



MINISTRY OF DEFENCE

Boards of Inquiry and Coroners' Inquests

Information for Bereaved Families



Ministry of
JUSTICE



Boards of Inquiry and Coroners' Inquests

This booklet is intended to provide a general overview of two forms of inquiries - Board of Inquiry and the Coroner's Inquest - that might take place after a death and to help explain the purpose of each one. It does not replace the support and advice of your Visiting Officer or specialist advice that is already available to you from either the Ministry of Defence about Boards of Inquiry, or from the Coroner's office on Inquests.

We hope that this booklet will be helpful in answering the questions that are most commonly asked by families. Your Visiting Officer, or your single Service point of contact, will be able to help with any further questions which you may have about the information in this leaflet.

We continue to look for ways to improve the help we offer to families. If you have any comments either on how we could make this booklet more useful or how we could improve our support to you during the Board of Inquiry and the Inquest, please tell us so that we may learn from your experience to help others. You can contact us by writing to:

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Boards of Inquiry

Introduction

A Board of Inquiry is a fact finding investigation undertaken by the Services for Service reasons. Its main purpose is to examine the circumstances surrounding an incident and to identify any actions that can be taken to reduce the possibility of a similar incident happening again.

A Board of Inquiry is not carried out with the intention of meeting the requirements of any other organisation or person outside of the Ministry of Defence. However, for compassionate reasons, we offer the Next of Kin a copy of the Board's convening order, terms of reference, findings, recommendations and the Senior Officers' comments. We also recognise that where there is to be an Inquest the Coroner sometimes finds the information contained in the Board of Inquiry report useful, and so we pass a copy of the report to the Coroner to assist his preparations for the Inquest. However, not every Coroner waits for the Board of Inquiry to complete its work before holding his Inquest; nor does every Coroner wish to see the Board's report.

What is a Board of Inquiry and why have one?

The purpose of a Board of Inquiry is to examine the facts and circumstances surrounding an incident, to learn lessons and to make recommendations to Senior Officers for the improvement of working practices, procedures or equipment, which could help to reduce the likelihood of a similar incident happening again.

Who sits on the Board of Inquiry?

The Board consists of a President, who is an Officer, and at least two other members, all of whom will be unconnected with the immediate circumstances. Where necessary, the Board will include members with relevant technical expertise.

Is a Board of Inquiry held in every case?

No, we do not hold a Board of Inquiry in every case. In some cases, an initial review of the incident will highlight any lessons to be learned or actions that could be taken to prevent a similar incident happening again. Dispensation from holding a Board of Inquiry may be given if there are no further lessons to be learned. This is often the case for incidents occurring on operations.



What will the Board do?

The Board will address specific questions that are set out in its terms of reference. During the course of its inquiries the Board will:

- ◆ Gather evidence and establish the facts.
- ◆ Interview witnesses.
- ◆ Examine the relevant procedures and make an assessment of whether they need to be amended.
- ◆ Identify what lessons could be learned.
- ◆ Make recommendations so that, as far as possible, we can prevent a recurrence.
- ◆ Document their findings, conclusions and recommendations in a report which is submitted to Senior Officers for review and acceptance.

What won't the Board do?

A Board of Inquiry does not:

- ◆ Serve as a court, a tribunal or any part of the judicial process.
- ◆ Open its proceedings to members of the public or the media.
- ◆ Replicate the function of an Inquest.

Will the Board of Inquiry report tell me who is to blame?

No. The Board of Inquiry is neither a criminal nor a judicial investigation and it cannot attribute blame or negligence. Neither is the Board permitted to recommend that anyone is disciplined in connection with the incident. The Board of Inquiry is a technical review of the facts for management purposes and the Board does not have the legal competence and safeguards of a court of law. In some cases, any attempt to apportion blame might be detrimental to the due process of law. If the Board finds evidence of criminal or disciplinary culpability then it will stop proceedings (adjourn) and refer the matter to the police. The Board can only continue its inquiry (reconvene) once these issues have been investigated and dealt with.



