

What can I do if the Coroner has decided no inquest or post mortem is required?

Not all deaths will result in the Coroner ordering a post mortem or deciding to open an inquest. This is only usually done when the Coroner has reason to suspect that death may be 'unnatural'.

This comprehensive self help guide outlines the circumstances in which a Coroner will investigate a death and what to do if the Coroner decides not to proceed to an inquest.

Contents

When is an inquest called?	2
What happens if the coroner is not sure whether the duty to investigate arises?	2
What are preliminary enquiries?	2
What can I do if the coroner has decided to discontinue the investigation but I feel that an inquest should be opened?	2
What happens if I still cannot convince the coroner to open an inquest?	3
Judicial Review	3
What can I do if the coroner refuses to authorise a post-mortem?	3

This leaflet is kindly sponsored by:

HUGH | JAMES

Understanding law, understanding you

Call Hugh James on 0333 016 2222 for a free, confidential, no obligation chat with a specialist medical negligence solicitor or email info@hughjames.com.

Visit www.hughjames.com/inquests to see how we've helped other people.

If you need legal advice about making a clinical negligence claim, you can find a wide selection of solicitors accredited for AvMA's specialist clinical negligence panel at www.avma.org.uk/find-a-solicitor or call our helpline.



The **charity** for **patient safety** and **justice**

AvMA is the charity for patient safety and justice. We provide specialist advice and support to people when things go wrong in healthcare and campaign to improve patient safety and justice.

For advice and information visit **www.avma.org.uk**

Or call our helpline
*10am-3.30pm Monday-Friday
(03 calls cost no more than calls to geographic numbers (01 or 02) and must be included in inclusive minutes or there can be a cost per minute)*

0345 123 2352

 Freedman House,
Christopher Wren Yard,
117 High Street,
Croydon CR0 1QG

 www.facebook.com/AvMAuk

 @AvMAuk

 bit.ly/AvMAYouTube

Registered charity in England & Wales (299123) and Scotland (SCO39683)

What can I do if the Coroner has decided no inquest or post mortem is required?

When is an inquest called?

The coroner has a duty to investigate a death if he or she has reason to suspect that one of the following circumstances applies:

- i. The deceased died a violent or unnatural death
- ii. The cause of death is unknown
- iii. The deceased died while in custody (for example prison) or in state detention (for example, in a mental health hospital run by the NHS)

What happens if the coroner is not sure whether the duty to investigate arises?

There may be times when the coroner is not sure whether the duty to investigate the death arises or not in which case the coroner can make preliminary enquiries. Once those preliminary enquiries have been completed the coroner can then decide whether the duty to investigate has arisen or not. One example of how preliminary enquiries can help the coroner is where the post mortem shows that the cause of death was due to natural causes but the enquiry suggests that other factors, such as neglect, contributed to the death.

What are preliminary enquiries?

Preliminary enquiries are whatever enquiries the coroner considers necessary to satisfy him/herself that their duty to investigate has been triggered. For example, the coroner can ask for a post mortem examination (sometimes referred to as a coroner's post mortem) and/or can obtain documents that they believe will help them identify whether the duty to investigate the death arises. The Coroner may also speak to the deceased's doctor for more information about their death. It is important to note that the coroner does not have to conduct a post mortem as part of the preliminary investigations.

If having carried out preliminary investigations the coroner decides they do not have a duty to investigate, there will be no further investigation and no inquest will be held.

Sometimes the coroner's preliminary investigations do identify circumstances and factors which give rise to concerns that a death which initially presented as a death by natural causes was contributed to by human failing. In those cases the coroner may consider that the death may not have been due to natural causes and open an inquest so further investigation and enquiry can be conducted and enable the coroner to conclude how the deceased died.

According to case law a death may be 'unnatural' where it has resulted from the effects of a naturally occurring condition or disease process but where there were some failures in their care that contributed to death. There need only be a 'reason to suspect' that the death was unnatural.

What can I do if the coroner has decided to discontinue the investigation but I feel that an inquest should be opened?

If the Coroner is satisfied that a death is completely natural then s/he does not have a statutory duty to investigate. If your loved one has passed away and you feel that his/her death was unnatural then you are able to write to the coroner and ask that they reconsider their decision. If you do want to follow this course of action, then you may find our template letter helpful:

www.avma.org.uk/wp-content/uploads/Inquest-letter.pdf

It is therefore advisable that you make a list of any failings in your loved one's care and how that contributed to their death. It is important to identify any link between any failings you have identified and the cause of death. For example, in a case where the cause of death was sepsis, if there was a failure to diagnose and commence antibiotic treatment in a timely manner then it might be argued that this failure contributed to death.

It is important to focus on failings that go to the care of the deceased rather than administrative type failings such as a failure to notify the family when someone has passed away in a timely manner. While this is certainly a serious and valid concern it is not a failure which can be said to have contributed to the death.

