

Ministry of Justice

**Draft charter for bereaved people who come into
contact with a reformed coroner system**



**A response from the Association of Personal Injury
Lawyers (APIL)**

September 2008

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation, formed by claimant lawyers with a view to representing the interests of people injured through negligence. APIL currently has around 4,500 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

The aims of the association are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:

Amanda Stevens, President, APIL

Grainne Barton, APIL member

Paul Balen, APIL member

Any enquiries in respect of this response should be addressed, in the first instance, to:

Lorraine Gwinnutt

Head of Communications

APIL

11 Castle Quay, Nottingham NG7 1FW

Tel: 0115 938 8707; Fax: 0115 958 0885

e-mail: lorraine.gwinnutt@apil.org.uk

Introduction

APIL welcomes the opportunity to provide feedback on the draft charter and, indeed, all the work the Government has undertaken to improve the current archaic coroner system. We look forward to seeing a Coroners and Death Certification Bill in the next parliamentary session.

In our response to this consultation, we offer some comment on the detail of the document, but first take the opportunity to address other fundamental issues.

The need for legal representation

Throughout this document, our specific comments have been provided by APIL members who have wide experience of assisting people dealing with inquests. The reality, however, is that many people do not have the benefit of legal assistance and, on occasion, we have suggested how this might affect the procedures outlined in the charter.

While there is much in the draft charter which our members welcome, we must take this opportunity to reiterate, as we have many times throughout this long consultation process, the need for bereaved families to understand they have a right to legal advice and, even more importantly, the need for funding for legal advice to be made more widely available.

At inquests, bereaved families often find themselves alone in the coroner's court, while other parties usually appear with legal representation. Bereaved people who do not have access to a lawyer are likely to be seriously disadvantaged in such circumstances and there is far less chance that the relatives will be satisfied with the outcome. This could jeopardise public confidence in the new system. We therefore request that reference is made in this charter to the right of the bereaved family to seek legal advice for an inquest.

The funding of legal advice for bereaved relatives is a particular concern and we believe the power to award public funding for them should lie with the coroner, following application to the coroner from the bereaved. The experience of APIL members is that provision of so-called 'exceptional funding' is very limited and that many 'borderline' cases are denied funding which leaves bereaved relatives in an intolerable position.

The extent of the problem is illustrated on the website of the Legal Services Commission, which outlines the success rate for obtaining exceptional funding for advocacy at inquest for 2005/6 (the most recent year for which statistics appear to be available). These statistics show that of 116 requests for funding during that year, only 25 were granted – a rate of 21 per cent.

Delay

While it is clear that significant efforts have been made to ensure aspects of the process are made more timely and efficient, there is no reference to a time limit for holding an inquest. It is not unusual for inquests to be held in excess of 12 months from the date of death. In line with other consumer charters, a suitable target time frame for the inquest should be specified as it often does not help a bereaved family to come to terms with the situation when there has been no conclusion to the proceedings.

The time frame should, however, be subject to the coroner's discretion, as there can be occasions when a delay (if the relatives are happy to delay) may be beneficial. Those relatives who are legally represented, for example, may wish to balance their need to get proceedings underway with the need to conduct as thorough an investigation as possible.

Comments on the illustrative draft

Page 6

While it is recognised that this is a working draft, we recommend that, for the avoidance of any possible future misunderstanding, it is suggested that the wording in the 'NB' beneath the title should be revised to read:

'This charter applies to all deaths post the introduction of the Coroners and Death Certification Act.'

Definitions

It is unclear from the text whether the list provided in the definition of 'family member' is definitive. Certainly, we do not believe that the definition of 'family member' needs to be strictly defined. There can be unusual situations where the only surviving relative with an interest might, for example, be an uncle or aunt. Later, in paragraph 4 of the document, there is reference to the 'most appropriate next of kin' and we would wish to see that degree of generality applied to this definition.

Objectives

We submit that it would be helpful for advice about the right to legal representation to be included in this section.

