

## APPLICATION TO THE COMMITTEE

### Nature of application

1. The Assistant Deputy Coroner for Teesside applies to be paid for the days past and future sitting in the Teesside Coroner's Court.

### Credit Crunch Times

2. At the outset I fully recognize that presently all councils have difficult choices to make. Limited budgets have to be set against the duty to provide services and still maintain best practice in all areas. Asking for money in such circumstances is rather like announcing a wedding engagement at a funeral. However, what a reading of this application should do is to demonstrate that the additional funding required would be proportionately small. It would enable Middlesbrough, Stockton and Redcar & Cleveland Councils to adopt a modern approach. It will allow the Councils to comply with the latest legislative proposals. It would also allow the Councils to distance themselves from anachronistic and ethically questionable practices.

### Background

3. The committee will be aware of the vital role that the coroner performs.
4. The work of the Coroner is substantially set out in the Coroners Act 1988 and the Coroners Rules 1984. An inquest must be held in the following situations;
  - Where there has been a violent or unnatural death,
  - Where there has been a sudden death the cause of which is unknown,
  - Where there has been a death in prison or other such place or circumstances that requires an inquest

5. An inquest must determine answers to the following questions:
  - Who the deceased was,
  - How, when and where the deceased came by his death,
  - “How” is often referred to as the ‘verdict’ (neglect, accidental death, suicide etc.)
  - The particulars for the time being required by the Registration Acts to be registered.
  
6. Inquests are opened so that the family can give identification evidence and receive burial certificates and interim death certificates. This is referred to as an “opening”. Thereafter witness statements will be taken and further evidence will be gathered. The adjourned inquest will then be brought back. All the witness evidence will be considered at that “adjourned hearing”. It is at this stage that the 4 questions referred to above will be answered. What this means in practice is, for example, that if a patient in a residential home has a fall and fractures her femur, she will have to go to hospital. Often due to her age and injury, the patient will be immobile. Within days or weeks she may develop complications and suddenly die. In the normal course of events she should not have fallen or died. A post mortem may be ordered by the coroner to establish what the cause of death was. Thereafter, the matter will eventually conclude with a court hearing. A family member usually gives identification evidence. Residential and medical staff then give evidence about treatment and questions may be put to them to establish what procedures were in place and whether they were appropriately followed. The pathologist will also usually give evidence as to what caused the death and hopefully exclude other potential competing possibilities. Following the evidence, the coroner will then endeavour to answer the 4 questions based upon what has been heard and read. Importantly, this hearing may be the only time that the family will have to ask questions concerning the treatment of and death of their relative. Recent case law about lawyers’ funding and the requirements of the Human Right Act mean

that solicitors and barristers often attend on behalf of families or employers or councils.

What role is played by the council?

7. It is the council that is required as a matter of law to appoint the coroner of its district and pay the coroner an annual salary. In effect, under the 1988 Act, the council is required by Parliament to fund its provision of its coroner's services in this respect. The council also provides for the payment of the deputy coroner.

Where does the Assistant Deputy Coroner fit in?

8. Every coroner is obliged by law to appoint a deputy coroner. The deputy sits when the coroner cannot reasonably sit. The coroner may also appoint an assistant deputy coroner. The assistant deputy has to be approved by the Chairman of the local council in order to be appointed. The assistant deputy will sit when it is not reasonable for the deputy to sit. The deputy coroner for Teesside is a busy litigation partner within a local solicitor's firm. He strives to fit in as much sitting time as he reasonably can, but of course there will be many days when it is not practical for him to preside over inquests. Equally, the coroner sits as much as he can but there will be an overlapping workload, administrative and domestic reasons which prevent him from presiding over some of his work. As far as possible, inquests are arranged for the convenience of those witnesses who attend. So if the case involves a post-operative death involving 5 registrars and/or consultant surgeons and has to be set down for a date when neither the coroner nor his deputy can do it, the assistant deputy will step in. The Committee may remember that it was the assistant deputy of Oxfordshire that presided over the majority of the army deaths arising in Iraq.

9. The fact that the Chairman has seen fit to approve my appointment shows that the Council recognizes the need for the position of the assistant deputy to be filled. So far this year 239 "adjourned hearings" have been completed and 245 "openings" have been done. So that is a combined total of almost 500 hearings from 01.01.09 to 27.10.09. I have sat on 14 occasions between 23.02.09 - 27.10.09 and dealt with a total of 62 separate hearings (43 adjourned hearings and 19 openings). So I have conducted about 13% of the court-based caseload in a fortnight.
  
