

INQUEST BRIEFING ON COVID-19

Protecting people in places of custody and detention

23 March 2020

About INQUEST

INQUEST is the only charity providing expertise on state related deaths and their investigation to bereaved people, lawyers, advice and support agencies, the media and parliamentarians.

Our specialist casework includes deaths in prison and police custody, immigration detention, mental health settings and deaths involving multi-agency failings or where wider issues of state and corporate accountability are in question. This includes work around the Hillsborough stadium football disaster and the Grenfell Tower fire. INQUEST's Executive Director, Deborah Coles, sits on the cross-government Ministerial Board on Deaths in Custody and is a member of the Independent Advisory Panel on Deaths in Custody.

INQUEST will continue to support bereaved families, at a time when essential post death investigations and inquests are subject to disruption and delay. Alongside this, our team will be monitoring the situation as it unfolds and adapting our services and advice to families whose loved ones die in the coming days and months in custody and detention settings – from both COVID-19 and non-COVID-19 related deaths.

The INQUEST team will not waiver from our commitment to standing shoulder to shoulder with families in the search for truth, justice and accountability following contentious state related deaths.

In this briefing, we outline immediate areas of concern in relation to the COVID-19 (coronavirus) pandemic and our areas of expertise. These are not intended to be exhaustive and will be kept under review in consultation with families, lawyers and our wider partners in the coming months.

Introduction

People detained in custodial and mental health settings across the country must not be forgotten during this pandemic. This is an unprecedented public health crisis. Just as the government's response in the community seeks to protect the health and lives of the most vulnerable, so should its response within custodial and detention settings. Protecting the human rights of detainees must be central to this.

Unlike people in the community, people in detention are totally dependent on the state for their treatment and care. They can be subject to the use of force, segregation and compulsory treatment. Overcrowding, overstretched services, other existing pressures and the nature of detained populations mean that those held in and working in detention are particularly vulnerable. There are already confirmed and many unconfirmed reports that the

virus is well established in various prisons. The same issues will inevitably arise in other detention settings. Unless a radical and swift action plan is put into operation, the impact of this virus on detention settings will be catastrophic, with many preventable deaths.

It has been reported by the [Guardian](#) that epidemiologists estimate that up to 1% of people in prison could die if the coronavirus spreads across the estate, resulting in 800 deaths. This is an alarming figure and raises questions about the safety of people in other hidden detention settings such as mental health, immigration detention and learning disability settings. Andrew Hayward, professor of infectious disease epidemiology at UCL, who is also on a government national advisory committee for tackling coronavirus, said: *“One of my main concerns is that we’ve not really got to grips with the likelihood of big outbreaks in institutional settings.”*

The government must act decisively to urgently reduce the number of people in custody and step up plans to protect and treat people held in all detention settings from the direct and indirect effects of the Coronavirus. Government must be open and transparent about infection rates, conditions and deaths in custody and detention as the situation unfolds.

INQUEST also notes the publication of the Coronavirus Bill passing through parliament in the coming days. Like many other NGOs we have serious concerns about the escalation of coercive powers of police and immigration officers to detain. We are also closely monitoring the proposed provisions to diminish protections for people detained under mental health legislation, and changes to death certification, notifications and inquest processes; as well as the impact of the Bill may have on adult social care (and children transitioning to adult services) and meeting care and support needs.

Human Rights obligations

External scrutiny of places of detention is becoming seriously restricted. Inspection and monitoring bodies, who have duties to protect the rights of detainees and ensure safe conditions, are having to suspend visits. In these unprecedented times, it is more important than ever that the State upholds its domestic and international human rights obligations. The harms of COVID-19 will be compounded if the government’s response ignores human rights obligations, and allows hundreds, possibly thousands of vulnerable people to suffer and die as a result.

Article 2 (the right to life) and Article 3 (the prohibition of torture and inhuman and degrading treatment) place obligations on the state to protect the rights of those in custody and detention. This includes a duty to ensure an effective and independent investigation where someone dies or suffers serious harm, in order to establish whether it was as a result of the acts or omissions of the state authorities. These obligations must remain at the forefront of institutions responses.

Detained people are entirely reliant on the state for their safety. They cannot choose to self-isolate. Budget cuts across the public sector alongside long-term issues have already resulted in poor conditions and levels of care, intensifying pre-existing risks to safety and life. In prisons and other detention settings, current conditions could constitute a danger to

life, in particular, unsanitary conditions such as a lack of access to articles needed for personal hygiene, and a lack of appropriate ventilation.

Action is urgently needed to protect the safety and health of people in detention, in order to protect their rights. INQUEST's recommendations to this end are outlined below.

