

Ministry of Justice

Review of legal aid for inquests

Response from Thompsons Solicitors

August 2018

Thompsons Solicitors is a national law firm which has been representing the injured and mistreated since our foundation in 1921. Every year the firm secures hundreds of millions of pounds in damages on behalf of our clients.

Thompsons is committed to only representing claimants and has a reputation for fighting harder than others, to secure the highest possible compensation settlement for the party at fault.

Thompsons Solicitors normally only act in article 2 cases which involve a death in custody, and even in these cases we represent trade union members and not the deceased party. Nevertheless, we welcome the review into the use of legal aid for inquests and wish to make the following comments.

Question 1: Do we need to make any changes to the existing financial means assessment process to make it easier for applicants to complete? If so, please suggest prospective changes.

It is our view that the threshold for legal aid should be lowered significantly. Currently it is too high, which means that many families are unable to access funds to secure representation and support through the inquest process.

Question 2: Do we need to make any changes to the current legal help process where a waiver is being sought? If so, please provide suggested changes.

The availability of a waiver is clearly set out, however the language used in the funding provider pack is legalistic and likely to cause considerable confusion to families who do not have legal support or advice in place – which at that stage is very likely in almost all cases.

It will be extraordinarily difficult for anyone who does not speak English as a first language and measures ought to be in place to assist people who fall into this category.

Question 3: Are you aware of any cases where it would have helped to have had a lawyer assisting the bereaved family at the point at which a coroner is making a decision to trigger Article 2?

Yes.

Question 4: Are you aware of any cases where there have been difficulties in establishing whether Article 2 has been triggered? What sorts of cases are these?

No.

Question 5: If yes to question 4, what impact have these difficulties had on the bereaved family's experience of the proceedings and the legal aid application?

N/A

Question 6: Are you aware of any cases where an applicant has applied for and not been awarded legal aid for legal representation for a case where Article 2 has been triggered? Please provide details.

No.

Question 7: In your experience, is Article 2 ever triggered in cases where the death has not occurred in state custody or state detention? If yes, please can you include details on these types of cases.

Yes – the inquest into the Hillsborough Stadium disaster on 15 April 1989.

Question 8: Where applications for legal help and / or legal representation, does the LAA give clear reasons for this decision?

Not always.

Question 9: Are there any ways in which the LAA can provide greater clarity regarding their decision-making?

The use of legalistic language should be kept to a minimum, bearing in mind many families will not have access to legal advice at the application stage. The review process should be more clearly explained and an advice line made available to assist in navigating the intricacies of the process.

Question 10: In your experience, have there been inquests where Article 2 is engaged that have met the criteria considered by the Director? Please provide details.

No.

Question 11: Is the current definition of 'wider public interest' in the context of the granting of legal aid for inquests easy to understand? If not, please suggest areas for improvement.

The definition is little understood by a lay person – who will almost always feel that it is in the public interest to fund families representation following a death. A lay focused approach and advice line would be of benefit.

Question 12: Are you aware of any inquests that have been awarded legal aid through the ECF scheme under the 'wider public interest' determination? If so, please can you provide details of these cases.

No.

Question 13: Do you think that families are still able to understand and engage with the proceedings in cases where they are not legally represented at the inquest? Please provide reasoning for your response.

No – it is a difficult environment for anyone not legally trained. The inquest is a court environment and can be intimidating for families.

Question 14: In your experience, how could we ensure that available legal aid funds provide the most value to bereaved families going through the inquest system?

Funding should be expanded sufficient to meet need.

Question 15: In your opinion, do inquests where the state has legal representation meet the criteria used to determine the need for a financial means test?

No.

Question 16: In your experience, at inquests where both the state agents and the family have legal representation, does the family receive the required level of support and representation from their legal representative to enable them to understand and properly participate in the proceedings? Please give examples where possible.

No – however many families we act for can access support via their trade union.

Question 17: For cases where the bereaved family has legal representation, do you feel their lawyer(s) are effective in representing the family's interest? Please give examples where possible.

Yes in our experience.

Question 18: In your experience, what impact does the number of lawyers representing the state have on the experience of the bereaved family?

It can be intimidating in any event – but multiple legal representatives only adds to the general sense of bewilderment grieving families feel during this process.

Question 19: In cases where there are multiple lawyers representing the state, would the family benefit from receiving information about the role each one plays, and the type of legal position they are assuming? Please give examples where possible.

Yes inevitably so.

Question 20: Can you provide any examples of cases where a lawyer has adopted an inappropriate advocacy style or approach? If so, was the lawyer representing the state or the bereaved family?

No.

Question 21: Do you consider that the MoJ Guide meets the needs of bereaved people? If not, what do you suggest?

An advice line and greater use of non-legal language in the guide would be of benefit.

Question 22: Have you found any other information useful? If so, please can you give details.

We sit with families to explain the process carefully – they often find the fact finding purpose difficult to understand – and expectations as regards the ultimate outcome of an inquest need to be carefully managed.

Question 23: What else do you think could be done to support bereaved families better throughout the inquest process?

Access to legal advice and support – an advice line, or funding to secure this is needed.

Question 24: Is there anything else you would like us to consider?

There is a clear imbalance between legally represented parties with means and bereaved families without legal representation who are attempting to navigate a foreign process at a time of personal tragedy and grief.

As a practice we work predominantly with trade unions who, where there is a potential personal injury claim, offer support and advice throughout the claims process.

In the absence of a claim, an individual or family as a whole may be left without the necessary support and advice to enable them to understand and, where necessary, contribute to the inquest process.

The inquest process is inevitably costly. However in the event of a tortfeasor being responsible for the death(s), that tortfeasor ought to **always** meet in full the costs of the

inquest – including the costs of the coroners court, the legal aid board and the costs of representing the families.

For further information please contact:

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