



Protocol for partially remote hearings during Covid-19 pandemic in the Birmingham and Solihull Coroners Court

1. Introduction to this Protocol

- a) This Protocol applies to resumed inquest hearings and pre-inquest review hearings ('PIRs') held in the Birmingham and Solihull Coroners court.
- b) Although resumed inquest hearings were initially adjourned to enable the service to respond to the urgent demands of the pandemic and to remove the need for key workers and vulnerable groups to attend court as time goes on and social distancing measures remain in place the means by which inquest hearings can be resumed is becoming essential.
- c) A 'partially remote hearing' is a hearing where the Coroner is sitting in the Coroner's court but witnesses and interested persons ('IPs') attend by video link or, where video link is not available to a witness/IP, telephone. The COVID-19 pandemic and continuing social distancing necessitates the use of remote hearings where possible as advocated by the Chief Coroner in Guidance No 38 'Remote participation in coronial proceedings via video and audio broadcast'.
- d) Paragraph 10 of the Chief Coroner's Guidance No 34 on COVID-19 states:

"All hearings that can possibly take place remotely (via whatever means) should do so, and other hearings should continue only if suitable arrangements can be made to ensure distancing although the Chief Coroner accepts that in many jurisdictions this may be difficult. Hearings which must continue should be those considered essential business."

The Protocol also heeds the contents of Guidance No 35 on Hearings During the COVID-19 Pandemic and paragraph 3 of Guidance No 38 which states "The current position is as follows,

- (a) It is permissible to hold a partially remote hearing;*
- (b) It is unlawful to livestream any proceedings from a coroner's court;*
- (c) It is permissible to use live video to hear evidence from witnesses and/or for participation by interested persons;*
- (d) It is permissible to use audio only lines to enable public and/or press participation, as long as the coroner has expressly disapplied s9 of the Contempt of Court Act 1981 and given a warning as to recording etc;*

(e) The coroner must him/herself physically be present in the court when conducting any hearing.”

- e) This Protocol seeks to provide basic guidance as to the conduct of partially remote hearings. Whilst Birmingham and Solihull Coroner’s Court currently remain open to the public and for the media, the objective is to undertake as many hearings as possible via video/internet link to minimise the risk of transmission of Covid-19 with interested parties and witnesses attending over video link.

2. Key Principles

- a) The method by which all hearings, including partially remote hearings, are conducted is always a matter for the coroner, operating in accordance with applicable law. Nothing in this Protocol derogates from the coroner’s duty to determine all issues that arise in the case judicially and in accordance with normal principles.
- b) The Birmingham and Solihull Coroners will now be considering the use of partially remote Hearings for every resumed inquest and PIR. As a matter of good practice this will be done as far ahead of inquest hearings as possible but it may not be possible to make a final decision until the evidence for the inquest has been received and reviewed. It is anticipated that whilst many resumed inquest hearings and PIRs will be suitable for remote hearings many will not be.
- c) It is inevitable that undertaking numerous hearings remotely will cause teething troubles and delays. All parties are urged to be sympathetic to the technological and other difficulties experienced by others.
- d) Rules/Regulations on Public Access to Hearings.
 - i. Under rule 11, sub-paragraphs (1) and (2) of the Coroner’s Inquest rules 2013 {‘the Inquest Rules’) a coroner must open an inquest in public but where the coroner does not have immediate access to a court room or other appropriate premises, the coroner may open the inquest privately and then announce that the inquest has been opened at the next inquest hearing held in public.
 - ii. Under rule 11, sub-paragraph (3) of the Inquest Rules inquest and pre-inquest hearings must be held in public except:
 - a. a coroner may direct that the public be excluded from an inquest hearing, or any part of an inquest hearing if the coroner considers it would be in the interests of national security to do so (paragraph 4);
 - b. a coroner may direct that the public be excluded from a pre-inquest review hearing if the coroner considers it would be in

the interests of justice or national security to do so (paragraph 5).

- iii. Accordingly the Coroner will be located in court for all remote hearings and members of the public observing social distancing will be free to attend the hearing.
- e) Rule 26 of the Inquest Rules 2013 confirms that “A coroner must keep a recording of every inquest hearing, including any pre-inquest review hearing”.
- f) Under rule 17 sub-paragraphs (1) and (2) of the Inquest Rules a coroner may direct that a witness may give evidence at an inquest hearing through a live video link provided that the coroner determines that giving evidence in the way proposed would improve the quality of the evidence given by the witness or allow the inquest to proceed more expediently. Before giving a direction under paragraph the coroner must consider all the circumstances of the case, including the matters set out in sub-paragraph (3):
- i. views of the witnesses and IPs;
 - ii. interests of justice or national security;
 - iii. whether in the opinion of the coroner giving evidence by video link would impede the effectiveness of questioning of witnesses.