10. The Ministry of Justice also recognizes that there ought to be a streamlined system of appointing (further) assistant deputy coroners in the eventuality of a 'flu pandemic, (see generally "Pandemic influenza Guidance on the operation of the coroner system in England and Wales" dated May 2009). The committee will also be aware that the whole ethos of justice is all about speed and efficiency. Clearly if all our local cases are only being conducted by 2 rather than 3 judicial officers, constituents' deaths would take much longer to be the subject of inquiry. And delay results in criticism, whether it be in the media or elsewhere.

#### Payment of the assistant deputy's fees

11. The sitting fees of the assistant deputy have traditionally been the subject of "local agreement". Either the council pays the assistant deputy or the coroner pays him out of his own pocket. It is understood that throughout Yorkshire, all those councils that have assistant deputy coroners pay for those assistant deputy coroners. Take Doncaster as an example: a council that is smaller than Middlesbrough, Redcar & Cleveland and Stockton has 3 assistant deputy coroners. It pays all 3 of them.

12. There are very good and cogent reasons why councils do not let their coroners pay their assistant deputies;
- No other judicial system in this country proceeds in such a way,
  - The system of the coroner paying the assistant deputy is positively feudal and harks back to a time of squires paying their retainers,
  - If a 'flu pandemic were to occur, the assistant deputy's workload would bankrupt the coroner under this old fashioned system,
  - The assistant deputy coroner is an officer of the crown, independent of the coroner and cannot be 'told what to do' by the coroner. If the coroner is in charge of the purse strings then this erodes that independence,
  - There will be times when the coroner cannot sit on a particular case because he knows one of the witnesses. (This is common in our district.) Justice cannot be seen to be done if the assistant deputy coroner sits on a case on the basis that he is independent, when in fact the very person who has recused himself from the case is paying him,
  - The Councils' constituents should be able to expect 'best practice' from their coroner's services. The present position is untenable and is an anachronism.
  - Parliament has recognized that this system is arcane since in the current Coroners & Justice Bill it not only requires councils to pay their assistant coroners; it prohibits a senior coroner paying his assistants.

Amount of fees requested

13. The Councils may find it beneficial to consider what other part-time judicial officers are paid:

*Deputy District Judges* (who conduct less important County Court work) = £468/day

*Recorders* (who sit as circuit judges in the Crown and County Courts) = £583/day

14. Then there are comparable barrister's fees that local authorities pay in respect of Children Act care cases. The following are broad indications of fees charged by barristers to local authorities in this area:

Emergency Protection Orders (times vary)	£250-£500
1 <sup>st</sup> Directions Appointments (generally about ½ hr)	£175-£250
½ day Interim Care Hearings	£250-£500
1 day Interim Care Hearings	£350-£650
1 day Final Hearings (listed to settle, generally ½ day)	£350-£650
1 day Final Hearing (not listed to settle)	£350-£750

15. I would invite the committee to agree a fee of £350 (+ vat) for each day that I sit as the assistant deputy coroner. This would properly reflect the preparation time required in advance of the day's sitting and the court time itself. This fee would also take account of the form filing after the day's sitting. I genuinely believe that this is an expense that will aid the Councils' provision of services and keep abreast of the latest legislative developments from Parliament.

Sam Faulks

Assistant Deputy Coroner for Teesside

30.10.09

R F CURTIS  
H M DEPUTY CORONER  
SOUTH YORKSHIRE (East District)



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29 October 2009

Mr S Faulks  
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Dear Mr Faulks

I refer to your telephone conversation with me a few days ago when you asked about my experience as Deputy Coroner in connection with payment of Deputies and Assistant Deputies.

I have been Deputy Coroner for the South Yorkshire East District since a date in or about 1974. I was Deputy to Kenneth Potter for approximately 18 years and subsequently was Deputy to Stanley Hooper for a further period of 18 years. Kenneth Potter was my partner for a short time but Stanley arrived to the full time post in 1991 and was never associated with any local firm. I agreed to act as his Deputy.

I have always received the usual Deputy's salary which is approximately 11.5% of the full time Coroner's salary and that has never been a matter for any dispute with the Local Authority. Further, I have always been paid travelling expenses and other occasional expenses that have arisen in connection with my appointment as Deputy Coroner. However, the Assistant Deputy Coroner who for many years was my former partner, Peter Gore was never paid. The outcome was that when Kenneth Potter or Stanley Hooper were not available and I was indisposed (e.g. involved in some litigation in some court or other) Peter Gore would step in and do whatever was necessary. However, he was never paid and neither Coroner offered to pay him and accordingly I used to pay him for such work that he did. In the early years he was asked to undertake duties on perhaps four or five occasions in any one year, but latterly on rather more occasions as the time spent on coronial work has increased tremendously, particularly as a result of greater public awareness and the arrival of European Law considerations.

