

## Open Justice Coroners' Court Survey - 2021

In Summer 2021 a short survey was shared on social media and with professional networks, inviting journalists who have reported, or attempted to report, from coroners' courts in England and Wales during the covid pandemic to respond.

We asked people to share their experiences of accessing coroners' courts to report during covid and we made clear we were interested in pre-inquest review hearings and full inquest hearings.

We received 12 responses, a summary of these follows.

### Method of attending court

All respondents replied to this question and their responses clearly indicated a range of ways of attending court were in operation.

<b>Method of attending</b>	<b>Number</b>	<b>%</b>
In person	9	75
Via audio link	8	66.7
Via video link	7	58.3
Other	1	8.3

Two journalists had only attended court in person and had no experience of attending via audio or video link. One had only attended via audio link, one had attended in person and via audio link, one attended in person and via video link, one had not attended in person but had attended by both audio and video link, one had not attended in person or remotely (despite requesting remote attendance on more than one occasion) and five of the twelve responding (41.6%) had attended in person, via audio and via video link.

### Requests to attend remotely

Eleven of the twelve respondents had applied to attend court remotely (91.5%), one respondent had not requested remote attendance.

A third of respondents had no experience of a request to attend remotely being refused (three successfully requested attendance, one did not request and therefore was included in the not refused category).

Of the two thirds that did experience a request to attend remotely being refused, for 3 respondents that related to one request, and for 5 their requests were refused on more than one occasion.

## **Reasons for refusal**

If they had an application to attend remotely refused, we asked respondents to let us know what reasons were given for the refusal. We have grouped responses into categories and provided some sample responses.

## ***Covid protocol specifics***

Respondents experienced a range of responses directly relating to covid protocols when refused access.

One respondent reported that in order to adhere to social distancing guidelines they had been informed that the court was not open, with the accompanying offer of emailed information:

“If the press would like copies of the Record of Inquests, we can email them to them after the event”.

Another was told that the coroner was in court and therefore journalists needed to be too, with the additional caveat that:

“journalism is work and therefore journalists have the ability to travel to court”.

Another respondent reported that they were told that if they could come to court that they should, the implication being that if they could not attend in person that was unfortunate but remote attendance was not offered.

Kent Coroners’ Court have a Notice for Press available on their website which states:

“If press cannot attend in person and there is an exceptional reason for them not being able to do so, the Coroner will consider an application by the press for an audio link BUT any application will only be considered if made on notice, no less than 24 hours before the hearing and if the inquest is to be heard on a Monday, by 12pm the Friday before.

What constitutes an exceptional reason is not defined and will be determined by the Coroner on a case by case basis but press convenience or staffing limitations will not constitute an exceptional reason”.

Three respondents had been refused remote attendance by the Kent Coroners and one had resorted to sending a pre-action letter for judicial review to question the legality of the approach taken, which had led to them being granted remote attendance.

### ***Logistical access reasons***

Three requests were refused due to short notice, or journalists having missed the deadline that the court had set to request attendance. One respondent reported that they had applied in the morning for remote attendance at a 2pm hearing and was told that their application was too late.

Three respondents reported that they had been told the court did not have the required technology to facilitate their attendance. While disappointing, this might have seemed a reasonable response very early in the pandemic, however at least one respondent was told over a year into the pandemic, and despite all interested persons and legal counsel attending remotely.

One respondent reported that the coroner said they did not have the ability to run "conference calling or Skype" in their court and there were two options available – a single member of the media could attend to represent the interest of all organisations, or they would send a copy of their summing up/record of inquest to the media after the inquest.

### ***Coronial choice***

Three respondents stated that they had been told their requests were "not allowed" by the coroner, with no reasons given.

Another was told that the coroner had the right to request press attend in person, and that is why remote attendance was not granted.

Another respondent replied that there was "No reason given other than they do not hand out links to press, despite counsel and interested parties being able to do so".

### ***Other responses***

At least two respondents reported that they had simply had no response provided to their requests for remote access.

Another was told that they would "get a better experience in person", which given this was in response to a request to attend remotely, ignores the risks involved to journalists having to travel and attend in person, and seems somewhat inadequate an explanation.

