

Mental Health Law Briefing

Number 104

Coroner Reform Bill

Introduction

As the law currently stands, a Coroner's statutory duty is to discover the 'who, when, and how' of sudden and unexplained deaths. This is usually carried out by way of post-mortem examination and then an inquest if the death appears not to be natural.

The Coroner Reform Bill does not revolutionise the coronial process, but it does go some way to modernising it. Two questions arise: Just how far does it go? Is this far enough?

To answer, one must first look at the genesis of the Bill, which has been in development since 2003, and then the Bill itself.

Background

In the summer of 2003, Tom Luce published a report commissioned by the Home Office that made 122 recommendations for reforming and bringing up to date:

- (a) the procedures for certifying and investigating death; and
- (b) the office of H M Coroner.

In July 2003, Dame Janet Smith, Chairman of the Inquiry into the Harold Shipman killings, also published a number of recommendations.

Many of these recommendations have not been adopted by the Government and this will be considered further in the Conclusion of this Briefing Paper.

Coroner Reform Bill: The New Proposals

It is important to note that the following reforms are not yet law and are subject to change before an Act is passed through Parliament.

Chief Coroner

The principle change to the governance of coronial activities proposed by the Coroner Reform Bill comes in the form of the appointment of a Chief Coroner.

The Chief Coroner (and Deputy Chief Coroners) will be appointed by the Lord Chancellor and will have top-to-bottom control of the coronial system, including:

- training up and giving guidance to coroners
- advising the Government
- establishing a complaints scheme
- reporting to the Lord Chancellor each year
- hearing appeals of inquest decisions from interested parties
- sitting as a coroner him/herself

Coronial Advisory Council

The Lord Chancellor will also establish, appoint and maintain a Coronial Advisory Council to be made up of members of the public who have had dealings with the service. Coroners may be appointed to the Council only with the consent of the Lord Chief Justice. The Lord Chancellor will pay allowances and expenses to members of the Council in return for an annual report.

Lord Chancellor

The Lord Chancellor himself will play a significant role in any coronial reform. Under the Bill, he will be able to:

- appoint the Chief Coroner
- appoint the Coronial Advisory Council
- issue guidance
- receive reports

Investigating deaths

The Government is keen to differentiate between ‘the investigative procedure’ and ‘holding an inquest’. Under the proposed reforms, coroners will now have wide ranging investigative powers, including the ability to enter and search premises using ‘reasonable force’ and seize relevant property, which can be kept for as long as necessary.

With regard to post-mortem examinations, there would be no distinction between a post-mortem examination and a ‘special examination’. The coroner will have the flexibility to detail any kind of examination he would like the doctor to make. Furthermore, the body may be moved to a different location for the post-mortem examination to take advantage of specialist pathology skills and equipment.

In an apparent attempt to avert another Shipman-like string of murders, coroners would also be allowed to exhume a body other than the deceased if the death came about in circumstances connected with another death. Human remains could be retained for a maximum of 40 days and the Chief Coroner may allow longer.

Coroners would also have the power to ban publication of the name of the deceased or other information that might lead to identification. This limitation on the freedom to report would arise mostly in cases of apparent suicides or child deaths where there was no question of another person being implicated in the death.

Coroners

The number of coroners will be reduced from some 100 full and part-timers to about 60-65 full-timers should the Bill be enacted.

The Bill also seeks to reduce the burden on coroners. They would no longer need to investigate deaths that occurred more than 50 years ago unless directed by the Chief Coroner. Likewise, coroners would not need to investigate deaths that occurred outside the UK unless there is a reasonable cause for suspicion. The Bill also provides for one designated coroner to deal with treasure

trove across England and Wales. This should release local coroner resources to focus on the investigation of deaths.

