



Now or never!
Legal Aid for
Inquests

About INQUEST

INQUEST is the only charity providing expertise on state related deaths and their investigation to bereaved people, lawyers, advice and support agencies, the media and parliamentarians.

Our specialist casework focuses on deaths in police and prison custody, immigration detention, mental health settings and deaths involving multi-agency failings or where wider issues of state and corporate accountability are in question such as Hillsborough and the Grenfell Tower fire.

INQUEST's Executive Director, Deborah Coles, acted as a Special Advisor to the Angiolini Review and has advised on many other official reviews and currently sits on the cross government sponsored Ministerial Board on Deaths in Custody.

For almost forty years, INQUEST has worked alongside families to ensure their participation at inquests through access to legal support and advice. Our policy, parliamentary, campaigning and media work is grounded in the day to day experience of working with bereaved people.

This evidence-based briefing is informed by INQUEST's specialist casework and policy and parliamentary work conducted over almost four decades. It is also informed by family evidence from Listening Days and Family Forums.

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Executive summary



State bodies and representatives have unlimited access to public funding for the best legal teams and experts. At a time when they are grieving and at their most vulnerable, families face complex and demanding funding application processes

It is time to level the playing field at inquests. Bereaved families must be granted automatic non means tested funding for legal representation following state related deaths.

Whether it is the death of a child in a mental health setting, the self-inflicted death of a prisoner, or a death as a result of neglectful state services, families experience a profound, yet unnecessary, injustice.

State bodies and representatives have unlimited access to public funding for the best legal teams and experts. At a time when they are grieving and at their most vulnerable, families face complex and demanding funding application processes. Some are lucky to get legal aid, but many do not or face paying large sums towards legal costs. Some are forced to represent themselves, while others have to appeal to the generosity of strangers through crowdfunding.

Inquests following state related deaths are intended to seek the truth, to expose unsafe practices and abuses of state power. But the reality faced by most families is of multiple expert legal teams defending the interests and reputations of state and corporate bodies - fighting to shut down or narrow lines of enquiry, with a primary focus on damage limitation.

Without funded representation, families are denied their voice and meaningful participation in the processes of investigation, learning and accountability. This inequality of arms is an unacceptable curtailment of justice, undermining the preventative potential of inquests, to interrogate the facts and ensure harmful practices are brought to light.

More than any other party, the overriding objective of bereaved families is to bring about changes to prevent future deaths, to stop others going through what they have faced. Our public interest is served by their actions and the changes they bring about. **And yet they alone are forced to fight for funding.**

This inequality of arms is the most significant injustice in the coronial system. Every review and public inquiry exploring these issues has repeated the urgent need for funding reform. However, in February 2019, the Ministry of Justice published its review into funding for inquests with a rejection of the widespread call for change.

This decision is a crushing betrayal of those families who invested in the review of legal aid, believing this process would once and for all bring about the meaningful change long campaigned for and supported now from every quarter. **This is not what justice looks like.**

INQUEST, bereaved families and lawyers, are calling for:

1. **Automatic non means tested legal aid funding to families** for specialist legal representation immediately following a state related death to cover preparation and representation at the inquest and other legal processes.
2. **Funding equivalent to that enjoyed by state bodies/public authorities and corporate bodies represented.**



The overwhelming case for change

“The inquest process is what families have been given to find out what happened to their loved one. They do not choose to initiate it; the state initiates it for them to find out. That is the process that they have to go to.

The inequality of arms is the single greatest obstacle to families trying to get those answers. Regardless of the case, where somebody dies in the care of the state there are teams of lawyers representing those public authorities, be that the NHS trust, the prison or the police station.”



Deborah Coles, INQUEST, Executive Director
[Oral Evidence](#) to the Joint Committee on Human Rights (2018)

Momentum for change is now overwhelming, with our call for funding echoed from every possible quarter

For decades, INQUEST, and the families and lawyers we work with, have called for automatic non means tested funding for legal representation following state related deaths.

Whenever the inquest system has been reviewed, or contentious deaths and their investigation examined, there has been a recognition that the current funding arrangements for inquest representation needs fundamental reform.

The past few years have seen unprecedented focus on how agencies investigate and scrutinise contentious state related deaths. Momentum for change is now overwhelming, with our call for funding echoed from every possible quarter – Dame Elish Angiolini, Bishop James Jones, Lord Bach, two Chief Coroners, Baroness Corston, Lord Harris, the Joint Committee on Human Rights, the Independent Review of the Mental Health Act and from agencies including the Independent Office for Police Conduct.