### ***Where remote attendance was refused***

Respondents were asked to share which courts had refused applications to attend remotely. These responses relate to the courts that refused applications, not the total number (for example some respondents applied to the same court on more than one occasion and were refused multiple times). Additionally one respondent reported an application being refused

by one of these courts early in the pandemic, but being facilitated to attend remotely later on.

Bournemouth  
City of London (two respondents)  
Crawley  
Kent (three respondents)  
Liverpool  
Milton Keynes  
Newport  
North London (two respondents)  
Poplar (two respondents)  
Rochdale  
St Pancras (two respondents)  
Sheffield  
South London (three respondents)  
Walthamstow

### **Any difficulties attending court in person**

Respondents were asked to share whether they had experienced any difficulties attending court in person during the pandemic.

One respondent provided the following response, highlighting many of the unnecessary risks they were exposed to:

“At a high profile inquest last summer, around 25 members of the press were forced to attend a hearing in person, where all others except the coroner were remote.

The social distancing and hygiene arrangements were substandard, including bleach accidentally being offered as hand sanitiser, spacing being insufficient, and a lack of mask wearing.

In addition, we were forced to stand on a public street for up to 3 hours just to get a seat, and then ejected from the court for an hour over lunch when there was literally nowhere to go to work.

Forcing journalists to sit in parks, on pavements, and on walls to work, when remote was a viable option, seems bizarre, to put it politely”.

Conversely, another had no difficulties at all, and a positive experience:

“Generally, during the pandemic attending court in person was always good. Masks were worn inside and outside of the court, there was adequate social distancing and chairs were always wiped

down. It always felt like a very safe experience, even at the height of the pandemic”.

Other respondents reported feeling that Open Justice was being impinged upon, one responded:

“Southwark Coroner's Court appeared to treat my desire to enter the building as a request that could be granted or refused, rather than the lawful right that it is to attend a court hearing”.

Another:

“Ceredigion Coroners' Court told us they weren't sure they would have space for a reporter as the one (!) press seat was allocated but we could send a reporter there (a two-hour drive) to see if they could get us in. They couldn't offer any kind of remote hearing”.

An example of journalists being discouraged from attending was also provided:

“I was discouraged from attending Walthamstow coroners court at one point and was told I couldn't get an audio link, but to request recordings of the inquest instead (which were being sent a week or so later). That was cleared up after I contacted the senior coroner who said I could attend - however they are still under the illusion they can't give press an audio link”.

The same respondent reported that they had been forbidden from attending Westminster Coroners Court in person, however there were still difficulties in identifying timetabling for hearings:

“Westminster Coroners Court will not allow any press to attend and will only allow them over video /audio link, however for the first year of the pandemic did not send out a list and have only been doing so (still not every week) in the last few months” [response in June 2021].

Two respondents reported difficulties with travel to court, due to less frequent public transport, and the increased risks of catching covid while travelling.

### **Any difficulties attending court remotely**

Respondents were also asked to share whether they had experienced any difficulties attending court remotely during the pandemic.

Once access had been granted, one respondent experienced no difficulties, and another reported that things went relatively smoothly.

One respondent reported that they were sent the link for video access, and then had to sit in court while the coroner read a warning that it was an offence for members of the public or press to access a video link (despite the link being provided by court staff in response for an audio connection). They emailed the court to inform them and their email was not acknowledged.

The quality of the audio link was mentioned by four respondents, with varying sound quality, microphones not working and the line dropping out on a number of occasions resulting in a number of challenges to accurate reporting:

“Difficult to tell anyone you are having difficulty hearing or even to raise a legal or other point when you are muted by the clerk or if you are not muted, it’s hard as you don’t want to interrupt proceedings.

When videos are played as part of proceedings, you of course can’t see that on the audio link.

There’s a real reliance on a court clerk to be sympathetic to the press and happy to help with queries or assist with technical difficulties”.

Two respondents mentioned that they had not been let in promptly, or not let in at all:

“Repeatedly. Pontypridd Coroners' Court would repeatedly 'forget' to get reporters on the call or say technical gremlins prohibited them from doing so”.

