

Dealing with an Inquest after Baby Loss



This leaflet will explain what happens when you have suffered the loss of your baby and the death has been referred to the Coroner. It is designed for parents and also for close relatives concerned about the reasons for the baby's passing and who want to support the parents.

We explain the process from the viewpoint of fictional couple, Sarah and Liam.

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What triggers an inquest?

Sarah and Liam lost their first child, David, at two days old. He was born after a traumatic labour and needed resuscitating at birth. They are not clear what caused the death and are concerned that the care provided during the birth and afterwards contributed to David's death. The hospital Trust involved is also concerned that David's death may have been caused or contributed to by the medical care at his birth.

A hospital has to refer your baby's death to the local Coroner if they were born showing signs of life and it is suspected that their death was caused by the medical treatment they received, OR the death was unnatural, OR the cause of death is unknown. In Sarah and Liam's case, because David was born alive and there are questions about the medical care provided, the hospital refers his death to the local Coroner.



Coroner's officer

The Coroner's officer contacts Sarah and Liam shortly after the hospital's referral to explain that she will be their main point of contact during the Coroner's investigation. She explains the steps the Coroner will take to investigate David's death. Sarah and Liam explain to the Coroner's officer their concerns about how David died and they are invited to put their concerns in writing for the Coroner to consider.

It is important to make the Coroner's officer aware as soon as you can if you have concerns about the care provided by the hospital. This is not about blaming anyone, but to ensure that the Coroner is aware and can factor them into the investigation.

Who is a Coroner and what do they do?

A Coroner is a special judge (with either a medical or legal background) who investigates deaths where

the cause of death is unknown and in various other circumstances including where there are concerns as to how the death occurred. The Coroner's role is to decide four facts: (a) who David was (b) when and (c) where David died and (d) how David came by his death. The Coroner's role is to determine those facts rather than identifying who was to blame for the death.

While the Coroner's findings may be critical of what happened, the Coroner cannot blame and hold an individual or organisation responsible for the death. That will be for the criminal or civil courts. In addition, the coroner's investigation can consider whether steps are needed to help prevent future deaths and to request the organisations involved in the death to take certain steps to do so.

If Sarah and Liam's baby had not shown any signs of life at the time of birth, the Coroner would not have jurisdiction (the legal ability) to investigate. Where there is doubt whether a baby was born alive or not, that is a matter for the Coroner to determine but they can begin an investigation while they establish the position. In this case, there is no doubt that David was born alive.

Post-mortem examination

Post-mortems do not happen in all cases, and it is for the Coroner to decide whether or not to carry one out. If a Coroner decides not to hold one, Sarah and Liam can request one but the Coroner may refuse their request.

In Sarah and Liam's case there is to be a post-mortem investigation to help understand what caused David's death. Sarah and Liam cannot attend the post-mortem examination but can ask a doctor to attend for them. The examination is carried out by a specialist doctor, a pathologist and will involve an extensive examination of David's body and organs.

After the post-mortem examination, the pathologist sends the Coroner a short report to explain what they believe caused David's death. The report will set out what the pathologist did in the examination and any material that was retained and why.

If any samples of blood or organs are kept for a period of time to determine the cause of death, Sarah and Liam will be asked what they wish to happen to the blood and organs afterwards including whether they wish it to be returned to them or donated for research.

The Coroner's officer will then contact Sarah and Liam to tell them the Coroner can return David's body to them for burial and what steps, if any, will now be taken by the Coroner to investigate David's death.

When to involve a lawyer?



It is often at this point that families start to think about contacting lawyers to act for them. If Sarah and Liam contact Fieldfisher to ask for help in understanding and taking part in the inquest process, one of our specialists in maternity law would talk through their experience with them and offer initial advice and how we can help. We advise them that having legal representation means that we can gather in all the medical evidence and factual evidence surrounding the circumstances of Sarah's pregnancy and David's birth and examine it to identify key witnesses who we would want to be heard at inquest, and lines of investigation that we and Sarah and Liam

Other specialist organisations provide a range of support and information, including counselling services. For more detailed information, please scan the QR code.



feel the Coroner should be following. We can also consider what expert evidence may be needed to help investigate the care. All of this contributes to the final hearing being more meaningful and the family being able to have as many of their questions aired as possible.

