

Open Justice and Remote Inquests: Allowing public and media video access to hearings

written by Meelis Magland | 24 March 2021

The principles of open justice and transparency are fundamental to our justice system. They must be cherished and protected as vital to preserve the rule of law. However, a simple legislative oversight at the start of the pandemic has meant that, whilst most other courts increased their accessibility to the public by giving access via remote video platforms,[1] the Coroners Courts became more closed and secretive. All public, including accredited media representatives, have remained banned from watching any online broadcasts of coronial proceedings over the past twelve months.

This absurd position arose when the hastily passed Coronavirus Act 2020 made provision for four new sections to be inserted into the Courts Act 2003 which allow public participation in criminal, civil and family court hearings conducted by video link,[2] but unfortunately (confirming the view that Coroners Courts[3] are the forgotten relatives of the rest of the justice system) the broadcasting of coronial proceedings was overlooked and so wholly omitted from the Coronavirus Act 2020.[4]

With a stroke this unintentional oversight has meant that for the past year neither the public nor accredited journalists have been able to watch any inquest proceedings unless they have been able to persuade a friendly coroner to let them walk into their socially distanced courtroom. Happily, there have now been significant steps taken to correct this position via the Police, Crime, Sentencing and Courts Bill 2021.

Were it not for the exigencies of the pandemic those members of the press and public who wished to attend an inquest would be permitted to view the live proceedings in their entirety in a physical court room. However, the necessary closing of courts and the social distancing regimes put in place since 23 March 2020, has meant that the overwhelming majority of inquests in the past year have been held largely remotely. Usually only the Coroner (who must be in the court) and very limited court staff will be in the courtroom; whilst the bereaved and other interested persons, and the witnesses when giving evidence, watch the proceedings online.

The ban on video broadcasting

Before the pandemic broadcasting a hearing from any court in England and Wales was prohibited by s41 of the Criminal Justice Act 1925.[5] Any sort of live video feed of an inquest hearing being remotely broadcast to the public or press was thereby unlawful.

This position was made clear in 2019 in *R (Spurrier) v Secretary of State for Transport*[6], when the Divisional Court held that Parliament had imposed restrictions on the publication of court proceedings which constrained any inherent jurisdiction of any court to regulate its own procedure. In *Spurrier* Lord Justice Hickinbottom was sympathetic to those who were asking for a live streaming of a public hearing regarding the expansion of Heathrow Airport. The relevant local authority supported the request and even the defendant Secretary of State for Transport did not oppose the application. Yet the Court reluctantly concluded that it had no power to acquiesce. Any exceptions to the statutory regime (such as viewing the proceedings of the Supreme Court or Court of Appeal) needed to be expressly made in primary legislation.

It is therefore clear that there is no power of a coroner to give leave for any form of broadcasting of

images of their own proceedings to the press or public. To do so would be clearly contrary to the intention of the statutory provisions to impose restrictions upon such broadcasting (see *Spurrier* §26-28).

“A coroner may not broadcast any images from their own proceedings to the press or public”

Chief Coroners Guidance

The Chief Coroner’s Guidance #38 on *‘Remote participation in coronial proceedings’* (see our earlier blog [here](#)) suggests “there is an inherent jurisdiction for coroners to permit some remote participation in proceedings to take place” and that “under a coroner’s inherent common law jurisdiction to manage their own proceedings, any participant in the court hearing can apply to take part in those proceedings remotely.” Although that guidance does not explain how this purported inherent jurisdiction can be squared with the decision in *Spurrier*. The only express power that might trump Criminal Justice Act 1925 is set out in the Coroners (Inquests) Rules 2013 at (2), which allows a witness to give their evidence through a live video-link where to do so ‘would improve the quality of the evidence given or allow the inquest to proceed more expediently’. Rule 17 is notably silent about witnesses viewing any other parts of the inquest hearing.

There is clearly no common law or inherent power of a Coroner to authorise the broadcasting of images from Coroners Court to members of the public or press that might overcome the high hurdle of that was identified in *Spurrier*. The consequence, therefore, is that not only would any public watching inquest proceedings via a remote video link be in contempt of court, but the court staff would also risk being held in contempt themselves for broadcasting the proceedings to them.