### **Anything else you’d like us to know about your experiences reporting from coroners’ courts during covid**

The final question was a catch all and the responses reflected pre-pandemic experiences with coroners’ courts, that experience was variable and lacked uniformity:

“Across Wales the picture has been hugely patchy; some are far better than others. There have been occasional difficulties in Swansea, for instance, but the coroner there and his staff are generally very helpful indeed. There seems to just be a total lack of uniformity (as was the case pre-Covid) and coroners being able to run things entirely the way they want... I would also like to point out though that by and large the court staff have been incredibly helpful 99% of the time. I feel like the problems of attitude have almost exclusively come from (a very small number) of sitting coroners

while the staff have done the best they can in awkward circumstances”.

Most respondents pointed out that not all experiences had been bad ones during the pandemic:

“I have to say I’ve had two very positive experiences of coroners courts this year, in Manchester and Nottingham. The links worked, the court staff were responsive and helpful and the coroners even let us make representations when our requests for documents were objected to”.

Several respondents highlighted how helpful court staff have been:

“generally positive experience and coroners' officers generally very helpful”.

Two pre-pandemic challenges remained for respondents, one in relation to family awareness of press attendance, and another in relation to listings.

“Issues that existed before the pandemic still continue though. It is still always a shock to families that we are able to attend and this leads to them learning press can attend for the first time on the day itself. This obviously upsets families and it is sometimes communicated poorly to them why journalists are there. Families should be informed well in advance that we can attend, and all the reasons why we would”.

Three respondents reported difficulties in accessing court listings. One respondent shared:

“Westminster Coroner's Court appeared to stop sending out court diary between March 2020 and February 2021. For a coroner, of all public bodies, to stop informing the public of what they are doing during a national health crisis is outrageous and surreal. Numerous email requests for the list were ignored... aside from this Westminster is actually good in terms of remote hearings, which journalists are granted automatic permission to attend and can see the video as well as have audio.

This is because the court building is too small to accommodate anyone except coroner and staff. It is a sign of trust that they allow us to see as well as hear, seeing is vital to be able to know who is speaking.

Journalists should be treated with trust, not viewed as a risk of recording or filming. If we are trusted not to film or record when physically in a court (which would be easy with mobile phones) why are we not trusted over a remote link?”.

A number of respondents expressed their frustrations and confusion that members of the press are being required to attend court in person, when everyone else except the coroner is able to attend remotely:

“I don’t understand why they seem to be unwilling to provide links, either audio or visual, to dial into inquests. Some courts are also unwilling to provide recordings or links to inquest openings, which is frustrating as we are expected to travel to a hearing that will last no longer than five minutes”.

“It seems totally arbitrary to say the media cannot have a video link when the crown court and magistrates’ courts allow this”.

“All interested parties and family members involved in the inquest... are permitted to connect remotely, but members of the press are required to attend in person. It seems both unfair and unnecessary that members of the press are forced to physically attend when others are granted remote access. It is difficult to see the rationale in this approach. I am not yet vaccinated against Covid-19 and I am frustrated at having to go and mix with people when a perfectly workable alternative is available”.

## **Discussion and Conclusion**

While this survey was very small scale, it does provide something of a window on the varying experiences of journalists attempting to report from coroners’ courts during the pandemic.

The Chief Coroner has issued six guidance notes relating to inquests during the pandemic (Guidance No 34 – 39). The first of these, Guidance Note 34, issued on 26 March 2020 stated:

“All hearings that can possibly take place remotely (via whatever means) should do so”.

While there was recognition that courts should remain open to the press and public, where possible, it was also possible from that stage forward for members of the press and public to additionally attend remotely if a Coroner allowed, and if local arrangements were able to facilitate such remote attendance.

On 11 June 2020, Guidance Note 38, clarified the requirement for the coroner to disapply the 1981 Contempt of Court Act to enable audio transmission of proceedings to the press and public:

“Access to the public or press remotely can only lawfully be given by way of audio transmission if the coroner expressly disapplies s9 of the 1981 Act. There is an absolute statutory prohibition of members of the public or press having access to a visual broadcast, including a livestream of proceedings”.