The timeline (on pages 9 to 10) illustrates the groundswell of support to level the playing field and end the inequality of arms so that families have automatic access to legal advice and support after a state related death.

The 2017 landmark review by Dame Elish Angiolini on deaths and serious incidents in police custody and Rt. Rev Bishop James Jones’ report on the Hillsborough families’ experiences both made wide-ranging recommendations for change. Central to both reviews was the voice of families and their testimonies about the impact of the investigation and inquest process on their physical and mental health and well-being.

The lack of funding for legal representation and the resulting inequality of arms stood as a central theme through both reports, with the link clearly made between meaningful access to justice and the outcome of the legal process.



“For the state to fulfil its legal obligations of allowing effective participation of families in the process that is meaningful and not “empty and rhetorical” there should be access for the immediate family to free, non means tested legal advice, assistance and representation immediately following the death and throughout the Inquest hearing.”

Angiolini, 2017

“Publicly funded legal representation should be made available to bereaved families at inquests at which a public authority is to be legally represented. This could be achieved through amendments to the Ministry of Justice’s Lord Chancellor’s Exceptional Funding Guidance (Inquests) and should not need primary legislation. The requirement for a means test and financial contribution from the family should also be waived in these cases.”

Jones, 2017



Despite the overwhelming case for change the Ministry of Justice rejected widespread calls for automatic legal aid for bereaved families following state-related deaths

Now or never?

On 7 February 2019, the Ministry of Justice published a ‘final report’ of its review of legal aid for inquests, following a call for evidence in July 2018. Despite the overwhelming case for change from official reviews, families, lawyers and INQUEST, the Ministry of Justice rejected widespread calls for automatic legal aid for bereaved families following state related deaths.

Responding to the report, Deborah Coles, Executive Director of INQUEST said:

“The Ministry of Justice have failed to confront the reality of the uneven playing field faced by bereaved families, and the considered recommendations of all those who have looked at this issue.

This is a dishonest response and a betrayal of those who invested in this review in the hope of securing meaningful change. INQUEST and the bereaved families we work with will continue to campaign for what is so clearly needed: automatic non means tested legal aid funding to families following a state related death.”

The Ministry of Justice review outlines measures to improve guidance and signposting for families and representatives, including the coronial process, legal aid criteria, and support services. None of these proposed reforms address the fundamental inequality of resources experienced by bereaved families rooted in the means test for legal aid funding.





The evidence is clear that automatic funding should and must be granted to level the playing field

The Government is wrong in its conclusion and we call upon it to look again.

The evidence is clear that automatic funding should and must be granted to level the playing field. Anything less amounts to a clear message that bereaved families cannot expect an equality of arms when faced with a state related death. This is a travesty of justice which bereaved families and those who fight with them will not accept.

Why is legal aid so important?

Article 2 of the European Convention on Human Rights (ECHR), as enshrined in the Human Rights Act, guarantees the right to life. It places an obligation on the state to protect life and have in place systems for the protection of life.

State related deaths are those where protection of the right to life may have failed or been inadequate, or where there is the possibility of state responsibility in the death. Such cases trigger a duty to investigate under Article 2. They place an obligation on the state to ensure an independent and effective investigation capable of establishing the cause of death. Such investigations can also identify failures or wrongdoing that may have contributed to the death, ensuring those responsible are held to account. Families are entitled to properly and effectively participate in this process.

Inquests are the primary means by which the state discharges the duty to investigate a death under Article 2. A properly conducted inquest should examine and address systems and practices required to ensure safety and prevent deaths. Inquests can save lives and are a vital way of exposing unsafe systems of state care and holding public services to account.

In calling for automatic legal aid funding for 'state related' deaths we mean those that have occurred during or following contact with state agents (or state funded private providers) where Article 2 is and/or may be engaged.

This includes deaths of those in state detention where Article 2 automatically applies including:

- the unnatural, self-inflicted or violent death of anyone detained or de-facto detained in police, prison, immigration detention or mental health in-patient settings;
- deaths following use of force by the state (or agents of the state);
- self-inflicted deaths of military personnel.

