

Research Briefing

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By Catherine Fairbairn

# Challenging coroners' decisions



## Summary

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## Summary

This briefing deals with the law in England and Wales.

## Means of challenge

There is no right of appeal as such from an inquest.

[The Chief Coroner has no power to review, investigate, comment on, or otherwise intervene in the individual judicial decisions of coroners, or in the case management of individual cases.](#)

However, it is sometimes possible to challenge a coroner's decision, or the outcome of an inquest, by way of an application under [section 13 of the Coroners Act 1988](#), or an application for [judicial review](#).

Anyone seeking to challenge a coroner's decision, or the outcome of an inquest should take specific legal advice as quickly as possible to establish whether there are grounds to do so, and the relevant time limit.

## Complaint about conduct of coroner

It is sometimes possible to complain to the [Judicial Conduct Investigations Office](#) about the personal conduct of the coroner (as opposed to complaints about a decision made by a coroner).

## Ministry of Justice guide

In January 2020, the Ministry of Justice published an updated version of its [Guide to Coroner Services for Bereaved People](#). This provides bereaved people with an explanation of the coroner investigation and inquest process as well as links to organisations that may provide help and advice. It includes information about challenging a coroner's decision, making a complaint and how to complain about the standard of service received from a coroner's office.

## Proposed new system of appeal never implemented

Section 40 of the Coroners and Justice Act 2009 provided for a new system of appeal to the Chief Coroner against some decisions and determinations made by coroners in connection with investigations and inquests into deaths. This section was never brought into effect and has now been repealed.

In its 2021 report, [The Coroner Service](#), the House of Commons Justice Committee [recommended the introduction of a system of appeal similar to that in section 40 as originally enacted](#).

In its response to the Committee, the Government said [it would consider whether there should be an additional proportionate appeals mechanism and that it was not responding to the recommendation at that time](#).

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# 1 Challenging a coroner's decision

There is no appeal as such from an inquest. The Chief Coroner has no power to review, investigate, comment on, or otherwise intervene in the individual judicial decisions of coroners, or in the case management of individual cases.<sup>1</sup>

However, it is sometimes possible to challenge a coroner's decision or the outcome of an inquest. Broadly, a challenge may be made by way of:

- an application under section [13 of the Coroners Act 1988](#); or
- judicial review.

Anyone seeking to challenge a coroner's decision should take specific legal advice as quickly as possible as there may be time limits involved.

## 1.1 Section 13 applications

[Section 13 of the Coroners Act 1988](#) (as amended) provides that, if the High Court is satisfied either:

- that the coroner is refusing or neglecting to hold an inquest or an investigation which ought to be held or
- where an inquest or an investigation has been held, that it is necessary or desirable in the interests of justice that an investigation or another investigation be held (whether because of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, the discovery of new facts or evidence or otherwise),

then the High Court may order an investigation into the death to be held by the same or another coroner, order the coroner to pay such costs related to the application as appear just, and quash (cancel) the determination or finding of the original inquest, if one took place.

The Attorney General must make the application to the High Court or authorise a third party, by way of a fiat (consent), to do so. Before any such application can be made, the Attorney General must be satisfied that there is

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<sup>1</sup> Courts and Tribunals Judiciary, [Concerns and complaints about coroners](#). (accessed 12 October 2023)

sufficient admissible evidence to persuade the court that the test set out in section 13 is met.<sup>2</sup>

The Attorney General takes decisions on whether to apply to the High Court for an inquest as part of their public interest function, independently of Government and strictly on the basis of the evidence.<sup>3</sup>

It is the High Court, and not the Attorney General, which makes the decision as to whether or not to order a new investigation.

## Principles governing applications

It is not necessary to show that a fresh inquest would have a different outcome.