Can I attend the Board of Inquiry?

Members of the family are generally not permitted to attend Board of Inquiry proceedings except when they are invited to give evidence to the Board as witnesses. The attendance of members of the family to observe proceedings would change the character of the inquiry. There are also practical difficulties, in that the Board could convene and adjourn several times over a number of months, potentially in different locations and often in operational theatres. However, we make considerable efforts to ensure that the Next of Kin have some involvement and are kept informed of the progress of inquiries.

How will I be kept informed of the progress of the Board of Inquiry?

As the Next of Kin, we will keep you informed on progress of the Board of Inquiry in the following ways. We will:

- ◆ Provide information to help you to understand the Board of Inquiry process and the purpose of the inquiry.
- ◆ Offer you a meeting as soon as is practicable at the start of the inquiry to discuss any specific issues, or to raise relevant questions, which you may wish the Board to address on your behalf.
- ◆ Provide you with regular reports on progress, in person where possible or by letter, until the Board of Inquiry report is complete.
- ◆ Offer you a personal briefing on the Board's findings, conclusions and recommendations and, at the same time, if you wish, provide you with a copy of the report.
- ◆ Offer you a further briefing if it is necessary to help you understand the detail of the report once you have had an opportunity to read it in your own time.

Will I have to pay for a copy of the report?

No, we do not charge a fee. As the Next of Kin, you will be offered a copy of the Board of Inquiry report to help your understanding of the circumstances surrounding the incident.



Will I receive a copy of all the information gathered by the Board?

The report you will receive will consist of the Board's convening order, terms of reference, findings, conclusions and recommendations, and the Senior Officers' comments, which are based on the information gathered during the inquiry. If, after having read the report, you feel you also need to see some or all of the supporting evidence, you may request this from us, although we may not be able to release everything to you. Documents that are released may be edited to remove personal and security sensitive information, and information given to the Board in confidence. You can of course discuss the report with the Service concerned.

Why is some information withheld from my copy of the report?

We may remove, or edit, certain information from the copy of the Board of Inquiry report to comply with specific requirements. Our decision on whether to release or withhold information is based on legal and security considerations, and a full explanation will be provided to you when you receive the report. The legislation and other factors which we must consider for the disclosure of information include:

- ◆ Freedom of Information Act 2000.
- ◆ Data Protection Act 1998.
- ◆ Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
- ◆ Human Rights Act 1998.
- ◆ Access to Health Records Act 1990 (in respect of the deceased).
- ◆ Common Law duty of Confidentiality.
- ◆ Security and operational sensitivities.
- ◆ European Convention on Human Rights (ECHR) Article 6 – right to a fair trial and Article 8 – right to respect for private and family life.



What type of information is removed?

We will remove all personal information, including most names, relating to others involved in the incident (third parties). Security and operationally sensitive information is also removed to protect current and future operational effectiveness and/or the lives of Service personnel. This is consistent with the legislation and other factors referred to above.

Will the removal of names make the report difficult to follow?

Where names are removed, each will be replaced with a term like Person A, Person B, to help you follow the sequence of events within the report.

What if I know their names because they are friends or colleagues?


We accept that in some cases families know the names of those who are mentioned in the report, but the Ministry of Defence must still comply with the provisions of the law and our responsibilities to all our Service personnel and remove this personal information.

Will the report be published?

A few incidents attract significant wider or public interest, and in those instances we may make a copy of the report available on the Ministry of Defence website for others to read about what happened. We do this in accordance with the requirements of the Freedom of Information Act 2000 ensuring that all personal information is removed from the report beforehand (including personal information about the deceased). We will not publish anything before you have been offered and received a briefing on the Board's findings, conclusions and recommendations, and received your copy of the report. We will let you know if the report is to be published.

Can anyone else get a copy of the report?