Unfortunately, the later families leave it to contact lawyers to act for them, the more difficult it will be to find reputable solicitors to represent them and to have enough time to gather all the evidence for the final hearing. We would always recommend bereaved families to instruct lawyers as early in the inquest process as possible. It is also worth bearing in mind that Hospital Trusts always have legal professionals to represent them at inquest.

Investigating a legal claim alongside an Inquest

If Sarah and Liam decide they also want to pursue a legal claim, this can help pay the costs of legal representation at inquest, and the work done by lawyers in gathering in evidence for the inquest also progresses a civil claim. Once instructed, their lawyers will set up funding to cover both the legal claim and the inquest.

The Inquest process



The Coroner has a short hearing to 'open the inquest' where he states in court the name of the deceased and when they died. The Coroner then adjourns the inquest while he collects evidence to help make his findings based on the 4 questions explained above. It is at this point that an interim death certificate is issued.

The Coroner then starts his investigations. He will obtain statements from the key doctors and nurses involved in treating Sarah and David during the birth

and post-natal period. He may also ask the family to make a statement and this is a good opportunity to provide a picture of David in the statement. The Coroner will often set a date for a Pre-Inquest Review hearing (PIR) to discuss the scope of the inquest and what evidence is needed which the legal representatives from the family and the hospital have to attend.

In advance of the PIR Fieldfisher will use their investigations to put together some submissions to the Coroner regarding witnesses he should call, any evidence that is still needed, and setting out Sarah and Liam's concerns.

Pre-Inquest Review hearing

A PIR is where the Coroner sets out how he is going to investigate David's death, what evidence he is going to look at, which witnesses he is going to hear from, and whether he is going to call any experts. He will invite comments (submissions) from the lawyers for the Hospital and the family.

Fieldfisher will speak on Sarah and Liam's behalf at this hearing, but they can also attend, if they wish. The hearing, like the inquest, will be held in open court meaning the public and press can attend.

The Coroner will make decisions at the end of the PIR on witnesses, documents, experts, the length of the final hearing and when it will take place. Sometimes further PIRs are ordered.

Inquest hearing

Prior to the final hearing the Coroner will provide all parties with a copy of the hearing bundle.

At the hearing, the Coroner generally tries to make the inquest hearing less formal than court hearings you see on television. They do not wear a wig or gown

and nor do the legal representatives. However, any witness giving evidence must swear in open court to tell the truth and can be subject to penalties if they are found subsequently to have lied.

Sarah and Liam are not asked to give evidence themselves in court, and it is often the case that family statements are read out.

At the end of the evidence, lawyers for each party make representations to the Coroner as to the verdict and whether or not the Coroner should consider making Prevention of Future Death reports.

Verdict

The Coroner can either give a 'short form' verdict such as natural causes, or a longer more descriptive 'narrative verdict'. Sometimes a neglect verdict is given but these are rare. We would discuss with Sarah and Liam what verdict we consider the Coroner could reasonably reach on the evidence heard and ask them if they want us to make submissions on that verdict.

The Coroner will indicate before the end of evidence whether the verdict will be given immediately after the evidence or on a later date, depending upon the complexity of the hearing.

After the Inquest



At the end of the Inquest, because a cause of death has been decided, the Coroner can issue a final death certificate. David's parents will speak with the coroner's clerk about how to get some copies of the final certificate.

Sometimes there is press interest in the hearing, particularly if there has been criticism of the care provided by the hospital and/or a preventing future deaths report. Your lawyers will guide you through that process and help you deal with the reporters.

How can I get further information and advice?

Fieldfisher is an award winning, leading firm of medical negligence specialists, recognised for going the extra mile for our clients. To get more advice about your own circumstances, or to assist you in supporting a family you are caring for, please contact one of key contacts Caron Heyes or Christina Gardiner, or contact us on our **free helpline 0800 047 2791** or email us on **maternitylaw@fieldfisher.com**.

Simply fantastic in dealing with my medical negligence claim, listened to my thoughts about the situation. Legal knowledge and instinct are amazing, always professional, positive and unbelievably supportive during sad and challenging times.



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Caron Heyes is a Director in the medical negligence team and has worked in the medical negligence sector for many years specialising in bringing claims for adults and children injured during the antenatal, birth and neonatal period.



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