It also includes deaths of people in state care and detention settings in circumstances in which Article 2 may apply, including, for example:

- the self-inflicted death of a child placed by CAMHS in a privately-run mental health hospital;
- a detained patient who dies following discharge in circumstances where inadequate support and community-based arrangements have been put into place;



- the so called ‘natural cause’ death of a prisoner who fails to receive necessary medical care;
- the unnatural death of a person with a learning disability who dies in a care setting;
- cases involving complex or systemic medical concerns.



The suggestion that inquests are inquisitorial – designed simply to establish the facts of a case – is a myth

Funding should also be granted in cases involving wider state and corporate accountability and multiple deaths such as Hillsborough, Grenfell and terrorist attacks. The little used ‘public interest’ category of funding needs to be expanded and clarified to broaden the scope to cover important cases raising issues of wider public concern and benefit. The extremely limited number of grants on public interest grounds demonstrates that the current test, and the way in which it is applied by the Legal Aid Agency, is not currently fit for purpose.

Access to justice

“We had to do everything ourselves. We had no lawyer at the inquest. Those three weeks were the most terrifying thing I’ve ever done in my life. I had to cross examine witnesses, it was absolutely terrifying, and they had lawyers. There needs to be a level playing field; a family member should never be put through that”.

Family member, Angiolini Family Listening Day 2016



Families commonly refer to the re-traumatising impact of the inquest process and hearing. The pain of this experience is often made worse by facing an inequality of arms

It is the inquest that the state has given as the principal way for a bereaved family to find out about what happened to their loved one. The need for families to play a central role in post death investigations and inquests following a state related death has been recognised by successive governments. Despite this, the pace of change has been slow.

The suggestion that inquests are inquisitorial – designed simply to establish the facts of a case – is a myth in practice. State agencies and private providers often treat the aftermath of a contentious death as a damage limitation exercise.

Families face combative legal teams representing multiple state, private sector bodies and employees, instructed to defend state policies and practices rather than find out what went wrong and why. In the case of state related deaths, this so called ‘inquisitorial’ process is in fact highly adversarial and are often complex and protracted legal proceedings requiring specialist knowledge of organisational policies and procedures and the law.

Inquests can be a painful, stressful and deeply frustrating experience for families. Families commonly refer to the re-traumatising impact of the inquest process and hearing. The pain of this experience is often made worse by facing an inequality of arms – a disparity in access to funding and



therefore to legal expertise – between families and public or private bodies. This has been exacerbated by the outsourcing of state services to private companies.

As soon as a death occurs, complex legal processes are triggered, involving multiple ‘interested persons’ and agencies. Families often need expert advice on areas such as access to and release of the body, post mortems, communication with investigation teams, securing of evidence, criminal investigations and so on. The more contentious the circumstances of the death, the greater the demands.

It is therefore imperative that families secure specialist legal advice from the earliest possible stage. Time and again families have pointed to the importance of this and regret not having been able to access such help sooner.

To have any chance of legal aid funding, families must jump through multiple hoops, answering extensive personal questions. It is a protracted and distressing process at an already intensely painful time. Some manage to get access to legal aid, but many do not or face paying large sums towards legal costs. The denial of legal aid has left many in desperate financial situations. Many families crowdfund for legal fees or are simply forced to represent themselves in complex legal hearings. Others face a battle to persuade the Legal Aid Agency that they come within the guidelines for exceptional funding. Until funding is secured, a legal team cannot take important and often urgent initial action.

Families describe the funding application processes as highly intrusive and offensive in its demands. To find that those representing the state are funded from the public purse and do not face the same financial scrutiny and obstacles serves only to generate further suspicion and break down of trust in the justice system.



With so much at stake in these cases including for society at large, access to justice should not be undermined in this way.

Properly conducted inquests where families have been represented by specialist legal aid lawyers have been instrumental in exposing systemic and practice problems that have contributed to state deaths

What a difference legal aid makes

Inquests where families are represented have resulted in important changes to policy and practice in the treatment and care of vulnerable people. Funding for families therefore has a wider public benefit, far beyond individual rights and interests.

Without specialist legal representation for families, the issues uncovered at many inquests would have remained unchallenged and hidden from public view.

Properly conducted inquests where families have been represented by specialist legal aid lawyers have been instrumental in exposing systemic and practice problems that have contributed to state deaths. Better information about state related deaths, improvements in training and guidance for state bodies, and legal reforms are all a direct consequence of the active participation of deceased families via their legal representatives in the investigation and inquest process. This role is crucial in alerting the authorities to much needed actions to prevent further deaths.