Under the terms of the Freedom of Information Act 2000, any member of the public can ask the Ministry of Defence for a copy of a Board of Inquiry report. If the report has been published, we will direct the member of the public to the Ministry of Defence website. If the report has not been published each request for information must be dealt with in accordance with the terms of the relevant legislation. Whether or not a request would be granted, either in full or in part, depends on the circumstances of each case. Generally, when



we provide a copy of the report to a member of the public we will withhold all personal information (e.g. details of personal life, professional abilities, and medical records) including about the deceased. We will let you know if the report is to be made available to others.

How long will the Board of Inquiry take?

The length of time a Board of Inquiry takes is determined partly by the nature of the incident under investigation and the complexity of the circumstances surrounding the incident. The need to adjourn a Board pending a police investigation or a Health and Safety Executive investigation will naturally cause a delay, and there can sometimes be difficulties in witnesses attending if they are on operations and if the Board has to travel overseas on its duties. However, you will be kept informed of the Board's progress throughout its course.

Will the Board of Inquiry report be given to the Coroner?

The Coroner is normally provided with a copy of the full Board of Inquiry report in confidence to assist him in the preparation of his own inquiry. This means that even where families have been unable to see all the material (for reasons of security, sensitivity or personal information), you can be reassured that the Coroner will have had the full benefit of this information when conducting the Inquest and giving a verdict.

Separate arrangements apply where the Board of Inquiry report includes reference to other nations' classified material or commercial information which had been provided solely for use by the Board of Inquiry. Without agreement from the owner for its further use, the Ministry of Defence is unable to provide such material to the Coroner. However, in many cases the Coroner is likely to have a version of the relevant document with classified and third party information removed.

Will the completion of the Board of Inquiry report delay the Inquest?

Some Coroners await the completion of the Board of Inquiry report before they hold the Inquest, although there is no requirement for any Coroner to do so and, indeed, some choose not to. The report can be helpful to the Coroner's understanding of the circumstances surrounding the incident, particularly when death has occurred on training or operations. The report can also assist Coroners in deciding who to call as witnesses to the Inquest.



Inquests

Introduction

Inquests are conducted in England and Wales by a Coroner who is an independent judicial officer. There are separate arrangements in Scotland and Northern Ireland. An Inquest is an inquiry to determine a number of facts surrounding a death. The Coroner will conduct an Inquest into the death of a Service person that occurred overseas and whose body is repatriated to England or Wales where an Inquest would be held had the person died in England or Wales. The Coroner does not work for the Ministry of Defence.

What is an Inquest?

An Inquest is an independent judicial inquiry into the facts surrounding a death which in England and Wales is conducted by a Coroner. The Inquest may **not** name who was legally responsible for causing the death. However, the Coroner does have the power to investigate not just the main cause of death but also any acts or omissions that directly led to the cause of death.

The purpose of the Inquest is to determine:

- ◆ Who the deceased was; and
- ◆ When, where and in what circumstances the deceased came by his or her death.

The Inquest:

- ◆ Will establish the medical cause of death and by what means it arose.
- ◆ May draw attention to the existence of circumstances which, if nothing is done, might lead to further deaths in the same manner.

Who are Coroners?

Coroners are independent judicial officers in England and Wales who follow all laws. Each Coroner has a deputy and may have one or more assistant deputies. Between them they must be available at all times to deal with matters relating to Inquests and Post Mortems. Coroners are usually lawyers but may be doctors. They are appointed and paid by the local authority. The Ministry of Justice has policy (but not operational) responsibility for Coroners.



What is the role of the Coroner's Officer?

Coroner's Officers, who are often police officers, work under the direction of the Coroner and liaise with bereaved families, police, doctors and funeral directors. In the case of a death of a Service person, in certain circumstances the military police assist the Coroner, particularly if the death occurred overseas.

Are all deaths reported to the Coroner?

