

ALERTER

Using disclosure, evidence and conclusions from an inquest in subsequent civil proceedings: dress rehearsal or side show?

Tim Green KC
Julie Leenane



A common concern for manufacturers, and their product liability practitioners, is the extent to which disclosure, evidence and judgments from inquests can inform product liability civil litigation. This alerter aims to provide clients with accessible answers to this very practical but nuanced question.

The mechanism by which a coroner and an IP (“Interested Person”) obtains disclosure

Before proceeding further, it is worth summarising the process of disclosure in inquest proceedings. Inquest disclosure takes place in two stages:

- (a) Firstly, once the circumstances surrounding a death are known disclosure is made to the coroner by relevant persons/IPs either (i) voluntarily following a request by the coroner or because the IP considers it holds relevant material, (ii) or following a statutory notice pursuant to **Schedule 5 part 1(2) Coroners and Justice Act 2009 (CJA 2009)**.
- (b) Secondly, once the coroner holds a document provided following his request, he determines whether disclosure is made of that material to the IPs on the basis that in the coroner’s mind, the disclosure is relevant to the issues in scope. This two-stage process was made clear in **Worcestershire CC v Worcestershire LCSB and HM Coroner Worcestershire [2013] EWHC 1711**.

In the event that an IP considers that the coroner holds relevant material, but that relevant material has not been disclosed, then the coroner is required by **Rule 13 of the Coroners (Inquests) Rules 2013** to give disclosure to an IP “as soon as is reasonably practicable” where the IP requests it (and subject to the restrictions in Rule 15).¹

The relevance of this staged process for practitioners is then twofold:

- (a) In a *Middleton* inquest the coroner only has that disclosure he has considered relevant to the issues in scope to answer the statutory questions of who, where, when and how the deceased died. This places limits on what is relevant and disclosable for the IP who is a product manufacturer.
- (b) If in a complex case inquest an IP is concerned relevant disclosure is being withheld, the coroner can order disclosure to be made using his Schedule 5 powers, and an IP can then demand this disclosure from a coroner if required.

Uses to be made of material which is disclosed but not in evidence

The use which can be made of disclosure which becomes evidence is relatively clear and dealt with below. The position in respect of documents which were disclosed to IPs, but not used as evidence in an inquest is less clear. The Guidance explicitly states the following:

“There is nothing in the coronial statutes or statutory instruments which explicitly prohibits IPs using documents disclosed to them by the coroner for a collateral purpose” (Chief Coroner’s Guidance for Coroners on the Bench Chapter 12, Disclosure at [64]).

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There is, as such, no express barrier on using documents which were disclosed, but not deployed in evidence, in subsequent civil proceedings. In particular, there is no equivalent to the **Civil Procedure Rules Rule 31.22**, that disclosed documents cannot be used for collateral purposes unless (i) they have been referred to in open court; (ii) the court gives leave; or (iii) it is agreed between the parties.

However, the Guidance goes on to suggest that a coroner deal with this gap in confidentiality via a specific direction:

“either written on the front of a disclosed bundle or by making a formal direction at a PIH, to the effect that the documents disclosed to the IPs are to be kept confidential and only used for the purpose of the inquest” (**Chief Coroner’s Guidance for Coroners on the Bench Chapter 12, Disclosure at [65]**).

If a direction is then given by the coroner in the forms above, disclosure made to IPs during an inquest *cannot* then be used in later proceedings. This protection could be buttressed by IPs who make potentially sensitive disclosure asking the coroner to ensure other IPs who receive that disclosure give an undertaking that this material will remain confidential.

The next question is then, what happens if that direction or undertaking is breached? The answer is that potential contempt proceedings could follow breach of a direction. This occurs infrequently not least because as a lesser court of record, a coroner is only empowered to deal directly with “*contempt in the face of the court*.” The coroner has no power to punish conduct which may amount to contempt but was committed outside the court precincts (**Chief Coroner’s Guidance for Coroners on the Bench Chapter 10, Contempt at [6]-[9]**). This would extend to breach of a confidentiality direction after the inquest has concluded, for example by attempting to use the information in later proceedings.

There is the added defence available to an aggrieved IP that a civil claim based upon material disclosed pursuant to confidentiality directions/undertaking could be struck out as an abuse of process (**CPR 3.4**) because the material is being used unlawfully. The prospect of any abuse application will obviously be fact specific.

