Browne Jacobson

The Coronavirus Act 2020

The Coronavirus Act 2020 allowed any registered medical practitioner to sign a medical certificate of cause of death ("MCCD"), even if the deceased was not attended to during his or her last illness and not seen after death, provided that the medical practitioner could state the cause of death to the best of their knowledge and belief.

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The Coronavirus Act 2020 allowed any registered medical practitioner to sign a medical certificate of cause of death ("MCCD"), even if the deceased was not attended to during his or her last illness and not seen after death, provided that the medical practitioner could state the cause of death to the best of their knowledge and belief.

This easement has expired, and attendance requirements have reverted to those in force prior to the pandemic, i.e. the attending medical practitioner has to have seen the deceased during their final illness. The viewing of the body after death has to be in person, but the viewing of a person within a set time period prior to death can be using video technology (but not telephone).

This set time-period within which the attending doctor must have seen the deceased has now been permanently altered from 14 days to 28 days.

If the attendance requirements are not met, or the attending doctor cannot state the cause of death, the death must be referred to the Coroner so that the Coroner can determine whether an investigation is required or whether the case can be closed and a form 100A issued so as to enable registration of the death.

If the cause of death remains unascertained and there is no evidence to suggest an unnatural death, the Coroner could consider admitting written evidence under rule 23 of the Coroners Rules 2013, or if appropriate, utilise new legislation which enables Coroners to hold an Inquest in writing.

Inquests in writing

'Rule 23 Inquests' have been in existence for sometime and are encouraged wherever possible and where evidence is undisputed, so as to save money and Court time. These Inquests still need to be held in open Court, and written evidence is effectively admitted or read into the Court record by the Coroner.

On 28 June 2022, Section 40 of the Judicial Review and Courts Act 2022 inserted a new section 9c into the Coroners and Justice Act 2009. Section 9C essentially means that Coroners can decide that an Inquest can be held in writing. This Inquest need not be held in open Court.

In order for this to happen, the Coroner needs to:

- Invite representations from each Interested Person and provide them with the bundle of disclosure;
- Have no one represent on reasonable grounds that a hearing should take place;
- Consider that there is no real prospect of disagreement to the inquests determination or findings; and
- Consider that no public interest would be served by a hearing.

If an Interested Person is not content for the Inquest to proceed in writing, they or their legal representative need to write to the Coroner requesting a hearing and explaining why one is needed.

This legislative change will be welcomed by Coroners, as it will effectively free up Court time, allow for Court time to be utilised for more contentious and complex Inquests and for Coroners to write up their written determination out of Court. Coroners are duty bound to report

to the Chief Coroner any Inquests that are not heard within 6 months of the Coroner being notified of the death.

In the wake of the covid pandemic, Courts were closed and a number of Inquests suspended, particularly those before a Jury due to social distancing restrictions. This, coupled with the influx of Inquests that are indirectly related to covid i.e. suicides due to financial pressures and lockdowns and cases where patients have not been able to access various services due to the redirection and redeployment of clinical staff at the height of the pandemic, has meant a number of Coronial jurisdictions are dealing with a huge backlog of Inquests that need to be heard in Court.

As well as the above mentioned example of where there is no reason to suspect an unnatural cause of death but the MCCD is unascertained, below are types of Inquests that could well fall into the category of being able to be dealt with in writing:

- Industrial disease with a histological diagnosis and a clear work history of exposure;
- Straightforward drugs death where there is no reason to suspect suicide and no concerns with regard to the role of healthcare or addiction services;
- Suicides in the community where no actions of any third party have given rise to concern.

As in a rule 23 Inquest, after an Inquest is held in writing, Interested Persons should be informed of the determination, findings and conclusion.

If there is any suicide note considered to be relevant in cases where the death is by suicide, all or part of it should be introduced, with sensitivities of course being taken into account with regard to the bereaved family.

Practical tips

- Organisations should seek early disclosure from the Coroner's Court if they are granted Interested Person status.
- Organisations should establish whether any of the information poses a risk of criticism or whether there are any questions that they would wish to ask the witnesses that have provided statements. Legal advice should be sought where appropriate.
- If the death within an organisation falls into one of the categories mentioned above, organisations should consider making representations to the Coroner or asking their legal team to do the same, setting out the proposal of having an Inquest held in writing and whether or not there would be any objections to this.

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