Deaths in detention

The UK Government and health officials have highlighted the risks posed by the virus to those with particular vulnerabilities: people in care home settings, those over 70, those with pre-existing health conditions, and pregnant women. The focus has, rightly, been on protecting the lives of the most vulnerable. The same standard must be applied to those in prisons, police custody, immigration detention centres or mental health and learning disability settings; where there are particularly high levels of need and vulnerability. Many people are deeply concerned about the wellbeing and safety of friends and family held in detention settings, living in close proximity, with high incidences of chronic health conditions, and unable to distance themselves from others.

Through our casework with bereaved families, we have a unique insight into the high numbers of preventable deaths across detention settings. These deaths occurred prior to the significant risks posed by COVID-19. Deaths often reveal neglect and systemic failures in mental and physical healthcare and treatment, experienced by people who often have existing complex social, health and economic needs.

- **Prisons:** [INQUEST's recent report](#) (January 2020) describes the current situation as a 'national scandal' revealing longstanding failures across the prison estate and historically high levels of deaths in custody. Every four days a person takes their life in prison, and rising numbers of 'natural' and unclassified deaths are too often found to relate to serious failures. [Ministry of Justice](#) figures show that in the 12 months to December 2019 there were a total of 300 deaths in prison.
- **Mental health settings:** In the year 2018-19 the [Care Quality Commission](#) reported 195 deaths of detained mental health patients. With many more deaths of non-detained and voluntary mental health patients, this figure is just the tip of the iceberg.
- **Learning disability residential settings:** [In 2019](#), there were 959 unexpected deaths of people in residential social care settings with a learning disability or autistic spectrum disorder.
- **Immigration detention:** [In 2018](#) there were two deaths of immigration detainees and in 2019 there was one. [The year 2017](#) saw the highest number of deaths of immigration detainees on record, with a total of 11 deaths of those held in immigration detention, prison, during deportation, or within four days of leaving detention.
- **Policing:** In 2018/19, the [Independent Office for Police Conduct](#) recorded a total of 276 deaths during or following police contact.

Without immediate action to implement safety measures alongside efforts to reduce the number of people in some custody settings, the already unacceptable numbers of people dying, will rise.

Protecting lives during the pandemic

Key considerations to protect lives during the COVID-19 pandemic are as follows:

- 1. The right to life:** The government owes a duty of care to people in custody and must work to protect the lives of staff and detainees. All people in custody are entitled to be treated with dignity and be able to access the full range of protections available in the community. Article 2 (the right to life) imposes a positive obligation on state agencies to protect the lives of those who are detained from any foreseeable danger, such as COVID-19.

The procedural obligations under Article 2 mean that deaths in detention require an independent, prompt and effective investigation, capable of establishing the cause of death and if the death was as a result of the acts or omissions of the State authorities. These obligations must remain at the forefront of institution's response in these unprecedented times. The authorities must take reasonable steps to implement and facilitate post death processes, including:

- the proper retention of physical and documentary evidence and other relevant materials including CCTV, recorded and secured;
- the identification of witnesses and gathering of initial accounts;
- taking of photographs or video evidence;
- special care to retaining personal belongings.

This will allow proper and effective investigations to take place in due course even if subject to delay. The next of kin must be treated with dignity and respect not least at a time when post death rituals will be restricted, and consideration must be given to how best to respect various cultural and religious post death rituals. Families are entitled to effectively participate in the investigative process and should be kept informed as to progress. It is essential that these requirements are not forgotten in favour of remote hearings.

- 2. Inquests, investigations and post death processes:** Inquests are the primary means by which the state discharges the duty to investigate a death under Article 2. If deaths should occur as a direct result of the virus, indirectly through limited access to healthcare, or in detention in ways unconnected to the virus, then it is vital that that there is full transparency in post death investigations, including when inquests take place.

The emergency Coronavirus Bill states that COVID-19 deaths will not be a 'notifiable' disease and so will be excluded from the scrutiny of an inquest jury. While INQUEST considers that the suspension of jury inquests for COVID-19 deaths is reasonable in the circumstances, it is vital that deaths occurring during this period are subject to proper, effective external investigation and scrutiny.

Deaths in detention which are not related to COVID-19 at this time must be subject to the investigative standards that Article 2 requires. While there may be delays in eventual inquests taking place, it is vital that investigations are robust and thorough. Specific attention should also be given to 'natural cause' deaths in detention which may or may not be attributable to COVID-19, but which may be premature due to poor conditions, system provision, lack of access to adequate healthcare or government response. In these cases, there need to be sufficiently broad inquests to properly address these issues where relevant.