When you set out your list of failings in the care provided the coroner is likely to be assisted if you can draw their attention to any complaints correspondence, medical records and/or serious incident reports or other documents that potentially support those failings. Any evidence you can provide to the coroner in support of your reasoning can be helpful.

What can I do if the Coroner has decided no inquest or post mortem is required?

What happens if I still cannot convince the coroner to open an inquest?

If having written your letter and made representations to the coroner about why the deceased's death was not natural the coroner is still not satisfied that his statutory to investigate has been triggered then the next step is to bring Judicial Review proceedings. There is no appeal process in the coroner's court.

Judicial Review

Judicial review is a legal process by which the courts assess whether a public body has reached or failed to reach a decision fairly. The grounds for this can include:

- There has been an unfair or biased process, such as failure to review evidence presented by one side or to give a fair hearing on the basis of the written information
- The decision is irrational The most important point about judicial review is that it must be sought very quickly after the decision has been made.

You should seek legal advice as quickly as possible if you are considering this route. An application for judicial review should be made as soon as possible and, in any event, no later than three months after the coroner's decision or determination not to hold an inquest has been made. This does not mean you have three months to seek advice, you have three months to issue judicial review proceedings from the date the grounds for the claim first arose.

There is a pre action protocol for judicial review proceedings which applicants are expected and encouraged to follow, except in urgent cases. A failure to follow the protocol may result in sanctions being imposed by the court. Details of the protocol can be found here:

www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_jrv

The protocol encourages an applicant to serve a Letter before Action containing all the essential detailed information about the basis for the judicial review application. Judicial review can be complex and expensive, you may be eligible for legal aid but this can be difficult to obtain, you should seek legal representation from a solicitor specialising in this type of work.

If you would like further legal advice relating to Judicial Review, then we strongly advise you to contact lawyers who specialise in Public Law. AvMA do not accredit solicitors in this specialist area of the law so we advise you to use The Law Society's 'find a solicitor' webpage to find such specialists. The link can be found here:

<https://solicitors.lawsociety.org.uk/>

What can I do if the coroner refuses to authorise a post-mortem?

Again it would be advisable to write to the coroner and clearly set out why you feel that there was an unnatural element to your loved one's death. Under Section 14 (1) (b) Coroners and Justice Act 2009, a coroner may request a post-mortem examination if they think it will help them to decide whether the duty to investigate arises. The coroner is not obliged to order a post-mortem report.

If the coroner refuses to authorise a post-mortem it may be possible to pay privately and instruct an independent pathologist to conduct a post-mortem for you. You may wish to contact the histopathology department of your local NHS hospital to see if they can recommend any pathologists who are able to help you with a private post-mortem.

It must be noted however that many experts do not accept instruction directly from members of the public and only accept instruction via solicitors. It may also be difficult to find solicitors who are willing to accept instruction solely for the purposes of instructing an expert for you.

If you wish to pursue a claim for negligence you should ask your solicitor whether they will instruct a pathologist on your behalf. You will need to discuss costs and funding options with your solicitor. You may find it helpful to read our leaflets:

Understanding legal costs – the principles:

www.avma.org.uk/wp-content/uploads/Costs-principles.pdf

Funding options in clinical negligence claims:

www.avma.org.uk/wp-content/uploads/Funding-options.pdf

The coroner's decision not to authorise a post-mortem examination may be subject to judicial review but again this can be quite a costly process and may take some time to proceed. We would advise you to contact a solicitor who specialises in public law if you wish to pursue this.

Be part of the movement for better patient safety and justice

Become a **Friend of AvMA** today



You can help make healthcare safer and fairer for all

AvMA wants to build on the support we enjoy from people all round the country who share our passion for making healthcare safer and fairer for those who do suffer harm.

By signing up to be a Friend of AvMA you will belong to a growing movement for change. Join injured patients and their families, healthcare professionals, lawyers and many more who share our goals.

Becoming a Friend of AvMA costs from as little as £5 a month.

£5/month could provide vital advice to patients and families via our helpline

£10/month could help train a volunteer helpline advisor

£50/month could help support a family through an inquest hearing

Benefits of membership

- Regular newsletter keeping you up-to-date with our work
- Invitations to special events
- Share your thoughts on our work and policy issues

Your help could make a real difference to patient safety in the UK

Please sign up today at www.avma.org.uk/friends



The **charity** for patient safety and justice

AvMA is the charity for patient safety and justice. We provide specialist advice and support to people when things go wrong in healthcare and campaign to improve patient safety and justice.

For advice and information visit **www.avma.org.uk**

Or call our helpline
10am-3.30pm Monday-Friday
(03 calls cost no more than calls to geographic numbers (01 or 02) and must be included in inclusive minutes or there can be a cost per minute)

0345 123 2352



Freedman House,
Christopher Wren Yard,
117 High Street,
Croydon CR0 1QG



www.facebook.com/AvMAuk



@AvMAuk



bit.ly/AvMAYoutube