No. Only deaths which are violent or unnatural, sudden of unknown cause, or where the deceased died in prison are reported. In most cases a GP or hospital doctor can issue a medical certificate of the cause of death and the death can be registered by the Registrar of Births and Deaths who will issue the Death Certificate in the usual way. However, Registrars, doctors or the police may report deaths to the Coroner in certain circumstances. For example if a doctor cannot give a proper Certificate of Cause of Death; if the death occurred during a surgical operation; if the death was due to an industrial disease; if the death was unnatural or due to violence, or in suspicious circumstances. About 40% of deaths are reported to Coroners. Only around 10% of deaths reported to Coroners have an Inquest. Deaths overseas which are of natural causes are reported to the Coroner for cremation purposes only.

Will deaths be reported when they occur overseas?

If the death of a Service person occurs overseas and the body is repatriated to England or Wales an Inquest will be held if the death would have needed an Inquest if it had occurred in England or Wales. For deaths that occur during operations, the bodies will normally be repatriated to RAF Brize Norton, in the Oxfordshire Coroner's jurisdiction, or RAF Lyneham, in the Wiltshire and Swindon Coroner's jurisdiction, and an Inquest will be held.

Where are Inquests held?

Inquests are normally held by the Coroner in the district where death occurred. For deaths overseas, however, by convention, it is not the Coroner for the district where the body is repatriated who has jurisdiction but the "home" Coroner, that is, the Coroner in the district closest to the Next of Kin. In the case of multiple fatalities arising from an incident where the deceased come from more than one area, the Coroner where the bodies first arrive will preside over the investigation and inquests. This is likely to be in Oxfordshire or in Wiltshire as repatriations generally take place at RAF Brize Norton and RAF Lyneham.



When are Inquests held?

In most circumstances the Inquest will be opened very soon after death for the formal business of recording the person's identity and to enable the body to be released to the family. This is a very short procedure taking only a few minutes. The Next of Kin and family have the right to attend this hearing. The Inquest will then be adjourned. The length of time before the Inquest is re-opened will depend on a number of factors, including the further investigations which need to take place and the availability of witnesses. It can be some months after a death, or even longer in particularly complex cases, that an Inquest is held. Your local Coroner's office should keep you informed throughout the process.

What is a Post Mortem examination?

A Post Mortem is a medical examination of a body carried out for the Coroner by a pathologist of the Coroner's choice. For deaths on operations, Post Mortems of overseas military fatalities are generally carried out by a forensic pathologist in the John Radcliffe Hospital, Oxford.

The consent of the Next of Kin is not required for a Coroner's Post Mortem, but the Next of Kin are entitled to be represented at the examination by a doctor of their choice.

The Next of Kin can ask for a separate Post Mortem examination, at their own expense and by a pathologist of their choice. If the Coroner has already released the body, consent will have to be given by the Executor of the deceased person's Estate.

Post Mortem Report

This report gives details of the examination of the body. It may also give details of any laboratory tests which have been carried out. Copies of the report will normally be available to the Next of Kin and to certain other relatives; there is no right to see the Post Mortem report before the Inquest but it is often the practice of most Coroners to release it. The Coroner may charge a fee for the Post Mortem report if it is made available after the inquest has taken place.

Does the Coroner see the medical records?

Medical records remain confidential after death. Coroners are entitled to request medical information that is relevant and necessary to their inquiries.



When can the funeral be held?

If a Post Mortem reveals that the death was due to natural causes and that an Inquest is not needed, the Coroner will release the body and the death can be registered. The funeral can then take place.

If there is to be an Inquest, the Coroner can normally issue a burial order or cremation certificate at the opening of the Inquest whereupon the body can be released and the funeral take place. In certain instances, such as where DNA testing is required, it may be several days or weeks before the body can be released for the funeral.

We recommend that funeral arrangements should not be confirmed until it is certain that the Coroner is able to release the body. This would avoid the additional, unnecessary distress of having to rearrange or postpone the funeral.


When is the Death Certificate issued?

