

Potter Rees Dolan

Representing Families at Inquests: Disclosure

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Introduction - Disclosure



- ▶ Relevant legislation
- ▶ Specific definitions
- ▶ Typical documents for disclosure
 - ▶ Standard documents
 - ▶ Additional documents
- ▶ Failure to disclose
- ▶ Benefits of disclosure
- ▶ Practical tips



Relevant Legislation



- ▶ The Coroners and Justice Act 2009
- ▶ The Coroners (Inquests) Rules 2013
- ▶ The Coroners (Investigations) Regulations 2013
- ▶ The Coroners Allowances, Fees and Expenses Regulations 2013

CJA 2009 Schedule 5



- ▶ **Section 1(2)** - A senior coroner who is conducting an investigation under this part may by notice require a person, within such period as the senior coroner thinks reasonable:
 - ▶ (a) To provide to the senior coroner, about any matter specified in the notice, in the form of a written statement,
 - ▶ (b) To produce any documents in the custody or under the control of the person which relate to a matter that is relevant to the investigation, or:
 - ▶ (c) To produce for inspection, examination or testing any other thing in custody or under the control of the person which relates to a matter that is relevant to the investigation

The Coroners (Inquests) Rules 2013 PART 3 - Disclosure



- ▶ **Disclosure of Documents at the Request of an Interested Person**
- ▶ **13.** – (1) Subject to rule 15, where an interested person asks for disclosure of a document held, the coroner must provide that document or a copy of the document or make the document available for inspection by that person as soon as is reasonably practicable.
- ▶ (2) Documents to which this rule applies include –
 - ▶ (a) any post-mortem examination report;
 - ▶ (b) any other report that has been provided to the coroner during the course of the investigation;
 - ▶ (c) where available, the recording of any inquest hearing held in public ...
 - ▶ (d) any other document which the coroner considers relevant to the inquest

The Coroners (Inquests) Rules 2013 PART 3 - Disclosure



- ▶ **Managing Disclosure**
- ▶ **14.** A coroner may –
 - ▶ (a) disclose an electronic copy of a document instead of, or in addition to, a paper copy;
 - ▶ (c) disclose a redacted version of all or part of a document; or
 - ▶ (c) make a document available for inspection at a particular time and place

The Coroners (Inquests) Rules 2013 PART 3 - Disclosure



► Restrictions on Disclosure

- **15.** A coroner may refuse to provide a document or a copy of a document requested under rule 13 where –
 - (a) there is a statutory or legal prohibition on disclosure;
 - (b) the consent of any author or copyright owner cannot reasonably be obtained;
 - (c) the request is unreasonable;
 - (d) the document relates to contemplated or commenced criminal proceedings; or
 - (e) the coroner considers the document irrelevant to the investigation

The Coroners (Inquests) Rules 2013 PART 3 - Disclosure



► Costs of Disclosure

- **16.** A coroner may not charge a fee for any document or copy of any document, disclosed to an interested person before or during an inquest (1).
 - (1) Fees may be charged for disclosure after an inquest has been commenced in accordance with the Coroners Allowances, Fees and Expenses Regulations 2013

Specific Definitions



▶ Interested Person

- ▶ At section 47 (Chapter 7) of the CJA 2009 it states that an interested person means –
 - ▶ (a) a spouse, civil partner, partner, parent, child, brother, sister, grandparent, grandchild, child of a brother or sister, stepfather, stepmother, half-brother or half-sister;
 - ▶ (b) a personal representative of the deceased;
 - ▶ (c) a medical examiner exercising functions in relation to the death of the deceased;
 - ▶ (d) a beneficiary under a policy of insurance issued on the life of the deceased;
 - ▶ (e) the insurer who issued such a policy of insurance;
 - ▶ (f) a person who may by any act or omission have caused or contributed to the death of the deceased, or whose employee or agents may have done so ...

Specific Definitions



▶ Senior Coroner

- ▶ The CJA 2009 Schedule 3 Part 1 indicates that the relevant authority for each coroner area must appoint a coroner for that area. That coroner is known as the 'senior coroner'

▶ Document

- ▶ At Part 1 Rule 2 of the Coroners (Inquests) Rules 2013 'Document' is defined as 'any medium in which information of any description is recorded or stored'

▶ Relevancy

- ▶ As we have seen, there is an emphasis on 'relevant' evidence being obtained by the coroner (CJA 2009) and being provided to interested persons (CIR 2013). However, relevance is ultimately a question for the coroner and he/she will exercise their discretion in that regard

Standard Documents for Disclosure

- ▶ GP records
- ▶ Hospital records (clinic notes, nursing notes, test results – bloods, micro-biology, histo-pathology, radiology)
- ▶ Other third party records
 - ▶ District Nurse records
 - ▶ Community psychiatric records
 - ▶ Community Midwife records
- ▶ Also
 - ▶ RiO notes
 - ▶ Complaint letters and responses
 - ▶ Minutes of meetings

Standard Documents for Disclosure

- ▶ **Serious Untoward Incident Reports**
 - ▶ Also known as Serious Incident Reports or Root Cause Incident Reports
 - ▶ Other related documents to consider requesting
 - ▶ Detailed timeline of events
 - ▶ Copies of all witness statements obtained for purposes of preparing the report
 - ▶ All versions of the report to include the final version
 - ▶ All internal memoranda regarding the investigation and creation of the report

Additional Documents

- ▶ Mortality and morbidity meetings
- ▶ Health and Safety Reports
- ▶ Internal Audit Reports (e.g., infection control within a hospital)
- ▶ CQC reports
- ▶ Police/Transport Police Reports
- ▶ NHS Resolution early notification scheme

Additional Documents

- ▶ Healthcare Safety Investigations Branch (HSIB) Maternity Reports
- ▶ Hospital Policies/Protocols/Guidelines
- ▶ Duty of Candour

Failure to Disclose

- ▶ See CJA 2009 Schedule 6, Section 7
- ▶ (1) It is an offence for a person to:
 - ▶ (a) distort or alter evidence
 - ▶ (b) prevent any evidence from being given or produced
- ▶ (2) It is an offence for a person:
 - ▶ (a) intentionally to suppress or conceal relevant document
 - ▶ (b) intentionally to alter or destroy such a document
- ▶ (3) For the purposes of subsection (2) a document is a 'relevant document' if it is likely that a person conducting an investigation under this Part of this Act would (if aware of his existence) wish to be provided with it.
- ▶ (6) A person guilty of an offence under subparagraph (1) or (2) is liable on summary conviction to a fine, not exceeding level 3 on the standard scale, or to imprisonment for a term not exceeding 51 weeks, or to both

Benefits of Disclosure

- ▶ Narrow the relevant issues at an early stage
- ▶ Prevent any suspicions often held by the deceased's family members
- ▶ Open and transparent forum
- ▶ Alert coroner to all relevant information

Practical Tips

- ▶ Check that all interested persons are working from the same material
- ▶ Interested persons can request disclosure before, during or after inquest
- ▶ Application to be designated as an interested person after an inquest and seek disclosure of material
- ▶ Coroners must retain documents in connection with an investigation or a post-mortem report for 15 years
- ▶ Hearings must be recorded and interested persons can obtain a copy of the recording of the inquest as noted above

Summary



- ▶ Changes to legislation have put deceased families at the centre of the inquest process
- ▶ Two-step nature of disclosure benefits all
- ▶ Move to transparency results in less suspicion
- ▶ Relevance and scope of inquest
- ▶ Families can influence what documents are disclosed



Thank you

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