Public audio access can be permitted

Coroners must of course still ensure that there is public access to hearings whilst acting within the framework of the law. This can be achieved by permitting limited physical attendance in their courts and allowing audio only attendance under s.9 of the Contempt of Court Act 1981. The CCA 1981 prohibits the broadcasting of an audio feed from a court but, unlike of the Criminal Justice Act 1925, it also includes a discretion to waive the prohibition. By giving leave under s.9(1)(a) CCA 1981 a coroner can at least allow press and public to hear (but not see) remotely what is happening in their courtroom.

It is now commonplace for coroners to give that leave, albeit with appropriate warnings about it being a contempt of court to record the audio feed. It is, however, rare to find a coroner reminding IPs or journalists that an application can be made for leave to record the audio (something which would often be a boon to those trying to take an accurate typed note of the hearing). The party asking for leave to record the proceedings must demonstrate a need for the recording to be made, but as the Chief Coroner’s Guidance #4 reminds us, the Home Office Circular No. 79 of 1981 encouraged coroners to treat applications for leave to record the audio themselves from interested persons, legal representatives and journalists sympathetically, as there was in principle no objection to their use (see also Jervis 14th edn. paragraph 11-87). If leave is granted, conditions may of course be attached to use of the recording made and the breach of those conditions would also be a contempt of court (CCA 1981 section 9).

This hotchpotch of legal provisions has left coroners holding partially remote inquests negotiating a

legislative minefield during the pandemic whilst managing the annoyance of the media who might not understand why their video attendance is being banned. A range of different practices, adopting pragmatic interpretations of the law, are being applied by coroners nationally.

The Chief Coroner's remote inquest guidance is of course only guidance: it avoids being over-prescriptive and so does not attempt to grapple with whether or not there is lawful authority to allow a witness to watch the proceedings before and after they give their evidence under , or whether a remote witness can be supported by having another trusted person near them as they give their evidence remotely (as they might in court).

Putting things right

Happily a change is at least now clearly on the horizon in the Police, Crime, Sentencing and Courts Bill which was introduced to Parliament last week. The open justice measures at clause 166 of the Bill will, if passed, facilitate the remote observation of proceedings across all the courts and tribunals including Coroners Courts. At the discretion of the Coroner, on a case-by-case basis, it will become lawful for 'images or sounds of the proceedings to be transmitted electronically for the purpose of enabling persons not taking part in the proceedings to watch or listen to the proceedings.'

It will of course still take some time for these powers to become law as the Bill takes its course through parliament and the 'kill the bill' protests (aimed at separate criminal justice clauses in the Bill) persist. But it is to be hoped that it will not be too many more months before these new open justice provisions come into force and full transparency can be achieved in remote inquests.

In the meantime, it seems that no one other than a 'participant' (an interested person or their representative) or witness giving evidence might lawfully access the live streamed video of coronial proceedings. A very imperfect work around lies in (2)(m) CJA 2009 and the power of a coroner to make "any" person an interested person (and thereby a participant) if the coroner "thinks" they have "sufficient interest". Perhaps promoting open justice might be sufficient enough an interest for some?

Footnotes

[1] See for example Kitinger. C (2021) '*How being watched changes how justice is done*' Open Justice, Court of Protection Project blog, [here](#)

[2] See schedule 25 of the Coronavirus Act which also made separate provision for the public to see and hear proceedings broadcast from the first tier and upper tier tribunals. Although even the current provisions of schedule 25 would actually be immaterial for inquests as, with a coroner sitting in court no inquest is being conducted "wholly remotely", and this is the precondition under for video broadcasting to be lawful.

[3] Which are not covered by the Courts Act 2003.

[4] The only mention of inquests being the suspension of the s.7(2)(c) CJA 2009 requirement to have a jury hear an inquest into a COVID-19 death by declassifying it as notifiable disease for that purpose (see)

[5] which expressly applies to Coroners' Courts pursuant to (2)(a) of the 1925 Act

[6] [2019] EWHC 528 (Admin)