

Ministry of Justice

Reform of the Coroner system

Next stage: preparing for implementation



**A response by the Association of Personal Injury Lawyers
July 2010**

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation whose members help injured people to gain the access to justice they deserve. Our members are mostly solicitors, who are all committed to serving the needs of people injured through the negligence of others. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues.

The aims of the Association of Personal Injury Lawyers 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:

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Introduction

1. We welcome the opportunity to respond to this consultation, having campaigned for reforms to the coronial system for over a decade. APIL members have a unique view of the coronial system, serving bereaved people during what is obviously an extremely traumatic time. The comments which we have provided are restricted to aspects of the system which are immediately relevant to bereaved families, and the expert solicitors who represent them at inquests.
2. This response is mindful of the fact that the consultation was launched by the previous Government, which had announced that the new provisions contained in the Coroners and Justice Act 2009, would be implemented in 2012. The new administration has, however, ordered officials to review that implementation process. While we understand that the cost implications of the new Act must be carefully considered, we believe it is vital that the new provisions are brought into force, in order to update the coronial system in England and Wales.

Question 6 – Whether there are other main circumstances when consideration should be given to cases being transferred

3. We welcome the new provisions in the Act which will enable an investigation to be transferred from one coroner area to another. It is right that bereaved families must be placed at the heart of the new coronial system. In order to ensure bereaved families can play as full a part in the investigations as possible, it is important that they are able to apply for an investigation to be transferred to a different coroner area, if there are valid reasons to do so.

4. In addition to the circumstances when a transfer can take place which are outlined in the consultation, we believe there are other occasions when investigations should be transferred. There is a suggestion, in the consultation paper, that there may be a mechanism for bereaved families to make such representations to the Chief Coroner, when one is appointed, but we believe that there should be a way to ask any coroner to consider a transfer. If an application for transfer can only be made to the Chief Coroner the process is likely to be lengthy, and the bereaved family could incur significant costs. Going straight to the Chief Coroner also removes the ability for the bereaved family to appeal a decision. Access to the Chief Coroner should be reserved for only the most serious cases.

5. There may be occasions when inquests take place after the deaths of more than one person, caused by suspected actions by a hospital, with those involved living in different coroner areas at the time of death. Under the current proposals the investigations would be carried out by separate coroners, which would, inevitably, lead to a duplication of work. There may also be circumstances when a patient may have been transferred shortly before death, but the cause of death to be investigated occurred at a hospital in a different coroner area, where another similar death had occurred, and was already being investigated. Transfer in such circumstances may lead to a substantial saving of costs. We note that the consultation document says that transfers may take place if there is a 'major incident'. There is no definition of a 'major incident' in the paper, however, other than to say it will result in 'many casualties'.

6. We believe that further detail will need to be included about which incidents will be classed as 'major', when the new system is implemented, as there may be occasions where a transfer would be appropriate which would not classify as a 'major incident' under the wording suggested in the consultation paper. If bereaved families can be certain which circumstances will lead to an automatic transfer of an investigation, it will reassure them that the deaths are being taken seriously, and that the expertise of coroners is being utilised. It will also show that all necessary steps are being taken to learn lessons from the death.

Chapter five - disclosure

7. We welcome any move to increase disclosure, as it is of paramount importance that bereaved families, or their representatives, have access to as much information as possible. This will ensure that an investigation into a death is as thorough as possible, and make sure that lessons can be learned to prevent circumstances surrounding a death recurring.
8. APIL members have provided anecdotal evidence that, in some areas, bereaved families are being charged 'per page' for documents disclosed. It can not be right that after losing a family member while in the care of the state, the bereaved family can be charged hundreds of pounds for access to inquest documents.

9. The disclosure of information does not just assist the bereaved family, or a legal representative, but also enables a full investigation into the death to be carried out, which can assist the coroner when it comes to drafting a report, and suggesting any lessons which could be learned. We believe that in circumstances where the coroner considers he has no choice but to charge bereaved families for the disclosure of information ahead of inquests, then they should only be charged a nominal fee, as a gesture of good will. We can, however, see no reason for doing so, and believe that information should be made freely available.