As Deputy I found that from about the turn of the Millennium I was being asked to do rather more and I undertook this without question as I enjoyed the work and, perhaps, I was imbued with the old fashioned notion of public service. Nonetheless, by about 2003/04 I was increasingly aware of the fact

that other jurisdictions were paying various supplements to Deputies and more particularly, were paying Assistant Deputies upon a session basis. Accordingly I began to consider canvassing the Local Authority on this situation but it was not until 2006 that I first broached the issue on a very informal basis. There was no reaction. Accordingly I entered into correspondence with the individual responsible for Coroner's staff and pay at the Local Authority and had an exchange of correspondence and several friendly meetings where, I believe, it was agreed that payment of Assistant Deputies in principle was realistic and possibly even necessary in order to attract Assistant Deputies of the right calibre. However, there were long delays between the letters written and the replies received and even longer delays between the meetings and by late 2006/early 2007 it became increasingly clear that nothing would happen during the tenure of the then Coroner, Stanley Hooper as the Local Authority used the potential appointment of a new Coroner as the reason for deferring a decision.

In the meantime I gathered considerable evidence of payment of Assistant Deputies in other jurisdictions and I brought some of this evidence to the attention of the Local Authority on behalf of both Peter Gore and myself. I think it is fair to say that every major jurisdiction within the Yorkshire and Humberside area pays Assistant Deputies on a session basis and currently my understanding is that the lowest daily rate is in the region of £340.00, the highest rate nearer to £400.00. On a half day basis payment is usually in the region of £200.00. Further, Assistant Deputies are dealing with signings as opposed to inquests would normally be paid in the region of £50.00 and some jurisdictions pay for on-call duties during weekends and bank holidays. I have heard a mention of a figure of £175.00 for being on call over a weekend from Friday afternoon until Monday morning. One other feature drawn to my attention recently is that some jurisdictions now pay for the attendance of Assistant Deputies and Deputies at courses run by the Ministry of Justice for Coroners. Assistant Deputies in the same jurisdictions are also pressing for additional payments in respect of preparation time, as they make the point that if a long inquest is handled by an Assistant Deputy then inevitably there is extensive preparation possibly on more than one day. I am not sure that others have succeeded in getting this kind of payment.

So far as other parts of the country are concerned, there is absolutely no doubt that payment of Assistant Deputies is common place and when I have told senior members of the Coroners' Society that South Yorkshire (East District) did not pay Assistant Deputies that has generally brought comments to the effect that this jurisdiction was way behind the common practice throughout the land.

Assistant Deputies are, as I have indicated, paid throughout all the major jurisdictions in this part of the world and they are extensively used, particularly by the Coroners in the larger jurisdictions of which yours must be one. In Lancashire Assistant Deputies are even more extensively used and the level of pay for them there is very much at the upper end.



If you have not been paid then this is wholly exceptional. Assistant Deputies have been paid in this jurisdiction since the arrival of the new Coroner at the beginning of 2009 and that has simply brought us into line with common practice elsewhere. I am not sure how any Local Authority can expect a Coroner to discharge his or her duties properly in 2009 without the help of paid Assistant Deputies. Things have changed dramatically in the last few years and the pressure of work and the time spent on that work has increased.

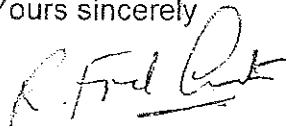
You may wish to refer your Local Authority to Section 23 of the bill currently before Parliament which, in my view, clearly provides for proper payment for Coroner's staff including Assistant Deputies, as well as requiring proper consultation with the Coroner on this kind of issue.

As I indicated, Assistant Deputies are now paid in this district, but the previous Assistant Deputy was not paid for over 25 years and I do believe that that was a grave injustice. He himself began to recognise the injustice of the situation and that coupled with other matters eventually resulted in his resignation. The Coroner in this jurisdiction now has the benefit of three Assistant Deputies who are used relatively frequently.

Finally, it is worth remembering that most of the Assistant Deputies have office expenses elsewhere and will give up well remunerated work on the days they deputise for a Coroner.

Please let me know if I can help further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. F. Curtis', written over a horizontal line.

R F Curtis  
HM Deputy Coroner  
South Yorkshire (East District)

