

Coroners' Courts and Inquests

Contact our experts on FREEPHONE 0800 954 9936

Lanyon Bowdler offices can be found at:

Chapter House North, Abbey Lawn, Abbey Foregate, Shrewsbury SY2 5DE

Brodie House, Town Centre, Telford TF3 4DR

49 Church Street, Wellington, Telford TF1 1DA

12 The Business Quarter, Eco Park Road, Ludlow SY8 1FD

info@lblaw.co.uk

www.lblaw.co.uk

Where, following a medical accident the cause of death is clear and there are no suspicious or untoward circumstances, the attending doctor will prepare a medical certificate which shows the cause of death. That certificate is given to the family who can then register the death with the Registrar of Births, Deaths and Marriages and the body can then be released for burial or cremation.

Where the cause of death is not clear and there are suspicious or untoward circumstances, the Registrar of Births, Deaths and Marriages has a duty to report to the Coroner and in those circumstances the Registrar cannot release the body for burial or cremation. Once a death has been reported in this way to the Coroner, he is obliged by statute to hold an inquest in public.

It is the Coroner's role to carry out an enquiry into the circumstances of the death.

The nature and extent of the enquiry is largely for the Coroner to decide. Generally, a post-mortem examination will be ordered which will be carried out by a pathologist. Where an allegation of clinical negligence has been made, the post-mortem must be carried out by a pathologist who is not in any way employed by or connected with any hospital that was involved in the deceased's treatment or care.

Post-mortems can be attended by a family's own pathologist in an appropriate case and a copy of the post-mortem report must be supplied to the family upon request.

When the Coroner is in possession of the post-mortem report, he must then decide whether or not the circumstances are such that the death falls within one of three categories that do require him to hold an inquest. These include the fact that the deceased:

- Died a violent or unnatural death
- Died a sudden death of which the cause is unknown
- Died in prison or police custody

Generally a death that is caused by inadequate medical treatment will be regarded as unnatural if the deceased's original medical condition was not life threatening. In those circumstances, if there is any reason to believe that the deceased died after receiving negligent medical treatment for a non-life threatening condition and would not have died were it not for that negligent treatment, then an inquest will normally be held.

It is the Coroner's role to establish the cause of events and to do that he must have before him all the evidence which will enable him to look at the chain of events which preceded the death to see in particular if there was an act or omission which caused or contributed to that death.

The Coroner is obliged to notify you of the date, hour and place of the inquest. The Coroner will generally open the inquest and then adjourn it immediately as a procedural step so that thereafter funeral arrangements can be put in hand. At the adjourned hearing the Coroner will call witnesses to give evidence on oath. The witnesses will include all those persons who have been associated with the deceased's treatment and care relevant to the issues identified in the case. Documentary evidence such as medical reports may also be admitted in evidence and notes will be taken.

An inquest is a public hearing. The whole purpose of the inquest is to determine who the deceased was and how, when and where he or she came by his or her death. It is not the purpose of an inquest to apportion blame. The Coroner has a duty to make a full and proper enquiry. Generally, your legal representatives would liaise with the Coroner's Court at an early stage to ascertain which witnesses are to be called to give evidence. In that way, if it is thought that there are additional witnesses who ought properly to be called, then an application can be made to the Coroner to try and ensure that person is called to give evidence.

The Coroner is not obliged to provide you in advance of the inquest with any

information regarding the evidence to be called. It is very often the case that he will at a minimum let you have a copy of the post-mortem examination report and you should ask for this immediately. Legal representatives will also generally obtain copies of the medical records in advance of the inquest to facilitate the enquiry and any subsequent civil claim and may be shown copies of witness statements dependant on local practice. The family or their legal representatives are entitled to appear at the inquest and ask questions.

Once the evidence has been heard, the Coroner will deliver a verdict to include a specific finding as to whether or not the death was unnatural.

The most common verdicts that are given in cases that are relevant to clinical negligence claims are as follows:

- Natural causes
- Accident or misadventure
- Stillbirth
- Want of attention at birth
- Unlawful killing
- Neglect
- Open verdict

As a firm, if we have agreed to act for you in connection with a potential clinical negligence claim, we will be happy to arrange to represent you at any inquest. We will be pleased to contact the Coroner and tell him or her that we are acting for you and to arrange for an independent pathologist to be present at the post-mortem if necessary and appropriate (subject to an agreement being reached with regard to payment of the professional fees of such an independent expert with you). We will also endeavour to obtain all of the relevant evidence, including the medical records and the post-mortem report prior to the inquest and then attend the inquest with you to represent your interest.

Once an inquest has been concluded, it is possible to obtain a full transcript of the evidence that was given. This is often helpful in relation to any subsequent clinical negligence claim.

Fatal Accident Claims

Where a medical accident or medical negligence has resulted in a death, legally any claim will be made under the Fatal Accidents Act 1976. This will encompass two claims:

- The first is a dependency claim for financial losses for qualifying dependants
- The second, a bereavement claim for non-financial losses

Such claims are personal to the claimants and are distinct from any vested interest in the estate of the deceased, but they are only available if the victim had an action available to him at the moment of his or her death. They are subject to any defences which would have been available against the deceased.

Dependency claim

Those who may claim for loss of dependency are defined by Section 1(3) of the Act. Inclusion in the list does not automatically entitle an individual to recover. The fact of dependency must also be proved. The persons entitled are:

- The wife or husband, or former wife or husband, of the deceased. Former includes marriages which have been annulled, declared void or dissolved
- Any person who was living with the deceased in the same household immediately before the date of death, and had been so living for at least two years before that date, and was living during that time as the husband or wife of the deceased
- Any parent or other ascendant of the deceased
- Any person who was treated by the deceased as his parent
- Any child or other descendant of the deceased. This includes step-children and illegitimate children
- Any person (not being a child of the deceased) who, in the case of any marriage to which the deceased was at any time a

party, was treated by the deceased as a child of the family in relation to that marriage

- Any person who is, or is the issue (child) of, a brother, sister, uncle or aunt of the deceased

Such a claim is made only in respect of the financial consequences of the death. This is interpreted broadly to cover earnings spent on the dependants; savings made for their future use and the value of services rendered. The value of the dependency is assessed on the facts of a particular case.

Funeral expenses

Damages in respect of funeral expenses incurred by the dependants of the deceased are recoverable under Section 3(5) of the Fatal Accidents Act 1976.

Bereavement

Section 1(a) of the Fatal Accidents Act makes provision for an award of damages for bereavement. This award is fixed at £11,800.00 for all deaths after 1 January 2008.

A claim for bereavement damages can only be made for the benefit of the husband or wife of the deceased, the parents of the deceased (if the deceased was a legitimate minor) or the mother of the deceased (if the deceased was an illegitimate minor). There is no claim for bereavement damages by a child in respect of the loss of a parent.

In certain circumstances it may be possible to make a "Right to Life" claim under the Human Rights Act which may result in an award of compensation by way of a lump sum in circumstances where bereavement damages are not payable.

General damages

The estate of the deceased is also entitled to recover compensation for the pain and suffering of the deceased prior to his death and for any claim which could have been brought by the victim if he had not died, for example loss of earnings or past care.