Use that can be made of evidence heard at an inquest

The position with evidence is clear and the starting point is that all oral and written evidence at an inquest are admissible evidence in subsequent civil proceedings. (**Jervis on Coroners, 15th ed. at [20-10] – [20-11]**).

Before evidence from an inquest is heard in subsequent proceedings, it must pass through the hearsay gateway. **Section 6 of the Civil Evidence Act 1995** provides *inter alia* as follows:

Previous statements of witnesses.

- (1) Subject as follows, the provisions of this Act as to hearsay evidence in civil proceedings apply equally (but with any necessary modifications) in relation to a previous statement made by a person called as a witness in the proceedings.
- (2) A party who has called or intends to call a person as a witness in civil proceedings may not in those proceedings adduce evidence of a previous statement made by that person, except—
 - (a) **with the leave of the court**, or
 - (b) for the purpose of rebutting a suggestion that his evidence has been fabricated (emphasis added).

So the admission of inquest evidence will in general depend upon the power of the civil court to control its own evidence pursuant to **Part 32 of the Civil Procedure Rules**, rather than any restrictions which are specific to evidence emerging from an inquest. In this way expert evidence, even if heard and admitted at an inquest, will only be admissible if it satisfies the CPR in terms of disclosure expertise, materials, conflicts etc.

From a product practitioners perspective, and that of a product manufacturer, the precautionary principle should be applied. Assume all relevant oral evidence and witness statements are admissible in subsequent civil proceedings unless and until the Judge in those subsequent proceedings rules otherwise.

The findings of fact and conclusions

Although there seems to be little authority directly on the point, it seems unlikely that the findings of fact and record of conclusions from an inquest are admissible in a civil court trying a product liability civil action. This is because it is likely to offend against the rule in *Hollington v Hewthorn* that the findings of one court cannot be admissible as binding on another court. This rule has not been applied specifically in the context of product liability civil litigation, and has come in for some judicial criticism.

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For example, *Hunter v Chief Constable of the West Midlands* [1980] QB 283, 319 Lord Denning MR, who had been counsel for the appellant in *Hollington v Hewthorn* described it as “beyond doubt ... wrongly decided”. In the House of Lords in the same case Lord Diplock said that that was generally considered to be so. In *Arthur JS Hall v Simons* [2002] 1 AC 615, 702 Lord Hoffmann said that the Court of Appeal in that case was “generally thought to have taken the technicalities of the matter too far”. Indeed, we recently published an [Alerter drawing attention to a dilution of the rule in criminal proceedings](#).

On the other hand, it was recently affirmed in *Hoyle and Rogers* [2014] EWCA 257 by Clarke LJ that *Hollington v Hewthorn* was rightly decided. He concluded a review of the authorities with this passage:

“As the judge (Goddard JJ) rightly recognised the foundation on which the rule must now rest is that findings of fact made by another decision maker are not to be admitted in a subsequent trial because the decision at that trial is to be made by the judge appointed to hear it (“the trial judge”), and not another. The trial judge must decide the case for himself on the evidence that he receives, and in the light of the submissions on that evidence made to him. To admit evidence of the findings of fact of another person, however distinguished, and however thorough and competent his examination of the issues may have been, risks the decision being made, at least in part, on evidence other than that which the trial judge has heard and in reliance on the opinion of someone who is neither the relevant decision maker nor an expert in any relevant discipline, of which decision making is not one. The opinion of someone who is not the trial judge is, therefore, as a matter of law, irrelevant and not one to which he ought to have regard.”

So in our view, whilst the evidence heard in an inquest is likely to be admissible in subsequent civil proceedings, the findings of fact made by the inquest and the conclusions are not admissible because the rule in *Hollington v Hewthorn* remains good law.

The rules governing the use of material disclosed, and evidence heard, in a public inquiry are beyond this note and worthy of another Alerter. However, we should advise readers that in our opinion, the findings of fact and opinion evidence of a public inquiry report are unlikely to be admissible in subsequent proceedings. This material will fall into the same category of inadmissible opinion evidence as findings of fact and conclusions from an inquest. This would

be consistent with the House of Lords decision which held that even Lord Bingham’s Report into the Supervision of BCCI was inadmissible opinion evidence in *Three Rivers District Council v Bank of England (No 3)* [2003] 2 AC 1.

