



APIL briefing: Judicial Review and Courts Bill - Part Two Chapter Four: Coroners – House of Commons Report Stage – January 2022

Missed opportunity to support bereaved families

It is difficult for most of us to imagine what it must be like to lose a loved one because of an incident which could have been avoided. When it does happen, families go through what is probably the most difficult time of their lives. They need support to help them through it, but they also need answers about why their loved one was killed. A coroner's inquest can be vital in revealing those answers. The bereaved family can have a very important part to play in ensuring an inquest reaches an accurate and fair conclusion. It is also important for bereaved families to be involved in inquests so they are able to hear, first hand, what happened, which can be a critical factor in helping bereaved people find closure and ultimately to try to move on in their lives. Such involvement, however, comes at a price, and it is a price that many bereaved families cannot afford to pay.

This Bill, therefore, should be amended to ensure legal aid is available for families at inquests where public authorities are legal represented. Legal representation can be a critical factor in helping families through inquests, which they can often find complex and difficult to understand, but many families cannot afford this help. Without changes to the legislation, the Judicial Review and Courts Bill will be a missed opportunity to support bereaved families.

Importance of legal representation

A coroner has a duty to investigate any death where the cause is unknown, the person might have died a violent or unnatural death, or died in police custody or any other state detention. For this investigation and any subsequent inquest to be conducted fairly, a coroner must be as impartial as possible. A coroner cannot be on the side of the bereaved family any more than he or she is on the side of the other parties involved. Families, who will be unfamiliar with the inquest process, will usually have to face organisations which will almost certainly have legal representatives who are experienced with the process. The coroner's office will ensure families are aware of practical arrangements for the investigation and inquest, but cannot give the family legal advice.

Without legal representation, families will be on their own. In some cases, they will have to review reams of documents which could include distressing information about their loved one's death. It cannot be right that any bereaved family is left to deal with these painful documents on their own, or is expected to know what is vital evidence and what should be challenged. Legal representation ensures families ask the right questions and call the appropriate witnesses at the inquest. If families are unable to do this, they might be left without the answers they need, or the closure which can come from an inquest.

The coronial process is designed to be inquisitorial, and this has been used as a justification for families not requiring legal representation¹, but coroners can take an aggressive line and shut down questioning. An example of this behaviour was seen in a case reported by one of our members, where the coroner's combative, sarcastic and terse tone caused the bereaved family serious distress, and undermined their faith in the coroner's ability. Fortunately, in this case, the family had legal representation, and the coroner was replaced under threat of judicial review. If they had not been represented, they would have been unable to do that, and may have accepted the outcome that the coroner presented in the first instance, which did not consider the wider circumstances of their daughter's death.

Legal aid for inquests

The last thing any family should have to worry about during their search for answers are the costs associated with an inquest. No family should be priced out of justice, or find the truth too expensive to secure. Regardless of their own financial situation, families should have a right to feel on equal ground at an inquest. There can be, however, a serious inequality of arms. Often, families will face hospitals, the police, local authorities or other public bodies which have legal representation funded by the public purse. Even in cases where these bodies do not officially have representation, they are likely to have assistance, either through in-house legal professionals or specialist inquest officers. At the very least, their witnesses will be experienced professionals such as doctors, who will have been provided with advice from a legal team prior to the inquest. Yet a family suffering a bereavement is likely to be refused the same publicly-funded legal aid.

Families can apply for legal aid, but it will be granted only in limited circumstances. Legal aid will be granted under the Government's exceptional funding scheme if it is considered there is a wider public interest in the inquest, or if it is an Article 2 inquest.

¹ Ministry of Justice, A Guide to Coroner Services for Bereaved People, page 16, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/859076/guide-to-coroner-services-bereaved-people-jan-2020.pdf

An Article 2 inquest is held when there is a death in state custody, or if it can be argued that the State failed to protect someone's right to life. Currently, families must also meet a financial means test if they are to be granted legal aid under this scheme.

We welcome the Government's recent decision to remove the financial means test in applications for exceptional case funding (ECF) which it made in its response to a report from the House of Commons Justice Select Committee into the coroner service². This change, however, does not go far enough. It is the experience of our members that even before the financial situation of families is considered, it is rare for applications for ECF to be successful, especially in healthcare-related inquiries. The removal of the financial means test alone is unlikely to be of benefit to many families. The Government must go further and accept in full the committee's recommendation for legal aid or other public funding for legal representation to be available for bereaved people in inquests where public authorities are legally represented³.

In the absence of legal aid, some of our members help bereaved families by funding representation through a conditional fee agreement (CFA - otherwise known as 'no-win, no-fee') but this funding arrangement has to be linked with a separate civil claim for compensation. If a CFA is not possible, legal representation is either provided free of charge by a lawyer, which can be unsustainable for law firms, or a family has to fund its own representation. This is simply unaffordable for many families. Legal aid which is not means tested provides families with the certainty that there will be a level playing field at the inquest, and they will not be alone during the most difficult period of their lives. It should be available for all.

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² The Coroner Service: Government Response to the Justice Committee's First Report, September 2021
<https://publications.parliament.uk/pa/cm5802/cmselect/cmjust/675/67502.htm>

³ Justice Select Committee, First Report of Session 2021-22, The Coroner Service, May 2021,
https://publications.parliament.uk/pa/cm5802/cmselect/cmjust/68/6812.htm#_idTextAnchor107