Chapter six – the conduct of the inquest

10. Under the new system, which would be implemented by the 2009 Act, 'verdicts' are to be replaced with 'determinations', although we understand that the changes this move will make to the process will be minimal. There is concern among APIL members that standard determinations will become more commonplace, as information is requested by the coroners' service for statistical purposes. While we appreciate the desire, on the part of the coroners' service, to look into the determinations made by coroners for statistical purposes, we believe that the Office for National Statistics should be able to carry out this work based on the evidence presented to the coroner, rather than on the basis of standard determinations, which may not give a completely accurate account of the circumstances surrounding the death.
11. The determinations made by a coroner should be for the benefit of the bereaved, and, where relevant, society generally, they should not be adjusted for the convenience of statistics. Narrative determinations, which outline the circumstances leading up to the death, should continue to be used, for this reason.

Chapter seven – appeals and complaints

12. There is concern among APIL members that under the new system the entitlement to claim legal aid to appeal decisions made by a coroner would be removed. Under the current system funding can be obtained for a judicial review of coroners' decisions, as long as wider public interest can be demonstrated. Such a change to the system will make it harder to challenge a decision made by a coroner, and this could lead to a lack of public support for the new system. We would urge the Ministry of Justice to look again at this as we believe the only effective way to ensure that this can happen is to retain legal aid for appeals.

Legal aid for representation

13. Throughout the passage of the Coroners and Justice Bill APIL argued that more bereaved families should have access to legal aid for representation at inquests. We were, obviously, disappointed that there was no significant movement on this point by the previous Government and we would ask the new administration to revisit this issue, when considering the wider issue of the new system.
14. There should be a level playing field at inquests, and therefore bereaved families should have access to legal advice before inquests, and legal representation during inquests. We recognise that the inquisitorial nature of inquests may mean some coroners believe it is not necessary to have legal professionals in court, but the fact that families are unlikely to have adequate knowledge of the way coroners' courts work during inquests mean they would benefit greatly from the assistance of a legal professional.

15. Bereaved families cannot be put at the forefront of the process if they are left to fend for themselves, when all other interested parties are represented, often at the expense of the state. If the state has been involved in the death of a loved one, it is possible that the bereaved family will have lost a degree of trust in the state. The value of the healing process of finding out the facts during an inquest cannot be underestimated.

16. Whenever employees of the state, including doctors, nurses, prison officers and police officers are involved in a fatal case and their conduct is being questioned, they will be represented at an inquest by experienced solicitors and counsel. The organisations themselves are also often represented. The legal representatives of the employees and organisations will wish to ensure that their clients' interests are protected by minimising adverse comments, findings or verdicts. The law of evidence is complex, and so are Coroner's rules. There is no way families without legal representation can participate on equal terms in an inquest when faced with opposing legal teams. It is entirely wrong to expect the coroner to effectively represent the views and interests of the bereaved family in the face of all other interested parties having representation, while conducting an impartial enquiry. This is a continuing source of injustice which can only be corrected by an extension of legal aid to provide for representation.

17. The main aim of an inquest is to find out the circumstances surrounding a death and legal professionals, who will have relevant experience of the systems in coroners' courts, will be able to assist the coroner in working to ensure there are no further fatalities in similar circumstances. In addition, of course, any avoidance of deaths in the future will save the state money.

18. Bereaved families seek a conclusion to a very traumatic experience. If the inquest does not provide a satisfactory conclusion, because the concerns raised by the family remain unaddressed or they have not felt involved in proceedings, there is anecdotal evidence to suggest that costs to the State in after care, which may include psychiatric care, can increase. Any perceived savings from not having legal representation may often be illusory when the total picture is considered. Experienced inquest lawyers help guide the bereaved through the process and achieve their aims which may involve ensuring that their loved one's death had not been in vain. It is extremely difficult for distressed relatives to accept that coroners are 'helping' them or 'on their side' when, however sympathetically they handle the relatives, they are bound to be seen as part of the system which may well have let them down.