



Covid-19: Coroners needn't investigate PPE policy failures in deaths of NHS staff, new guidance says

Clare Dyer

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Coroners have been issued with new guidance on covid-19 deaths steering them away from investigating policy failures in the provision of protective equipment in the workplace.¹

The guidance from Mark Lucraft QC, chief coroner for England and Wales, has been questioned by lawyers specialising in inquest law and described as “profoundly unwise” by the shadow attorney general, Charles Falconer.

The guidance on covid-19 deaths and possible exposure in the workplace came as the number of deaths of frontline healthcare workers from the virus rose to more than 100. Many workers say that they have had to work with inadequate supplies as the government has struggled to source enough personal protective equipment (PPE).

Rinesh Parmar, chair of the Doctors Association UK, told the chief coroner in a letter, “The guidance you have issued appears to be contrary to the legal requirements imposed on coroners by statute.”

He added, “We are extremely concerned by your suggestion that coronavirus deaths of healthcare workers will not usually require investigation. We believe that it may deny grieving families the answers to which they are entitled.

“Unless inquests are opened in each case, vital evidence in relation to that individual case will not be preserved and the opportunity to find out what went wrong will be lost irretrievably. We invite you to review your guidance and to amend it to ensure that it properly reflects the legal position and that these bereaved families receive access to the investigative procedures to which they are entitled.”

Guidance wording

The chief coroner's guidance states, “If there were reason to suspect that some human failure contributed to the person being infected with the virus, an investigation and inquest may be required. If the coroner decides to open an investigation, then he or she may need to consider whether any failures of precautions in a particular workplace caused the deceased to contract the virus and so contributed to death.”

But it goes on, “Coroners are reminded that an inquest is not the right forum for addressing concerns about high-level government or public policy. The higher courts have repeatedly commented that a coroner's inquest is not usually the right forum for such issues of general policy to be resolved.”

Daniel Machover of the law firm Hickman and Rose, a leading inquest specialist, said of the guidance, “It's internally

contradictory and it's wrong.” He said the chief coroner had “quoted one paragraph selectively and built an argument against going into policy decisions.”

Lucraft cites the 2010 case about the inquest into the death of Private Jason Smith, in which Nick Phillips, president of the Supreme Court, said that an inquest could properly consider whether a soldier had died because a flak jacket had been pierced by a sniper's bullet but would not “be a satisfactory tribunal for investigating whether more effective flak jackets could and should have been supplied by the Ministry of Defence.”

The chief coroner's guidance states, “By the same reasoning, an inquest would not be a satisfactory means of deciding whether adequate general policies and arrangements were in place for provision of personal protective equipment (PPE) to healthcare workers in the country or a part of it.”

Human rights convention

Machover said that the courts had held that an inquest could inquire into policy decisions where this was necessary to fulfil requirements under article 2 of the European Convention on Human Rights, the right to life. Lucraft had taken “a rather partial and controversial approach to the Smith case,” he added.

Pete Weatherby QC, a barrister specialising in inquest law, said, “I find it remarkable that the chief coroner can write such guidance without reference to article 2. As the inquest is the default process by which the state complies with article 2, what is the individual coroner to do when confronted with a covid-19 death where he or she considers there is a good argument that government policy (or lack thereof) contributed to the death?”

In some cases, such as those looking into the Manchester Arena terrorist killings, coroners had decided that inquests could not meet the requirements of article 2, adjourned the inquest, and contacted the home secretary, he said. Public inquiries had then been set up that could comply with article 2.

“Given that the 2009 Coroners and Justice Act requires article 2 compliant inquests where article 2 is applicable, it isn't good enough to issue guidance to coroners warning them off considering policy, without more,” he added.

Falconer, a Labour peer, shadow attorney general, and former lord chancellor, tweeted, “Profoundly unwise to seek to guide coroners away from including in scope of an inquest whether policy failures on PPE caused a death.”

Replying to the letter from the Doctors Association UK, Lucraft said he was not expressing any personal views but merely stating “the law as it currently stands.” He said he had not asserted that most healthcare workers’ deaths should not be referred to or investigated by a coroner; it was for a coroner to take an independent decision. It was also for the individual coroner to decide the scope of an inquest, he added, and, “I did not say (nor is it in my power to say) that PPE or any other aspect of

evidence in relation to the circumstances of the particular death may not be discussed at inquest.”

- 1 Lucraft M. Chief coroner’s guidance No 37: Covid-19 deaths and possible exposure in the workplace. 29 Apr 2020. <https://www.judiciary.uk/wp-content/uploads/2020/04/Chief-Coroners-Guidance-No-37-28.04.20.pdf>.

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