

Legal Aid Means Test Review  
Ministry of Justice  
102 Petty France  
London  
SW1H 9AJ



26 May 2022

Response via email only: [legalaidmeanstestreview@justice.gov.uk](mailto:legalaidmeanstestreview@justice.gov.uk)

Dear Sirs

### **Legal Aid Means Test Review**

We welcome the opportunity to respond to the Ministry of Justice's legal aid review. We comment only on the proposals within our remit. Overall, the changes suggested are a welcome step forward, although the proposals on legal aid for inquests do not go far enough.

#### **Civil income thresholds, passporting and contributions**

We will not comment in detail on the figures proposed, but suggest that in light of the recent increases in the cost of living that the figures are reviewed to ensure that they are keeping pace with, and are reflective of, this increase.

#### **Legal aid applicants aged under 18**

A removal of means testing for those under 18 applying for civil representation would be a positive step. We welcome the recognition that those under 18 are vulnerable in regard to the civil courts system, and that their needs are different. This would reduce the administrative burden on the applicant and their solicitor, therefore reducing the costs associated with the case and ensuring that the case is dealt with more efficiently and effectively.

#### **Proceedings relating to the withdrawal or withholding of life-sustaining treatment from children**

We welcome the proposed expansion of the types of proceedings for which non-means tested legal aid is available to parents and those with parental responsibilities, to those cases involving a proposed withdrawal or withholding of life-sustaining treatment for a child under the age of 18. As recognised in the consultation, these cases are complex and highly emotive, and it is right that parents facing a decision on whether their child will live or die should have legal assistance to ensure that their position can be properly represented – they should not have to attempt to represent themselves because they are unable to afford private representation.

#### **Legal help at inquests**

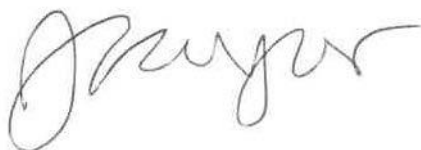
We are supportive of any reforms which will make it easier for bereaved families to obtain legal aid for representation at inquests. We have previously commented on the difficulties members have experienced when attempting to obtain a waiver for the cost of legal help in

relation to an Exceptional Case Funding application, and that there is little to no guidance available on how to obtain a waiver. We therefore welcome the proposal to remove the current waiver process. However, the recent removal of means testing for exceptional case funding, and the proposal within this consultation to remove means testing for legal help for inquests, simply do not go far enough. Exceptional Case Funding is rarely granted, and removing the financial means test alone is unlikely to make it any easier for bereaved families to obtain legal aid for inquests. These families will still be required to provide evidence that the case is in the wider public interest, or relates to a breach of Article 2 of the European Convention of Human Rights – both of which are incredibly difficult to prove.

Bereaved families need access to legal representation so that they are able to engage fully with the inquest process, and obtain answers about their loved one's death. Families will face hospitals, local authorities and other public bodies which have legal representation funded by the public purse. Even in cases where the state does not officially have representation, they are likely to have assistance to help them, either through in-house legal professionals or specialist inquest officers. At the very least, the witnesses called by the state to assist their case will be experienced professional witnesses such as doctors, who will have been provided with advice from a legal team prior to the inquest. It is not right that a family suffering a bereavement is likely to be refused the same publicly funded legal aid. We maintain that the Government should introduce non means tested legal aid for bereaved families at inquests where a public body is represented. We are disappointed that the opportunity to introduce provision for non means tested legal aid for bereaved families where a public body is represented has not been taken forward in the Judicial Review and Courts Act 2022, with an amendment by the House of Lords to that effect being removed by the House of Commons.

We hope that our comments prove useful to you.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Alice Taylor', written in a cursive style.

Alice Taylor

Legal Policy Manager