Still-births; time to pass responsibility to Coroners? Judy Dawson discusses

On 17th May this year I discussed the Court of Appeal decision in the tragic case of *R (on the application of T) v HM SENIOR CORONER FOR THE COUNTY OF WEST YORKSHIRE (2017) EWCA Civ 318* in which the Court of Appeal were asked to deal with an application for judicial review of two decisions of the West Yorkshire Coroner; first to hold an Inquest into the death of a baby who may or may not have been born alive and second not to grant an anonymity order to the baby's mother. **[please insert link]**

The Coroner was faced with a teenager who claimed that she given birth alone and the baby had showed no signs of life after birth. This caused considerable difficulties as if her evidence was both honest and accurate (and she was non-medically-qualified, appeared on the face of it not to have conducted any form of examination of the baby, was in a highly stressful situation having just given birth, and had significant reasons to lie if the baby had in fact been born alive) there would be no power for the Coroner to hold an Inquest (as was being argued before the Court of Appeal on her behalf). The Coroner's decision to hold an Inquest in those circumstances, to decide amongst other matters whether the baby had in fact been born alive, was upheld

Such difficulty arose because of the clear understanding in England and Wales that a Coroner does not have the power to hold an Inquest where a child has been still-born. If a child is born alive and lives for just a few seconds, an Inquest can be held and a full investigation is thus carried out into the reasons for the death. If a child dies a few seconds before it is born however, the parents have no right to an Inquest.

This differs from the law in Northern Ireland which the Court of Appeal dealt with in great detail in the case of *Attorney-General for Northern Ireland and Siobhan Desmond v Senior Coroner for Northern Ireland [2013] NICA 68*. The Court of Appeal had to rule whether the Coroner had the power to hold an Inquest in the case of a still-born baby. Due to the provisions of the law in Northern Ireland it was very clear that it had been intended that an Inquest was to be held in these circumstances as the provisions governing when juries should be utilised included the circumstance where it appeared to the Coroner that the deceased person came to his death by [a list of criminal offences including] "child destruction". As such offence could only be committed where a baby had been still-born, it was clear that the definition of "deceased person" extended to a foetus in utero that was capable of being born alive. There was no such similar provision in the law of England and Wales.

The announcement by the Secretary of State for Health about further investigations into still-births was trailed on some news outlets as being likely to include an extension of Coroner's powers to investigate such deaths. In fact, he failed to do so, announcing instead that the Healthcare Safety Investigations Branch (set up earlier this year) would investigate and report on cases of still-born babies. In many people's view this missed a valuable opportunity to assist bereaved parents. I note the detailed and reasoned position statement by SANDS (the Still-Birth and Neonatal Death

charity) that calls for parents to be able to request an Inquest if, after any review has been carried out, they remain unhappy with the outcome;

1) An inquest is widely (and rightly) regarded as a detailed investigation which is wholly independent of those bodies which may be criticised; it is unlikely that bereaved parents will have the same confidence in an investigatory body set up by government;

2) Indeed, if one follows the SANDS position statement, the Inquest would only be convened at the request of a parent at the conclusion of all other investigations thereby preventing a "floodgates argument", a massive increase in costs and a system whereby a grieving parent who did not want further formal processes was forced to endure it;

3) A duty on a Coroner to hold an inquest would have avoided the situation which arose in the case cited at the beginning of the article where the right to an Inquest is dependent on when exactly a baby lost its life which can in some situations be difficult (if not evidentially impossible) to ascertain (albeit in that case it was very clear that the young mother would not have requested the inquest as she was actively trying to prevent the same). There is anecdotal evidence of parents feeling that their baby was labelled still-born to avoid a subsequent inquest; this is quite possibly a question of perception rather than reality but it is an extremely upsetting perception which could have been removed;

4) A bereaved parent whose baby died a few seconds, a few minutes or even a few hours before it was born has the same emotions, questions and grief as the bereaved parent whose baby died a few seconds, a few minutes or even a few hours afterwards. It is artificial and upsetting to restrict the right of an Inquest to only one group.

As is often the case with any change in the law having unwanted consequences, there is a worry that an extension to still-born babies may extend coronial law into an area in which it does not wish to trespass (in particular the rights of mothers versus unborn children, and the abortion debate). In Northern Ireland, the right to an Inquest is extended to a foetus which was capable of being born alive at the time of death. It would be wrong not to accept that such extension could cause difficult issues in a world where a baby is counted as being "still-born" if it is delivered at just 24 weeks. The advancement of medical science is such that a foetus that young might be capable of being born alive, even if it were for a very short time. The calls for an Inquest from pressure groups into the death of (for example) a severely disabled foetus which would only live a few hours after birth and had been terminated at a late stage would immerse a Coroner in ethical and medical issues that would be a far remove from what the parents of healthy babies unexpectedly still-born are trying to achieve. It may be that it was this which persuaded Jeremy Hunt not to extend coronial law in this regard. The SANDS suggestion (that such Inquests would only be granted at the request of a parent unhappy with the outcome of any other review) may be a sensible compromise which would avoid this problem (albeit it could potentially be used as a tool between

warring parents) however it seems to be at odds with the coronial law emphasis on the rights of the deceased person to have a proper investigation into their death to award the “right of an Inquest” to be exercised only by a third party. Whilst a Coroner will often take the wishes of the family into account, his or her duty to hold an Inquest does not arise only when a family member specifically requests the same.

In conclusion, the decision by Jeremy Hunt not to extend inquests to still-born babies are not as surprising as it may first appear, although it will still cause much heartache to bereaved parents searching for answers. It is notable that the Court of Appeal decision I cite at the top of this article may be authority that where there is any doubt whether a baby was in fact still-born rather than dying a few seconds after birth, an Inquest should be held.

Judy Dawson represents both families and corporate clients at inquests, utilising her technical knowledge and her detailed cross-examination skills in a sensitive manner, necessary to secure the best results.