnesses will attend in person, whilst others may be asked to submit written evidence.

Each witness is first sworn in and then questioned by the Coroner. With the permission of the Coroner, witnesses can then be asked questions by any other interested party (e.g. the legal advisor representing the family or healthcare provider). Any questions must be limited to discovering the facts rather than to make accusations. The Coroner will advise witnesses that they do not have to answer any question, which may incriminate them. The Coroner can instruct independent medical experts to advise on the case and they may be called to give evidence at the inquest.

The Coroner's Verdict

If the Coroner is conducting an inquest without a jury, it is for the Coroner to reach a verdict. If a jury has been summoned, the Coroner must sum up the proceedings and direct the jury on the law to assist them in arriving at their verdict. No named individual can be 'blamed' for the death at the inquest.

The verdict must determine:

Who the deceased was

How or by what means the deceased came by his or her death

When and where he or she died.

There are a number of ‘verdicts’ that are commonly used including:

Natural causes

Want of attention at birth

Lack of care

Accident/misadventure

Open verdict

Suicide

Unlawful killing

Lack of care

Whilst the coroner might arrive at a verdict of misadventure or natural causes in medical deaths, it is what is said in the Coroner's summing up that can sometimes be more important.

For more detailed information and advice on inquests, contact AvMA.