The same guidance note later confirms that it is the 1925 Criminal Justice Act which prevents the public or press accessing court via a video link:

“Coroners cannot use live video, livestream or any other form of visual broadcasting device to provide access to either the public or the media from outside the court building. It is prohibited by s41 of the 1925 Act. It is permissible to relay a live feed from a main courtroom hearing an inquest to a secondary courtroom (see paragraph 7 above)”.

It would appear that there is some variation in awareness or practice in this regard, given the number of respondents who indicated that they had attended court via video link during the pandemic.

On 29 June 2020, Guidance Note 39, in a section on infrastructure, appeared to be explicit that the only person who had to physically be present in court was the coroner, albeit that the court must be open to the public:

“When conducting a hearing, the coroner must be in court and the court must be open to the public.

The use of video and audio for partially remote hearings should be actively pursued. By using technology, and subject to the interests of justice on individual cases, the attendance at the court by those other than the coroner and their staff may be avoided. See Chief Coroner’s Guidance No. 38”.

Shortly after the aforementioned pre-action letter for judicial review that questioned the legality of the approach taken in Kent was sent, citing this guidance note, it was revised by the Chief Coroner on 21 May 2021. The infrastructure section and reference to active pursuit of video and audio remote hearings were removed, instead a section of IT was included which states:

“Senior coroners should discuss with their relevant authority any improvements that are required in relation to the provision of IT

and audio-visual equipment. This will be particularly important for the future, as legislative changes are proposed that will enable the wider use of remote inquests, and remote capability is one tool that could be used to tackle backlogs efficiently”.

Perhaps it is worth concluding with reference to Chief Coroner’s Guidance Note 25, issued 30 September 2016, on Coroners and the Media. It clearly states that:

“The general public is entitled to attend all inquest hearings (with limited exceptions, below)... Hearings in the coroner’s court must be held in a courtroom which is accessible to the public without physical barrier, so that any member of the public can ‘drop in’ to see how a hearing is conducted by a coroner... Members of the press are members of the public for these purposes. The general rule is that all hearings, including openings, PIR hearings and final inquest hearings, must be held in public and therefore are open to journalists”.

It might have been helpful to have had an updated guidance note relating to media attendance at court during the covid pandemic. It is somewhat surprising that there is still no established standardised guidance about media access, more than eighteen months since the pandemic began. While some courts have been responsive and made efforts to safely facilitate press attendance, many have not. Clarity of guidance from the Chief Coroner might have helped with that, perhaps alongside a reminder that transparency and open justice are not optional, and should not be at the discretion of individual coroners or court staff.

Guidance Note 25 suggests coroners will be guided by the important principle of open justice, and references the Court of Appeal case *R (Guardian News and Media Ltd) v City of Westminster Magistrates’ Court* [2012] EWCA Civ 420; [2013] which applies to all courts (including coroners’ courts). The opening remark to that case includes the following statement:

“In a democracy, where power depends on the consent of the people governed, the answer must lie in the transparency of the legal process. Open justice lets in the light and allows the public to scrutinise the workings of the law, for better or for worse”.

It is incredibly unfortunate that some respondents had been denied access to courts, physically and/or remotely. It seems hard to imagine a time when the workings of the coronial system, and the accompanying need for open justice, are more pertinent than in a public health emergency.

### ***Future developments***

The Judicial Review and Courts Bill, Part 2, Chapter 4 proposes a number of changes to the coronial system, including provision for the use of audio or video links at inquests. It is proposed to amend Section 45 of the Coroners and Justice Act 2009 to include:

“provision for or in connection with the conduct of hearings wholly or partly by way of electronic transmission of sounds or images”.

It is unclear whether these changes would facilitate press and public to attend inquests remotely, or indeed what safeguards would be in place to ensure that remote access for some does not come at the cost of physical access for others.

The Justice Committee are currently holding an inquiry on Open Justice: court reporting in the digital age. This short inquiry will consider how the media's coverage of the courts has changed, with a particular focus on the impact of technology and court reform. The inquiry is accepting evidence until Monday 18 October.

It is clear that change is on the horizon, what is not clear yet is what that will look like for access to, and reporting from, coroners' courts.