The duty of candour

The position will soon be more complex for disclosure provided by public authorities. Currently, public authorities are (i) under a duty of candour in judicial review proceedings, and (ii) subject to the regular mechanisms of inquests already outlined (CJA 2009 compulsion etc.).

The Public Office (Accountability) Bill, introduced on 16 September 2025, includes a new statutory duty of candour and assistance. S.2 of the Bill reads *inter alia* as follows:

2. Duty of candour and assistance

- (1) Public authorities and public officials must at all times act with candour, transparency and frankness in their dealings with inquiries and investigations.
- ...
- (3) A public authority or public official must notify the person leading an inquiry or investigation where the authority or official has grounds to believe that
 - (a) their acts are or may be relevant to the inquiry or investigation, or
 - (b) they otherwise have information likely to be relevant to the inquiry or investigations (emphasis added).

Section 2(3)(b), as such, is likely to be of significant relevance to the disclosure process. The duty is intended to apply to statutory and non-statutory inquiries, and to coroners investigations (**Duty of Candour Fact Sheet**).² The remit of the duty may be extended through the creation of secondary legislation (**Section 21**). Failure to comply with the duty of candour will be a criminal offence (**Section 5**).

Once a public authority is under the new duty of candour, statutory compulsion of evidence may not be necessary. At the time of drafting this note, it is unclear whether an implied undertaking of confidentiality arises in respect of disclosed information disclosed to an inquest pursuant to a duty of candour. The disclosure will not have been compelled under statute *per se*, and arguably will have been “volunteered”, albeit it disclosed under this duty. If there is no express undertaking of confidentiality given by the recipient IP of the said material, then confidential status or otherwise of such disclosure will be uncertain.

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While analogous, the duty of candour in judicial review is of limited assistance by way of guidance. The case law on implied undertakings (**Riddick; Taylor**) has not been widely applied in judicial review proceedings.³ In **R (Good Law Project Limited) v The Secretary of State for Health and Social Care [2022] EWHC 46 (TCC)**, O’Farrell J observed that the issues of disclosure and the duty of candour gave rise to “*competing interests*” with confidentiality, but did not indicate whether this is resolved by an implied undertaking [259].

Final comments

So, practitioners should advise their clients that disclosure provided in an inquest usually comes with either express or implied confidentiality undertakings. This acts as a restriction against using simple disclosure in subsequent product liability civil actions. The sanctions for such use will be contempt proceedings against the party in breach and/or striking out of the civil claim.

On the other hand, disclosure which then becomes evidence heard during an inquest (whether as oral or R23 evidence) is likely to be admissible in subsequent civil proceedings. It will be subject to the hearsay provisions, and the CPR more generally (rules for experts etc), and may very well not be determinative of the issues because the evidence heard at a trial is rarely identical to the inquest. In practice, if the

coroner heard factual evidence, or the opinions of experts, and found a defective product was a material causative of an unnatural death, then manufacturers need to be concerned.

There may be some relief for manufacturers in our opinion that the findings of fact and conclusions of the coroner are unlikely to be admissible in a product liability civil litigation because they offend the rule that the opinion of one court can bind another (see *Hollington v Hawthorn*). In any event, the inquest is not allowed to determine issues of civil (or criminal liability).

In short, practitioners must advise their clients to treat inquests as a “dress rehearsal” for a civil claim. Coronial proceedings are not adversarial, and different rules of procedure and evidence apply to the High Court. Nonetheless, what goes around in an inquest is likely to back come around in a group action and other subsequent civil proceedings.

Endnotes

¹ The restrictions in Rule 15 are that (i) there is a statutory or legal prohibition on disclosure (which may cover privileged material shared only with the coroner); (ii) the consent of any author or copyright owner cannot reasonably be obtained; (ii) the request is unreasonable; (iv) the document relates to contemplated or commenced criminal proceedings or the coroner considers it irrelevant to the investigation.

² https://assets.publishing.service.gov.uk/media/68c92621de855c02ab517b3d/Duty_of_Candour_Fact_Sheet.pdf

³ From a search of the Westlaw primary references for those cases.

ABOUT THE AUTHORS



Tim Green KC

Tim Green KC has for many years been recognised by the legal directories as an exceptional advocate and highly trusted advisor practising in all areas of product liability and crisis management work.

View Tim’s profile [here](#).



Julie Leenane

Julie is currently in pupillage at Henderson Chambers. She is interested in developing a broad practice in line with chambers areas of expertise.

View Julie’s profile [here](#).