Inquest procedure

The Bill proposes that the trigger for an inquest should be ‘a reasonable suspicion’ held by the coroner that the death was:

- violent or unnatural;
- of unknown cause; or
- in prison or lawful detention (including presumably detention under the Mental Health Act)

Inquests would be held in public unless they involved persons under 17 or fell within other exceptions to be specified in future coroners rules.

The coroner would also be able to compel any witness to attend or any evidence to be produced, provided it would not be privileged under civil proceedings or Community Care laws.

Juries would not be empanelled unless the deceased died while in custody or as a result of an act or omission of a police officer. The coroner would however have an overriding power to call a jury if he/she thought there was ‘sufficient reason’. Such juries would be limited to between five and seven people.

Other clauses of the Bill allow for secondary legislation to come into force with regard to the conduct of inquests, highlighting the fact that the Bill and any future Act will only provide a framework which will be built on over the coming years.

Appeals

The Bill allows for a route of appeal to the Chief Coroner for an ‘interested person’ (in practice, almost any relation or other person with ‘a sufficient interest’) who is unsatisfied with a coroner’s inquest decision. As the law currently stands one can only appeal to the High Court if a coroner refuses to hold an inquest or if a fresh inquest is required. The only other option is judicial review.

Should the Bill come into force, the Chief Coroner would have wide-ranging appeal powers, including the power to:

- order a relevant person to conduct an investigation
- order a relevant person to hold an inquest
- substitute a different decision

- quash a decision and remit the matter to the relevant person for a fresh decision
- amend or quash a determination

Should the appellant still be unsatisfied with the Chief Coroner's or Deputy Coroner's decision, the final recourse would be to appeal on a point of law to the Court of Appeal.

Conclusion

At the time of writing, the Coroner Reform Bill is still in draft form. The Government makes clear in the Foreword to the Bill that the reform of this sensitive area is still open to scrutiny and debate, which it hopes will shape any future substantive legislation.

One area of debate might be the amount of freedom granted to the Lord Chancellor and the proximity of the Chief Coroner to the Government. As the Bill stands, it is the Lord Chancellor who would appoint the Chief Coroner, who in turn would have almost complete control over the internal workings of the coronial system. Moreover, external control would remain in the Lord Chancellor's hands as he would have the statutory power (once the Bill is enacted) to promulgate such rules and regulations as he wishes. Therefore, there will be no independent coroner service "at arms length" from the

Government, despite this being recommended by Dame Janet Smith in July 2003.

Of more immediate concern is the opinion expressed in the media that the Bill does not go far enough. Coroners will not, for example, be appointed by a national body, but will continue to be selected by the local authority. This could continue to give rise to conflicts of interest in cases where the coroner is investigating the involvement of a local authority in a death.

Other recommendations that have been rejected include reporting every death to a coroner for second scrutiny and that all doctors should be under a duty to report deaths.

The Coroner Reform Bill does not therefore represent a "complete break from the past" as demanded by Dame Smith and it has been suggested that the reason such a radical upheaval has not been undertaken is that it would be too expensive.

Despite these concerns however, the Coroners Reform Bill should probably be seen as a small step (rather than a leap) in the right direction. For better or worse, it seeks to centralise and streamline the coronial system and this should be welcomed by the new full-time coroners, who will also appreciate the wider powers proposed.

Peter King

© RadcliffesLeBrasseur

August 2006

Errata

Unfortunately Mental Health Law Briefing No. 102 contained a typographical error. At the bottom of the first page where reference is made to the situations where Part IV of the Act does not apply, reference was made simply to S.37 rather than, as should have been the case, S.37(4).

An amended copy of Briefing 102 correcting this typographical error is available on our website at www.rlb-law.com or via our Mental Health Law Blog at www.mentalhealthlawblog.co.uk

For more information on Mental Health Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7222 7040, or email andrew.parsons@rlb-law.com.

Out of office emergency advice available 24hrs on 07802 506 306.

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

Future editions can be received by email. Please e-mail: marketing@rlb-law.com or telephone 020 7227 7476.