



## CHIEF CORONER

### GUIDANCE No.15

#### DEALING WITH THE POSSIBILITY OF APPARENT BIAS

##### THE CORONER'S APPROACH<sup>1</sup>

1. Consider your position on a regular basis: Do I have an interest I should disclose? If in doubt, discuss it with an experienced coroner.
2. Disclose the interest at the earliest opportunity and in writing. Do not leave it to a late PIR or the inquest itself. Although disclosure may not be defective if all possible details are not included, the disclosure should be as full as possible so that any objection is on an informed basis. The onus is on you to raise the issue.
3. If you have a possible interest which is likely to recur, have a standard form of words about your interest, which can be adapted to the particular investigation where necessary.
4. If the response is a clear objection to you sitting and has a good basis for the objection, arrange for another coroner to hear the inquest if one is available (so as to avoid all criticism and a subsequent complaint).
5. If the response to your letter is ambiguous or amounts to an insubstantial objection, have a hearing or raise it at the next hearing. Make sure everything is recorded.
6. If the question of bias is raised at a hearing
  - explain your position
  - set out the options for the person objecting:
    - (a) 'If you consent to my continuing to sit on this inquest, that means that you cannot complain later; you will have lost your right to object'.
    - (a) 'If there is objection and I decide to step down as coroner, it will mean that the inquest will be heard by another coroner and cannot be heard until ...' (check dates and announce them).
  - give the questioning person time to think on the day (with a brief adjournment) and to reflect on the above options. If you raise the issue which has arisen late in the day, explain why it has arisen late.

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<sup>1</sup> This Guidance derives from the training given to coroners by Dame Linda Dobbs in 2014-2015. I am indebted to her for it.

7. Do not take personally any objection to your sitting. Stay calm.
8. Do not recuse yourself too lightly. You have a duty to keep going if possible. Consider what the fair-minded observer in the public gallery might think.
9. If you do recuse yourself give reasons. If you do not recuse yourself give reasons.
10. If no objection is raised to a coroner's informed disclosure, the objecting person will be taken to have waived his/her objection and cannot raise it by way of judicial review later. And if an interested person raises apparent bias at a PIR hearing and the coroner refuses to recuse himself/herself, a failure to apply for judicial review of that decision promptly after the PIR and before the final hearing is likely to amount to an unequivocal waiver.
11. Coroners should also bear in mind that a coroner's officer (or other staff) involved in a case may have a local interest which should be considered if not disclosed.

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## **BASIC MATERIALS**

12. The test for apparent bias is in *Porter v Magill* [2002] 2 AC 357:

'whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the judge was biased'.

This was developed in *Helow v Secretary of State for the Home Department* [2008] 1 WLR 2416.

13. In *Locabail v Bayfield Properties Ltd* [2000] QB 451 the court could not conceive of circumstances in which an objection could be soundly based on - the religion, ethnic or national origin, gender, age, class, means or sexual orientation of the judge. Nor ordinarily on the judge's social or educational or service or employment or background history, nor that of any member of the judges family. Nor on previous political associations or membership of social or sporting or charitable bodies. Nor of previous judicial decisions or extra-judicial utterances, or of instructions to act for or against any party, solicitor or advocate engaged in a case before him/her. Nor membership of the same chambers or same local Law Society.
14. By contrast, as *Locabail* states, a real danger of bias might be thought to arise if there were - personal friendship or animosity between the judge and any member of the public involved in the case, or close acquaintanceship. Or if for any reason there were real grounds for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues of the case. If there is a real ground for doubt, that doubt should be resolved in favour of recusal.
15. Guidance on the procedure to be followed is to be found in *Jones v DAS Legal Expenses Insurance Co.* [2003] EWCA Civ 1071 at [35].
16. Waiver was defined in *Millar v Dickson* [2002] 1 WLR 1615 (PC):

'a voluntary, informed and unequivocal election by a party not to claim a right or raise an objection which is open to that party to claim or raise'.

17. For a coroner's case involving a claim of apparent bias and waiver: see *R (Shaw) v HM Coroner and Assistant Deputy Coroner for Leicester City and South Leicestershire* [2013] EWHC 386 (Admin) at [31-62] and [100-105]. See also *Brown v HM Coroner for the County of Norfolk* [2014] EWHC 187 (Admin).

18. See also *R v Inner West London Coroner, ex parte Dallaglio* [1994] 4 All ER 139 at 151-152.

19. The Judicial Oath:

'I, \_\_\_\_\_, do swear by Almighty God that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second in the office of Coroner, and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will.'

**HH JUDGE PETER THORNTON QC  
CHIEF CORONER**

**25 September 2014**