If the death was due to natural causes, the Coroner will inform the registrar and the death can be registered and a Death Certificate Issued. If, however, there is to be an Inquest, an Interim Certificate of Fact of Death can be issued by the Coroner to assist in the administration of the Estate. When the Inquest is concluded a Death Certificate is issued. For military deaths that occur overseas particularly on operations, the Joint Casualty and Compassionate Centre, or other appropriate Service Registrar, will register the death in general terms with the General Register Office and will issue to the Next of Kin or the Executor of the Estate a Certified Copy of the Entry in the Register of Deaths, which is normally known as a Death Certificate. Once the Coroner's Inquest has been completed, the Coroner will inform the General Register Office of his findings to complete the record.

Who can attend an Inquest?

When the Coroner's investigations are complete, a date for the resumed Inquest is set and the "properly interested persons" or their legal representatives will be told by the Coroner if their details are held by his Officers.

- ◆ Persons deemed to have a "proper interest" include:
- ◆ Spouse, parent, child, civil partner or legal personal representative of the deceased.

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- ◆ Person who may have responsibility for the death.
 - ◆ A beneficiary from an insurance policy relating to the deceased.
 - ◆ Representative of any relevant insurance company.
 - ◆ Certain inspectors or representatives of enforcing authorities or persons appointed by a government department.
 - ◆ The police.
 - ◆ Any other persons the Coroner considers to have a legitimate interest for the purpose of the Inquest.

Inquests themselves are open to the public, and a Service representative may attend (independent of the Visiting Officer who attends in support of the Next of Kin) to report on the proceedings. Journalists may also be present.

What should I wear and bring with me to the inquest?

You should wear clothes that you feel comfortable in. The Coroner, lawyers and witnesses will normally be smartly dressed. There is no need for you to bring anything to the Inquest. If you are representing yourself, however, you may find it helpful to have prepared some questions in advance which you may wish to ask the Coroner. The Coroner's office can check whether these would be permissible, relevant questions before the hearing.

Will my expenses be paid?

Where death is related to a person's Service, the Ministry of Defence will pay travel, accommodation and subsistence for the Next of Kin and one other to attend the Inquest and any pre-Inquest meetings; the Visiting Officer will arrange this.

Who decides on the witnesses that should be called to give evidence?

The Coroner decides who should give evidence as a witness. Anyone who believes that they may be able to help can offer to give evidence by informing the Coroner. Anyone who believes that a particular witness should be called should inform the Coroner. Witnesses can be compelled to attend but only from within England and Wales.



Who can question the witnesses?

Witnesses will be questioned first by the Coroner and there may be further questions by “properly interested persons”; their legal representatives; or the jury, if there is one. Questions must be relevant to the purpose of the Inquest.

Is there a jury at an Inquest?

Coroner’s Inquests concerning deaths of Service personnel do not usually involve a jury. However, it is for the Coroner to decide whether there is a jury. In such cases the Coroner rules on matters of law and the jury decides the verdict.

Will the Inquest look into all the issues that touch on the circumstances of the death?


No. The remit of the Inquest is legally very narrow. It may be that there are many events in the days, weeks or even months before the death which may be perceived to have played a part in the death; however, Coroners will generally not allow exploration of those issues and will concentrate on the immediate events surrounding the death. That said, different Coroners will have diverse approaches and some will allow more wide ranging questions than others.

Can I speak to the Coroner before the Inquest?

It is more common that you will speak to the Coroner’s Officer. Some Coroners will speak directly to bereaved families especially if there is a pre-Inquest meeting with families and other properly interested persons to set out the scope of the Inquest. The pre-Inquest meeting also gives properly interested persons the opportunity to discuss with the Coroner the witnesses that they may wish to be called at the Inquest; this may be based on information in the Board of Inquiry report. However, the Coroner makes the final decision as to who he will call as a witness at the Inquest.

What is an Inquest verdict?

Inquests do not determine blame and the verdict must not identify someone as having criminal or civil liability.