A register should be kept of all COVID-19 related deaths in detention settings so that consideration can be given to a thematic understanding of the extent to which the institutions were capable of responding to the virus, as detailed above.

The Ministry of Justice should continue to share 'Death in Custody' notifications with stakeholders. Other agencies such as the Department for Health and Social Care, Care Quality Commission and Home Office, should act similarly, so that there is openness and transparency about deaths occurring in all places of detention.

In these difficult times **clear leadership and direction is required from the Office of the Chief Coroner**. The Chief Coroner must provide formal guidance for coroners on processes relating to custodial deaths, the need for pre-inquest investigations to continue as far as possible (including through liaison with investigative bodies such as the Prison and Probation Ombudsman (PPO) and the Independent Office of Police Conduct (IOPC)), and the way in which coronial investigations in COVID-19 cases should be conducted.

The ongoing suspension of jury inquests and other complex inquests requiring attendance of key medical staff is reasonable and necessary. However, this will inevitably cause a significant backlog in the system. There will need to be forward planning as to how to reduce this backlog when the health and safety risks posed by the virus cease.

For all deaths in custody and detention reported to the coroners' service during this period there needs to be timely information to bereaved families about the death certification process, post-mortems, and where to go for specialist advice and support.

INQUEST are aware of relevant adjustments being made on how the PPO investigates deaths in prison (e.g. by requesting early self-taken statements by members of staff, interviews by video link, etc) and subject to delay. This is likely to be the same for deaths investigated by the IOPC. Deaths in mental health settings already receive limited public reporting and scrutiny, and are not subject to independent investigations. However, it is essential that adaptations to post-death investigations do not dilute the core minimum standards for such investigations. They must, for example, ensure the proper retention of evidence and other relevant material, the identification of witnesses and the gathering of initial witness accounts.

- 3. Prisons and immigration detention centres:** Conditions in many prisons and detention centres are known to be unsanitary, with lack of access to basic cleaning products and hot water. This means that many people will not be able to protect themselves from the spread of the virus, against a backdrop of already limited access to healthcare and medication. It is not sustainable to continue to warehouse people in dangerous conditions, posing a risk to the health and wellbeing of both prisoners and staff.

More restricted regimes as a result of COVID-19, leading to increased isolation, anxiety and uncertainty, alongside restrictions on family visits and potentially more oppressive conditions, also raise concerns about the risk of self-inflicted deaths and self-harm across detention. It is vital that observations, monitoring and provision of emotional support is made available.

An immediate solution would be enacting practical measures to rapidly decrease populations across some detention settings. For this to happen, the government must develop plans for access emergency accommodation, finance and support from charities and key workers. This would ease pressures and minimise risks posed by the virus.

INQUEST proposes that consideration should be given to the following measures:

- a) **An immediate release of all those held in immigration detention centres**, in line with recommendations [made in the British Medical Journal](#) by key health professionals in the field.
- b) **Relieving the pressures within prison system by closing child prisons** (Secure Training Centres and other facilities holding children) as soon as practicable.
- c) **Prompt release into the community and relevant support services for women in prison**, alongside increased funding for women's centres and other specialist support services as a priority.
- d) **Dramatic reduction of the population across the rest of the prison estate**, with consideration of options to release all those who safely and reasonably can be. This should be done with input from (and funding provided to) community and voluntary sector services providing support for people on release. Nobody should be released into destitution or poverty or faced with a lack of health and welfare support.

- 4. Mental health and learning disability settings:** INQUEST casework has repeatedly revealed shortcomings in care provided to people in mental health and learning disability care settings. As the NHS and care providers are likely to face unprecedented pressures, it is imperative that the human rights of detained patients are protected. Patients must be kept safe and options should be explored to ensure people are released back into the community with the necessary financial, practical and emotional support in place to allow for a safe transition.

- 5. Visiting arrangements and contact with relatives and friends:** Efforts to stem the spread of the virus within institutions will result in even longer periods of time in cells and isolation for people who are already cut off from loved ones and the wider community. Action is required to allow for those in detention to retain contact with each other, and with friends and family via the use of phones and other technology. This could involve special allowances for free phone-calls or increased phone, credit skype/video calls - and in some cases, the provision of mobile phones.

- 6. Access to justice for those in detention:** To ensure access to justice for those in detention at a time when the criminal and civil courts are still operating and internal prison hearings such as parole and disciplinary hearings are taking place, there needs to be increased access to confidential phone calls and enabling non state agencies to use for example video conferencing facilities. At a time of reduced scrutiny of closed institutions access to lawyers and advice services are a vital lifeline.

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