



Proposed amendments to the Judicial Review and Courts Bill – House of Lords Committee Stage – Association of Personal Injury Lawyers – February 2022

Amendment 1

Clause 38, page 53, line 12, at end insert

() For subsection (4) substitute –

“(4) A senior coroner who discontinues an investigation into a death under this section must give interested persons as soon as practicable a written explanation as to why the investigation was discontinued”

Briefing: The purpose of this amendment is to ensure a coroner always provides a written explanation about why an investigation was discontinued.

Currently, a written explanation has to be given only if requested by an interested person, such as the family. Families may not know, however, that they are entitled to a written explanation, or may not understand or agree with the decision to discontinue an investigation. A written explanation could provide the answers they need, or even provide the closure which is often needed by families after the death of a loved one. A written explanation could also assist a bereaved family if they wish to challenge the decision to discontinue an investigation.

Amendment 2

Clause 38, page 53, line 12, at end insert

() Section 43 of the Coroners and Justice Act 2009 (Coroners regulations) is amended as follows.

() In subsection (3) after paragraph (a) insert –

“(aa) provision for the establishment of an appeals process for interested persons who disagree with the decision to discontinue an investigation under the provision in section 4 of this Act”

Briefing: The purpose of this amendment is to ensure the Lord Chancellor establishes an appeal process for families who disagree with the decision to discontinue an investigation.

A family may have a legitimate reason not to agree with the decision to discontinue an investigation, and currently if a family wants to challenge the decision of a coroner, they must seek a judicial review. This this can, however, be complex and financially prohibitive for families. Instead, there should be an easily accessible appeal process for families who want an investigation to continue. The experience of the family of Mrs Noreen Clements shows why an appeal process could be so important for bereaved families.

Mrs Clements suffered a fractured pelvis after falling in hospital and died two weeks later. Despite her family's belief that the fall contributed to her death, it was not recorded by the doctors who completed the medical cause of death. Mrs Clements' family were fortunate that the coroner listened to their concerns and instructed an independent expert who eventually agreed with the family. This resulted in changes being made to the hospital's procedures. Under the Government's proposals, another coroner may have been satisfied with the medical cause of death. The investigation may have been discontinued before an inquest could be held, leaving the family without the answers they need, and missing a learning opportunity for the hospital. An appeal process could help ensure this does not happen.

Amendment 3

Clause 40, page 54, line 24, at end insert

“() Coroner rules that provide for the conduct of hearings wholly or partly by way of electronic transmission of sounds or images must not allow the conduct of hearings wholly or partly by sound only”

Briefing: The purpose of this amendment is to prevent an inquest from being conducted by telephone or other means which are audio only.

There is a place for remote hearings, either partly or in full, but it would be inappropriate for an inquest to be conducted by audio only. For example, it can be vital to see a witness who is being questioned during the inquest, because otherwise it will be impossible to know if that person is being prompted on what to say by someone else. Nor will the coroner or anyone else be able to get a sense of the body language of the witness, which could help establish his or her credibility.

Amendment 4

Clause 40, page 54, line 24, at end insert

“() Coroner rules that provide for the conduct of hearings wholly or partly by way of electronic transmission of sounds or images must provide for all interested persons to have to give their agreement to the conduct of hearings wholly or partly by way of electronic transmission of sounds or images”

Briefing: The purpose of this amendment is to ensure the agreement of families is secured before an inquest is conducted remotely.

Inquests can help provide closure for grieving families, and it is the experience of our members that for some families, part of that closure can be achieved by physically being in court. This also allows families to be supported by their legal representatives, not just professionally, but also emotionally. This could be difficult if they are in different locations. Some families may not have internet access, or have an internet connection which is not good enough to allow them to take part in an online hearing. This amendment will ensure those families are not excluded from an inquest.

New clause

“Inquests involving public bodies

(1) Section 10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Exceptional cases) is amended as follows.

(2) At the end of subsection (3)(b) insert

Or,

That is necessary to make the services available to the individual under this Part because an inquest involves a public authority which is legally represented”

Briefing: The purpose of this new clause is to ensure legal aid is available for all families in inquests in which public authorities are legally represented.

A serious inequality of arms can exist at inquests. Often, families will face hospitals, 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. 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.

We welcome the Government's recent decision to remove the financial means test in applications for exceptional case funding (ECF) but it 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 ensure legal aid or other public funding for legal representation is available for bereaved people in inquests where public authorities are legally represented.

In the absence of legal aid, some lawyers 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 provides families with the certainty that there will be equality of arms at the inquest, and they will not be alone during the most difficult period of their lives. This amendment, therefore, amends the criteria for exceptional case funding, and ensures it will be granted in inquests where public authorities are legally represented.

About APIL

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has campaigned for the rights of people injured through no fault of their own for more than 30 years. Our vision is of a society without needless injury but, when people are injured, a society which offers the justice they need to rebuild their lives.

For more information please contact:

Sam Ellis

Public Affairs Manager, APIL

Email: sam.ellis@apil.org.uk

Tel: 0115 943 5426