

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

1.

(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 courts and tribunals are 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 Inquest rules 2013, a coroner must open an inquest in public but where the coroner does not have immediate access to a

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 ~~coroner~~ a coroner must keep a recording of every inquest hearing, including any pre-~~hearing~~ ~~hearings~~.
- 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

- 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
- f) Full details of the hearing will be found on the C b4700030052005709 of7to object)

- 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)

- 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 muted. This is not 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

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 30 minutes. The Coroner will be notified of the break and will be asked to return to the hearing.

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.