When considering the Attorney General's application for fresh inquests for the victims of the Hillsborough disaster, the then Lord Chief Justice, Lord Judge, set out the general principles governing applications under section 13 of the Coroners Act 1988:

The single question is whether the interests of justice make a further Inquest either necessary or desirable. The interests of justice, as they arise in the coronial process, are undefined, but, dealing with it broadly, it seems to us elementary that the emergence of fresh evidence which may reasonably lead to the conclusion that the substantial truth about how an individual met his death was not revealed at the first Inquest, will normally make it both desirable and necessary in the interests of justice for a fresh Inquest to be ordered. The decision is not based on problems with process, unless the process adopted at the original Inquest has caused justice to be diverted or for the inquiry to be insufficient. What is more, it is not a pre-condition to an order for a further Inquest that this court should anticipate that a different verdict to the one already reached will be returned. If a different verdict is likely, then the interests of justice will make it necessary for a fresh Inquest to be ordered, but even when significant fresh evidence may serve to confirm the correctness of the earlier verdict, it may sometimes nevertheless be desirable for the full extent of the evidence which tends to confirm the correctness of the verdict to be publicly revealed.<sup>4</sup>

## No time limit for application

Section 13 does not specify a time limit. In a 2019 case, the High Court ordered a fresh inquest should be held, even after the passage of 53 years.<sup>5</sup>

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<sup>2</sup> Gov.UK, [Attorney General applies for fresh inquests for victims of Hillsborough disaster](#), 10 December 2012 (accessed 12 October 2023)

<sup>3</sup> As above

<sup>4</sup> [HM Attorney General v HM Coroner for South Yorkshire \(West\) \[2019\] EWHC 3783 \(Admin\)](#), at para 10

<sup>5</sup> [Frost v HM Coroner for West Yorkshire \(Eastern District\) \[2019\] EWHC 1100](#)

## 1.2

### Judicial review

There are grounds, based upon public law principles, on which a coroner's decision or the outcome of an inquest may sometimes be challenged. These are concerned with the fairness of the procedure and whether the coroner properly exercised their powers.

If a coroner has acted unreasonably, outside their powers or by not doing something which they were obliged to do, it may be possible to seek judicial review of the coroner's actions (or inactions) in the High Court. This is a review of the way the decision was made, rather than the rights and wrongs of the conclusion reached.<sup>6</sup>

The potential remedies in judicial review are discretionary and are not automatically ordered even it is established that a decision was unlawful. The Public Law Project publication, [An introduction to Judicial Review](#) provides further information, and states:

Judicial review is risky – even if the court concludes that a public body has acted unlawfully, it may decide that it will not set aside the decision being challenged or make any other order to give the claimant what he or she wants. This is because the remedies possible in judicial review are always at the court's discretion, and are not automatically applied where a claimant has been successful...<sup>7</sup>

There is a time limit for bringing an application for judicial review (normally no later than within three months of the decision to be challenged).

The Courts and Tribunals Judiciary has published [guidance on bringing a judicial review case in the Administrative Court](#).<sup>8</sup> This is a complex area of law on which legal advice should be considered.

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<sup>6</sup> Courts and Tribunals Judiciary, [Concerns and complaints about coroners](#). (accessed 12 October 2023)

<sup>7</sup> Public Law Project, [An introduction to Judicial Review](#) (PDF), 6 February 2019, p4

<sup>8</sup> Courts and Tribunals Judiciary, [Administrative Court Judicial Review Guide 2023](#) (accessed 12 October 2023)

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## 2

# Complaints about coroners

Complaints about a coroner's personal conduct (as opposed to complaints about a decision made by a coroner) may be made to the [Judicial Conduct Investigations Office](#) (JCIO).

A complaint to the JCIO must be made within three months of the matter complained of. The JCIO can only extend this timescale in exceptional circumstances.

Further information is provided on the JCIO website, [Making A Complaint](#).<sup>9</sup> Among other things, this sets out [the matters the JCIO can and cannot investigate](#).<sup>10</sup>

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<sup>9</sup> Judicial Conduct Investigations Office, [Making a Complaint](#) (accessed 12 October 2023)

<sup>10</sup> Judicial Conduct Investigations Office, [What can I complain about?](#) (accessed 12 October 2023)

## 3

# Guide to Coroner Services

In January 2020, the Ministry of Justice published an updated version of its [Guide to Coroner Services for Bereaved People](#).<sup>11</sup> This provides bereaved people with an explanation of the coroner investigation and inquest process as well as links to other organisations that may provide help and advice.

