

## **Note for trusts and foundation trusts on legislation and guidance setting out their duties in relation to coroner inquests**

We outline the current legislation and guidance in relation to how NHS trusts and foundation trusts and individual clinicians must act with regards to coronial processes.

In general, all relevant information must be shared with coroners to ensure that they can carry out their statutory duties to investigate certain deaths; that is, to ascertain who has died and where, when and how.

### **Coroners and Justice Act 2009**

Schedule 5 of the Act gives coroners the power to compel the production of documents or other evidence by giving written notice. Failure to comply with the notice without reasonable excuse may attract a fine of up to £1000.

Under Schedule 6 of the Act, it is an offence for a person to “do anything that is intended to have the effect of (a) distorting or otherwise altering any evidence, document or other things that is given, produced or provided for the purpose of an investigation... (b) preventing any evidence, document or other thing from being given produced or provided for the purposes of such an investigation, or to do anything that the person knows or believes is likely to have that effect”.

Additional offences are intentionally suppressing or concealing a relevant document; altering or destroying such a document; giving false oral evidence.

These offences apply where there is an intention to distort the evidence and they are punishable by a fine and/or imprisonment for up to 51 weeks.

### **Common law**

The Act does not remove or alter the powers of a coroner under the common law to summon witnesses, require evidence to be given or punish for contempt of court. Coroners continue to enjoy these powers.

### **Duty of candour**

Regulation 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 imposes a legal duty of candour on trusts to act in an open and transparent way where a notifiable safety incident has occurred. This duty includes providing an account of all the facts known about an incident to relevant persons and

making a written record. It also sets an expectation that trusts will have policies and procedures in place to support a culture of transparency and openness.

The Care Quality Commission now inspects a trust's compliance with this regulation and failure to comply is a criminal offence.

### **Professional codes of practice**

Trust staff who are called to give evidence must observe any professional duty they are under through membership of their professional body.

The Nursing and Midwifery Council Code requires nurses and midwives to co-operate with all investigations and audits, and to be open and candid with service users about all aspects of care and treatment, including about any mistakes made in their care or harm done to them.

The General Medical Council's *Good medical practice* and supporting guidance includes clear requirements for medical doctors to co-operate with formal inquiries, including coronial inquests, to be honest and trustworthy when giving evidence, and to make sure any information they give is not false or misleading.