3. Planning and notice for partially remote hearings

- a) In the present circumstances, the court and the parties and their representatives will need to be more proactive in relation to all forthcoming resumed inquest hearings and pre-inquest review hearings ('PIR').
- b) The Birmingham and Solihull Coroner will be hosting remote hearings via Microsoft Teams. Witnesses and IPs, or their legal representatives, will receive an email invitation with a link to attend. An email address and telephone number will also be provided for use if any witness or IP finds they cannot join the hearing at the allocated time or loses the connection to the hearing and cannot re-join. For witnesses or IPs who do not have email and/or internet access a telephone number will be provided to enable them to ring into the hearing via Microsoft Teams.
- c) Any objection to the use of a remote hearing must be raised in writing by email, copied to the other parties, within 7 days of the notice that the hearing is to be a remote hearing with reasons for the objection and stating what other proposal would be more appropriate. On receipt of submissions from all parties, the Coroner will make a binding determination as to the way in which the hearing will take place and give all other necessary directions. It will also be open to the Coroner to fix a short remote case management conference in advance of the inquest to allow for directions to be made in relation to the conduct of the hearing, the technology to be used, and/or any other relevant matters.

- d) Any witness or IP who believes they cannot attend by video link or telephone must make the Investigating Officer aware within 7 days of the notice that the hearing is to be a partially remote hearing with an explanation of the difficulty. It is expected that witnesses and IPs will make reasonable efforts to attend by video link or telephone seeking assistance from friends/family/their employer (if the employer is involved in the case). N. B. The fact that an individual witness or IP cannot attend by video link or telephone is not a reason of itself to object to the hearing being a remote hearing
- e) Where necessary consideration will be given to allowing witnesses and/or IP(s) who cannot attend partially remote hearings by phone or video link to attend in person however:
- i. permission will only be given if it will be possible to accommodate social distancing at the hearing and at the hearing social distancing will be strictly enforced;
 - ii. the views of all other IPs will be sought and considered;
 - iii. in making any decision and in their conduct of the hearing the Coroner will be mindful of the potential in-equality of arms from having a witness/IP in attendance and other's not.
- f) Full details of the hearing will be found on the Coroners website in the usual way.
- i. The website will now indicate the Mode of Hearing as either; **'Final Hearing'** meaning all witnesses and IPs are required to attend; **'(Remote hearing) Final Hearing'** meaning the Coroner will be in open court and witnesses and IPs are to attend remotely (unless the Coroner has given permission for an exception). Likewise it will be identified whether a PIR is a Remote Hearing.
 - ii. Information will be posted on the website for members of the public and the media who wish to attend a partially remote hearing.

4. Preparations for the partially remote hearing

- a) When the mode of hearing is a partially remote hearing it should be assumed that the Coroner will be in court but all witnesses and IPs are attending through Microsoft Teams. IPs will be consulted if an IP or witness wishes to attend in person, offered the opportunity to make submissions and informed of the Coroner's decision.
- b) The court will prepare an electronic bundle of documents for each remote hearing which will be circulated in advance to all interested person.
- i. Electronic bundles will contain only documents that are essential to the remote hearing as large electronic files can be slow to transmit and unwieldy to use.

- ii. Electronic bundles will be prepared in .pdf.
 - iii. Submissions on the bundle must be made within 7 days of its receipt unless otherwise stated.
- c) For PIRs an Agenda will be circulated.
- d) Any submissions must be filed no later than 48 hours before the hearing is listed with any authorities referred to either:
- a. in an electronic bundle (lengthy authorities should be edited to include only the relevant sections); or
 - b. for those authorities available on public websites, hyperlinks should be included in the written submissions and/or the Index to any electronic bundle of submissions.
- e) Do not forward the Microsoft Teams link to any person. If you believe it is necessary for someone else to receive the Microsoft Teams link (e.g. a legal representative) please inform the Investigating Officer providing the persons name, email address and nature of their involvement.
- f) Parties are requested to keep the number of participants to the minimum necessary to conduct the hearing.

5. The conduct of the partially remote hearing

- a) The parties will all need to utilise the email link or call in as instructed at the stated start time of the hearing. The time given for witnesses/IPs to log on will vary to enable a Court Officer to greet those joining the hearing, take details and answer any immediate queries. The Coroner will join the hearing last.
- b) An email address and telephone number will be provided if problems with joining the hearing are encountered before it has commenced or while it is in progress. It is suggested that participants have an email already drafted to send quickly if there is a problem. The Coroner and Court Officer will attempt to monitor the participants on the call but particularly if there are a number of remote participants it may not be noticed if the connection to a witness or IP is lost.
- c) The hearing will be recorded by the court. **Please do not touch the recording controls within the Microsoft Teams app.**
- d) For the avoidance of doubt, It is a contempt of court to record, play, dispose of publish a recording or transcript of the proceedings. That means it is a criminal offence to make or attempt to record or broadcast the hearing or any part of it by any means.

