

IN THE MATTER OF

THE LOCAL GOVERNMENT PENSION SCHEME

THE CORONERS AND JUSTICE ACT 2009

AND

ASSISTANT CORONERS

--

NOTE

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1. This note addresses shortly (and therefore not definitively) an issue raised in relation to the question who is the “employer” of Assistant and Deputy Assistant Coroners for the purposes of the the Local Government Pension Scheme (Administration) Regulations 2008 (the 2008 Regulations).¹
2. I have seen an exchange of emails over the 10th and 11th October 2017 between two officers of the Local Government Association Pensions team - Terry Edwards Senior Pensions Adviser and Jeff Houston, Head of Pensions – in which the question as to how Regulation 9(4) of the 2008 Regulations would have applied.
3. That Regulation defines by whom a Coroner is to be treated as being employed and says –

“9(4) If a coroner is an active member, he must be treated –
 (a) if appointed by a local authority, as being in employment with that local authority; or
 (b) if appointed by the Common Council of the City of London, as being in employment with that Council.”

4. To address this issue it is necessary to look at the Coroners Act 1988 (the 1988 Act) which at the relevant time would have still been in force.
5. By section 6 of the 1988 Act it was provided that –

6.— Appointment of deputy coroners.

(1) Every coroner—
 (a) shall appoint as his deputy a person approved by the chairman of the relevant council; and
 (b) may appoint as his assistant deputy a person so approved.

(2) A coroner may at any time revoke an appointment made under subsection (1) above; but a revocation of an appointment made under paragraph (a) of that subsection shall not take effect until the appointment of a successor to the deputy has been approved by the chairman of the relevant council.

(3) The following, namely—
 (a) every appointment made under subsection (1) above; and

¹ SI 2008/239.

(b) every revocation of an appointment made under paragraph (b) of that subsection, shall be in writing under the hand of the coroner; and a copy of every such appointment or revocation shall be sent to the relevant council and be kept with the council's records.

(4) Subsection (1) of section 2 above shall apply in relation to the office of deputy or assistant deputy coroner as it applies in relation to the office of coroner; and subsections (2) to (4) of that section shall apply in relation to, or to persons holding, the office of deputy coroner as they apply in relation to, or to persons holding, the office of coroner.

(5) In this section "chairman", in relation to the Common Council, means the Lord Mayor.

6. I can see immediately that this provides for the Coroner to appoint his or her Deputy and Assistant Deputy.
7. However any such appointment is subject to the approval of the Chairman of the relevant council who will usually be the Mayor. Obviously in exercising the power to give or withhold approval the Chairman/Mayor is acting on behalf of the relevant council.
8. In my view it is possible to argue that the Coroner in making these appointments of a Deputy and Assistant Deputy is only exercising powers which he or she has by virtue of his initial appointment and that these powers are expressly subject to the Council's control in the manner set out above.
9. In short I consider that there was an argument that the provisions of Regulation 9(4) applied to this class of sub-appointment as it did to the Coroner's own appointment.
10. I accept that this is not explicitly stated but it does seem to be the logic of this Regulations when read against the 1988 Act.
11. As this is both historic and not a concluded view I have not put this in my Revised Opinion. I am willing however to explore this further if and when it is considered necessary.

ROBIN ALLEN QC

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23 October 2017