[Section 8](#) (PDF) deals with challenging a coroner's decision and making a complaint. It includes information about how to complain about the standard of service received from a coroner's office.

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<sup>11</sup> GOV.UK, [Guide to coroner services](#), 28 January 2020

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## 4 New system of appeal repealed without being implemented

### 4.1 Coroners and Justice Act 2009

Section 40 of the Coroners and Justice Act 2009 provided for a new system of appeal to the Chief Coroner against some decisions and determinations made by coroners in connection with investigations and inquests into deaths. This section was never brought into effect and has now been repealed.

### 4.2 Justice Committee recommendations and Government response

#### New system of appeal

In its 2021 report, [The Coroner Service](#), the House of Commons Justice Committee recommended the introduction of a system of appeal similar to that in section 40:

The current arrangements for challenging coroners' decisions are unwieldy and cause unacceptable delays, stress and often expense, for bereaved people. The Ministry of Justice should introduce a system of appeals similar to that in Section 40 of the Coroners and Justice Act 2009 as originally enacted.<sup>12</sup>

In its response to the Committee, the Government set out the concerns which had previously been raised about section 40:

Section 40 of the 2009 Act which was repealed, without ever having been commenced, by section 33 of the Public Bodies Act 2011, made provision for a detailed appeals route to the Chief Coroner, with onward appeal to the Court of Appeal, setting out numerous matters which could be appealed. We understand that there were concerns around the cost of maintaining such an appellate process as well as over whether the Chief Coroner and his office would be able to deal with a potentially high number of appeals on a wide range of decisions in addition to their other work.<sup>13</sup>

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<sup>12</sup> House of Commons Justice Committee, [The Coroner Service](#), HC 68 2021-22, para 113

<sup>13</sup> House of Commons Justice Committee, [The Coroner Service: Government Response to the Committee's First Report](#), HC 675, 10 September 2021, section 12

The Government said it would consider whether there should be an additional proportionate appeals mechanism and that it was not responding to the recommendation at that time:

Nevertheless, the Government is, however, aware of stakeholders' views and accepts that there is merit in considering the original Section 40 and whether there is a need for an additional mechanism to enable more decisions to be appealed. Any potential appeals mechanism would, however, need to be proportionate and neither make the system more litigious and adversarial nor overwhelm the Chief Coroner's office. We are therefore not responding to the recommendation at this stage.<sup>14</sup>

In December 2022, the Government confirmed its position in a written answer:

As set out in the Government's response to the Justice Committee's First Report on the Coroner Service, we undertook to implement six of the Committee's recommendations and consider 10 further recommendations, including the introduction of a system of appeals against coroners' decisions. We will take forward any actions arising from that further consideration as soon as is practicable. However, as outlined in the Government's response, any appeals system would need to be proportionate, should not make the coronial system adversarial, and must avoid overwhelming the Chief Coroner's Office.<sup>15</sup>

## Amendment to section 13

On the suggestion of the Chief Coroner, the Justice Committee also recommended amending section 13 to give the High Court greater flexibility when it quashes an inquest:

There may be circumstances where with the consent of the bereaved people concerned, it would be sensible for the High Court to be able to direct that the particulars of the Record of the Inquest be amended as appropriate without ordering a fresh inquest. The Government should consider adopting the Chief Coroner's proposed amendment to Section 13 with the caveat that the High Court could use the new power only with the consent of the interested party applying under Section 13.<sup>16</sup>

The Government accepted this recommendation and said it would seek to introduce this measure into legislation when parliamentary time allows.<sup>17</sup>

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<sup>14</sup> As above

<sup>15</sup> [PQ 107084 \[on Coroners: Appeals\], 19 December 2022](#)

<sup>16</sup> House of Commons Justice Committee, [The Coroner Service](#), HC 68 2021-22, para 113, para 116

<sup>17</sup> House of Commons Justice Committee, [The Coroner Service: Government Response to the Committee's First Report](#), HC 675, 10 September 2021, section 13

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