- e) The hearing will be made open to the public by the Coroner being in their usual court room with members of the public and press being permitted to call an audio line to listen or sit in the public gallery observing strict social distancing.
- f) To avoid any unfairness, or perception of unfairness, no member of the public or the media in court will be able to participate in the hearing in any way. If any issue is raised by such a person they will have to write down the issue and pass it into the court office for it to be communicated to the Coroner who will raise it with the IPs if required. This instruction will be posted on the website and on a notice on the court door. This restriction will not apply to any witness or IP who has been given permission to attend court for a remote hearing.
- g) Any witness or IP who has been given permission to attend court for a remote hearing will follow the same procedures for making submissions on law and procedure and questioning witnesses as those attending remotely.
- h) Conduct of participants:

- i. Mute**

- When not speaking all participants, except for the Coroner, must be 'mute' to reduce feedback/interference. When attending by telephone a 'mute' function may not be available on older handsets in which case the caller might be asked to physically cover the microphone when not speaking.

- Non-speaking participants (those present purely to observe) must always keep their microphones muted and should turn off video (to reduce the recording file size).

- Speaking participants (legal representatives and family members who wish to be actively involved in the hearing) are to only unmute their microphones when preparing to make submissions and when they are engaged in questioning witnesses.

- ii. Identification of Participants**

- At the start of the hearing the Coroner will check who is participating in the remote hearing and all participants will be asked to confirm their name and the nature of their involvement in the hearing.

- iii. Invitation to make submissions/representations**

- The Coroner will always check with each IP in turn calling on them by name whether there is any matter of law or procedure they wish to raise:

- a. following the Coroners introduction to the hearing and before turning to the evidence in a resumed hearing or the agenda in a PIR;
- b. before any breaks/adjournments in the hearing are taken;
- c. before releasing any witness (which will enable them to log off the hearing if they wish);
- d. in a resumed inquest hearing once the evidence is completed but before the Coroner begins the summing up and conclusions;
- e. on each item of the agenda of a PIR.

iv. Taking of witness evidence

- a. Rule 19 of the Coroners Inquest Rules applies.
- b. In accordance with Rule 20 of the Coroners Inquest Rules all witnesses (except for children under 14 years of age considered by the Coroner to be unable to understand) will be sworn by means of the affirmation. The affirmation will be read in sections by the Coroner and the witness will be asked to repeat it.
- c. The order of questioning will be in accordance with rule 21 of the Coroners Inquest Rules: the Coroner will always question the witness first, the family, or their legal representatives, will usually be invited to ask questions next and any legal representative for the witness will always be last.
- d. All those asking questions with reference to documents are requested to ensure that those documents are in the electronic bundle(s) of documents prepared in advance of the hearing and to make sure the witness either has the page in front of them or ask the Coroner to display the document through Microsoft Teams (assuming the witness is attending by video).
- e. Witnesses cannot consult with anyone whilst giving their evidence. All witnesses will be warned of this at the start of their evidence and will be asked to confirm at the end of the evidence that they have not had any input from any person present with them or who has communicated with them during their evidence.
- f. Witnesses must not refer when answering questions to any document or source of information without first making the Coroner aware. All witnesses will be warned of this at the

start of their evidence and will be asked to confirm at the end of their evidence that they have not referred to any document or source of information without making the coroner aware.

v. Interruption of read or oral evidence or during others' submissions is strongly discouraged.

To avoid confusion if it is imperative that a point of law is raised during the questioning of the witness by the Coroner and/or an IP, or during the submissions of other IPs must:

- a. Wait for an appropriate time;
- b. Interrupt by stating your name and who you represent and wait to be acknowledged by the Coroner;

If, whilst asking a question or making a submission, an IP is interrupted they should stop speaking immediately to allow the Coroner to deal with the interruption.

vi. Introduction at the start of any unsolicited submission

As participants may not always have a clear view of who is speaking all speakers are asked to state their name and who they (e.g. daughter of Mrs. Smith, Solicitor for the Family, Counsel/Barrister for the hospital Trust) each time they start a submission (in longer hearings or where there are few participants there may come a time when the Coroner states that this is no longer necessary).

vii. Repeated interruptions

If a Witness or IP repeatedly interrupts the hearing prejudicing the fairness or efficiency of the hearing they will be removed from the hearing and, if necessary, the hearing will be adjourned. This applies to those attending virtually and in the event of a witness/IP being present in court.

viii. Breaks

Regular breaks will be taken throughout hearings lasting longer than an hour. Participants will either be required to log off the link and then re-join at the appointed time or it may be possible for the call to be put on hold.

ix. Hand up and Chat functions

The Coroner will not be able to monitor the 'hand up' or 'chat' functions during the hearing. If you are concerned about a technical difficulty you can draw it to the attention of the usher by using chat – although they will not be monitoring it constantly.

x. Disruption to the remote hearing

Should the link fail for all or any of the parties, the Coroner will call a short adjournment of up to five minutes to determine whether the link can quickly be re-established. If the link cannot be re-established the hearing shall be adjourned to a later date.

If the link is successfully re-established, then the remote party / parties will be deemed to have returned at the point of re-establishment. If any evidence, questions or legal submissions took place during that time, which cannot reasonably be revisited when the party re-joins, the recording of the missed period may be played before the hearing continues.

Office of HM Coroner for Birmingham and Solihull.

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