In addition, bullet point 7, which is a revised item, does not provide the same certainty for families as the previous sentence. We suggest combining both sentences would provide the greatest benefit to injured people, as follows:

'respond to concerns of bereaved people when they are not satisfied about the cause of death given on a death certificate by explaining why the coroner intends to take no further action in a particular case'

When a death is reported

Paragraph 4: it should be made clear that the next of kin will be contacted prior to any post mortem.

Right of a family to report a death to the coroner

Paragraph 6: APIL welcomes this new addition to the charter but believes it should be amended to deal with a current problem where junior doctors complete the coroner report when they have scant knowledge of the hospital treatment given to the patient prior to the death. This can result in the doctor unwittingly providing insufficient information to the coroner.

We also believe the text of paragraph 6 should be made less restrictive on behalf of the bereaved family. We suggest both points could be addressed by adding the following words (in italics) to the current text:

'If a family member believes that a doctor, or other relevant professional, has not reported a death to the coroner, or has not provided full circumstances of the event leading to the death when they should have done, or if the family member has concerns generally about the death or events leading up to it, they will have a right to report the death to the coroner personally...'

Post mortems

Paragraph 9, second sentence: 'they' should be replaced with 'appropriate next of kin or any other family member' for the sake of consistency with paragraph 8.

Paragraph 13: family members should also have the right, on request, to see any subsequent medical or scientific reports, such as reports on samples etc.

While we believe that family members should have the right, on request, to see these reports, this does cause serious concern among our members about the degree of distress such reports can cause bereaved relatives. Where a family is legally represented, it is considered good practise among lawyers to deal with the reports themselves and to remind relatives that they are under no obligation to read any reports if they don't wish to. We would suggest that, in keeping with the desire to treat bereaved people with sensitivity, as outlined in the charter's objectives, the coroner could decide (where a party is not legally represented) if post mortem and other reports should be handed to the family doctor and the family notified to that effect. The doctor could, at least, then provide some comfort to a family member who does wish to know the contents of a distressing report.

This section should also make reference to the bereaved family's right to organise its own independent post mortem if the family wishes.

Keeping in touch

We believe three month intervals are too long and that this could help to generate a culture of accepting delay in the new system. It seems a matter of courtesy to keep relatives informed of the status of the case on a monthly basis.

Inquests

Paragraph 15: it is not uncommon for bereaved families who require legal representation to notify a solicitor only when they receive notification of the inquest date. It would assist greatly in preparation for inquests for a slightly longer notification period of six to eight weeks.

Paragraph 16: the word 'legally' should be added to the end of this paragraph, for the purpose of clarity.

Paragraph 18: disclosure of documents free of charge will be a significant benefit to bereaved families and we applaud the Ministry of Justice for introducing this. The value of this really would be enhanced by a commitment in this charter to provide documents between six and eight weeks before the inquest, so that legal advice can be obtained by the bereaved family, if required.

Paragraph 19: while it is accepted that the coroner may decide not to disclose all documents he takes into account, we submit that the bereaved family has a right to inspect such documents, which may be relevant to them personally. The coroner should, therefore, list documents he has which he is not intending to rely upon so that the relatives may inspect them.

Reports to prevent future deaths

Paragraph 26: the words 'within 14 working days of receipt of the organisation's response' should be added to this paragraph, in order to provide bereaved relatives with peace of mind at the earliest possible opportunity.

Other rights to participation

Paragraph 29: for the purpose of completeness and the family's peace of mind, the charter should include a list, or at least an illustration, of the 'exceptional circumstances' under which coroners will retain a body, or organs, or tissue, without the consent of the family.

Monitoring service standards

Paragraph 40: we suggest coroners reports to the chief coroner on their performance should be provided every six months, to allow any emerging trends to be addressed as soon as possible.

Concluding remarks

We congratulate this Government on its drive in recent years to overhaul the inefficient and archaic coroners system in England and Wales, where coroners have long been considered by many to be a law unto themselves.

APIL members who have close experience of this system have contributed to reviews and consultations on these issues for many years and we continue to welcome any opportunity to provide input and assistance on behalf of injured people, where appropriate, during the development of this work.