Possible inquest conclusions include: natural causes, accident, suicide, unlawful or lawful killing, industrial disease, and open verdicts (where there is insufficient evidence for any other verdict). A narrative verdict is also possible in more complex cases, where one of the above verdicts is not applicable.

What can I do if I am dissatisfied with the outcome of a verdict?

It is possible to challenge a Coroner's decision or verdict, but the grounds for doing so are complex and need explanation by a lawyer with expertise in this area of the law. An application for a Judicial Review can be made, but this must normally be done within 3 months of completion of the Inquest. An application for a fresh Inquest under section 13 of the Coroners Act 1988 can be made at any time but should be without any unnecessary delay. All such applications should be made as soon as possible.

Can I get a copy of the record of the Inquest?

Notes of Evidence at an Inquest can be seen by "properly interested persons" or copies may be obtained; Coroners may charge a set fee for copies and this will depend upon the number of copies or the length of the transcript. There is no right to disclosure of written evidence before the Inquest although some Coroners allow this.

What happens if criminal proceedings are being taken?

Where a person has been charged in the English courts with causing someone's death, e.g. by murder or manslaughter, the Inquest is adjourned until the person's trial is over. Before adjourning, the Coroner finds out who the deceased was and how he or she died. The Coroner then sends a form to the registrar of deaths to allow the death to be registered. When the trial is over, the Coroner will need to decide whether to resume the Inquest. There will normally be no need to do so.

Will the Inquest prevent me from taking out civil proceedings?

No. Civil proceedings (for example, for compensation) are not dependent on the outcome of an Inquest or criminal proceedings. Most must be started within 3 years of a death. A lawyer's advice should be sought about time limits and the procedures that apply.



Can I engage legal representation and am I entitled to Legal Aid?

An Inquest is an inquisitorial, non-adversarial fact finding legal process. Therefore, legal representation should not be necessary as it is appropriate for those deemed interested persons by the Coroner to ask questions of witnesses at an Inquest without legal assistance.

Nevertheless, interested persons are entitled to engage legal representation to act on their behalf. However, Legal Aid is not normally available to fund legal representation at an Inquest, other than in exceptional circumstances, subject to strict criteria. Those wishing to apply for Legal Aid should seek advice from the Legal Services Commission or their solicitor.

Legal Help on the other hand is available to all those who qualify financially for assistance prior to an Inquest – this can include, for example, a solicitor drafting written submissions to a Coroner.

In a small number of Service-related Inquests the Ministry of Defence will have legal representation (Counsel) at the proceedings. This is normally when potentially complex issues could arise, and Ministry of Defence Counsel can assist the court in the relevant questioning of witnesses to elicit as clear and full an understanding as possible of what took place.

What happens in Scotland?

There is no provision for Inquests in Scotland. A Fatal Accident Inquiry will be heard in certain circumstances and, as the law currently stands, there is no provision for a Fatal Accident Inquiry to be held on any death occurring outside Scotland.

A Coroner may transfer an Inquest to another Coroner within England or Wales whilst he or she still has the body within his or her jurisdiction with the agreement of the other Coroner, but there is no provision for the Inquest to be transferred to Scotland. The Coroner may, however, transfer jurisdiction to a Coroner in the north of England for the Inquest to be held closer to Scotland if this suited the family, and the other Coroner agrees.



What happens in Northern Ireland?

There is no provision for the Coroner in Northern Ireland to conduct an inquest into a death occurring outside Northern Ireland. In Northern Ireland the Inquest process is similar to that for England and Wales, except that the Inquest is held at the Coroner's discretion.

A Coroner may transfer an Inquest to another Coroner within England or Wales but there is no provision for the Inquest to be transferred to the Coroner in Northern Ireland. The Coroner may, however, transfer jurisdiction to a Coroner in England or Wales for the Inquest to be held in a more convenient location if this suited the family, and the other Coroner agrees.

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