

June 2019

briefing

Public funding for coronial investigations

You may well have heard about the controversial and wide ranging cuts to public legal funding. You may be wondering what the impact will be for your organisation's involvement in the coronial process, in terms of the likelihood of families receiving public funding for representation at inquest hearings.

The current position in respect of legal aid funding for inquests is broadly as it was under the previous legislation. This briefing note summarises the availability of public funding for individuals during the inquest process.

The full Lord Chancellor's Guidance on Civil Legal Aid and Exceptional Funding, based on the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which came into effect on 1 April 2013, can be found [here](#).

Legal aid for advice and assistance in the run-up to an inquest

Legal aid is available for advice and assistance in the run-up to an inquest involving a member of the individual's family – this can cover preparatory work associated with the inquest, such as preparing submissions to the Coroner setting out questions the family wishes the Coroner to raise.

Legal aid for representation at an inquest

However, legal aid for representation at an inquest is only available through the “exceptional funding” criteria laid out in the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The exceptional funding criteria allow funding for representation at an inquest to be provided on two grounds:

- 1 Where it is necessary to carry out an effective investigation into a death, as required by Article 2 of the European Convention on Human Rights (the right to life).
- 2 Where there is a significant wider public interest in the individual being represented.

These grounds are developed further below.

Where legal representation is necessary to carry out an effective investigation into a death, as required by Article 2 of the European Convention on Human Rights (the right to life)

Article 2 not only imposes a “substantive obligation” on the state to protect life, but also a “procedural obligation” to effectively investigate deaths at the hands of the state. For exceptional funding to be granted on the grounds of Article 2, there is essentially a two-stage test:

1 *Has there been a breach of Article 2 giving rise to the state’s procedural obligation?*

The guidance states that Article 2 is likely to have been breached and give rise to the procedural obligation where the state has killed the individual (for example a police shooting) or where the individual has died in state custody. It is unlikely to have been breached where there has not been any state involvement in the death.

2 *Is funded legal representation for the family necessary to enable the Coroner to carry out an effective investigation?*

The Ministry of Justice considers that because an inquest is an inquisitorial process, in most cases the state can discharge its obligation and hold an effective investigation without the family needing to be legally represented. In considering whether legal representation is necessary, the individual facts and circumstances of the case must be taken into account, including:

- the nature and seriousness of the allegations;
- the particular circumstances of the family; and
- any previous investigations into the death.

Where there is a significant wider public interest in the individual being legally represented

According to the guidance, the most likely wider public benefits are the identification of dangerous practices, systematic failings or other findings that identify significant risks to the life, health or safety of other persons. It is not sufficient for there to be a significant wider public interest in the inquest itself. There must be a significant wider public interest in the family being represented.

Means and merits criteria

Financial eligibility (means) and merits criteria also apply, but the financial eligibility criteria can be waived if, “*in all the circumstances, it would not be reasonable to expect the family to bear the full costs of legal assistance at the inquest*”.

The need for families to be legally represented at inquests

Some might argue that the absence of legal aid for representation at inquests creates an inequality of arms between the individual and the state. This is an argument which has been robustly advanced by the charity INQUEST (which provides free advice to bereaved people facing an inquest, with a focus on deaths in custody). It is not unusual for healthcare organisations and other state bodies to be legally represented at inquests.

Legal aid would have been made available for representation at certain categories of inquests under section 51 of the Coroners and Justice Act 2009 but this was subsequently repealed.

The Ministry of Justice argues that funding for advocacy at inquests should not generally be available, because an inquest is a relatively informal inquisitorial process where participants are not expected to present legal arguments. The purpose of an inquest is to establish who died and how, when and where the death occurred, not to attribute blame. There are no opposing parties each trying to prove their case. An inquest is not a trial.

If your organisation requires advice or assistance in relation to an inquest process, please get in touch with one of our inquest team.

Mills & Reeve on-line inquest support

You will find this guidance and a lot more information and guidance documents on our free on-line support page.

There is also a set of videos with top tips on what to do and others tell their stories of who they got through the process. All designed to make it a little bit easier for you.

Follow the link or type in:

<https://www.mills-reeve.com/foresight/inquests/information-on-inquests>

Recent Feedback

“ I’m most grateful for your support during the Inquest. It was outstanding. ”

Executive Director Forensic Services, NHS Client

“I feel genuinely privileged to know that you are on our team and offer my heartfelt thanks”

Dr Stephen Merron, Consultant Anaesthetist, University Hospital North Midlands NHS Trust

Contacts

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