Family lawyers have assisted coroners by highlighting shortcomings in evidence or in raising important areas of concern. Family representation is now routinely welcomed and supported by coroners - indeed, in recent years we have noted the increasing practice of coroners writing to the Legal Aid Authority in support of bereaved families' individual applications for public funding.

In other areas of law, legal aid is provided without the need for a means test. For example, there is no means assessment in care and supervision proceedings in relation to children, where children are to be removed from their parents, nor for child abduction cases. This no doubt reflects the importance of the issues to those families and the public interest in funding legal representation in such cases.

There is also no means assessment for certain cases under the Mental Health Act and Mental Capacity Act linked to the fact that such applicants cannot represent themselves and in the majority of cases have little means. Many of these considerations apply to inquests into state related deaths.



It is bereaved families who drive the search for truth, justice and accountability

It's time to level the playing field

Specialist legal representation and input from families is crucial to ensuring robust post-death investigations and inquests. Inquests must shine a light on any state failings, ensure those responsible are held to account and identify opportunities to prevent future deaths.

More than anyone else, it is bereaved families who drive the search for truth, justice and accountability. Their overriding objective is to bring about changes to prevent future deaths, to stop others going through what they have faced. Our society is made safer by their actions and the changes they bring about.

INQUEST, with the support of families and lawyers, is calling for:

1. **Automatic non means tested legal aid funding to families** for specialist legal representation immediately following a state related death to cover preparation and representation at the inquest and other legal processes.
2. **Funding to an equivalent level to state bodies/public authorities and corporate bodies represented** including funding for silks and juniors, rates and brief fees and attendance at pre-inquest reviews;
3. **Legal aid should also include financial support for families**, including travel and subsistence, overnight accommodation and loss of wages.
4. **A relaxation of the current rules to enable funding of more than one family legal representative** where a real and insurmountable conflict exists.

Find out how you can support the campaign by visiting www.inquest.org.uk/legal-aid-for-inquests



Legal aid for inquests, time for change

Timeline 1999-2019

1999	Macpherson – Stephen Lawrence Inquiry Report of the Stephen Lawrence Inquiry.	<i>That consideration be given to the provision of Legal Aid to victims or the families of victims to cover representation at an Inquest in appropriate cases.</i>
2003	Independent Review of the Coroners Services Commissioned by the Home Office, chaired by Tom Luce Death Certification and Investigation in England, Wales and Northern Ireland: the Report of a Fundamental Review.	<i>We consider that the inquest should so far as possible be conducted in a style that is accessible to unrepresented lay people, and that the current criteria for awarding legal aid at inquests are broadly satisfactory. We recommend, however, that there should be a more liberal interpretation of the criteria in cases where a public authority is represented.</i>
2004	Joint Committee on Human Rights Deaths in custody, Third Report of Session 2004-05, Vol 1 2004.	<i>Participation of the next of kin in the investigation into a death in custody is an essential ingredient of Article 2 compliance... In all cases of deaths in custody, funding of legal assistance should be provided to the next of kin.</i>
2007	Corston Review A report by Baroness Jean Corston of a review of women with particular vulnerabilities in the criminal justice system.	<i>Public funding must be provided for bereaved families for proper legal representation at inquests relating to deaths in state custody that engage the state's obligations under Article 2 of the European Convention on Human Rights. Funding should not be means tested and any financial eligibility test should be removed whenever Article 2 is engaged. Funding should also cover reasonable travel, accommodation and subsistence costs of families' attendance at inquests.</i>
2015	Harris Review Changing Prisons, Changing Lives: Report of the Independent Review into Self Inflicted Deaths in Custody of 18-24 year olds by Lord Toby Harris.	<i>Families of the deceased should have a right to non-means tested public funding for legal representation at an inquest.</i>
2016	HHJ Peter Thornton QC, Chief Coroner Report of the Chief Coroner to the Lord Chancellor: Third Annual Report: 2015 – 2016.	<i>The Chief Coroner therefore recommends that the Lord Chancellor gives consideration to amending his Exceptional Funding Guidance (Inquests)³⁵ so as to provide exceptional funding for legal representation for the family where the state has agreed to provide separate representation for one or more interested persons.</i>
2017	Angiolini Review Report of the Independent Review of Deaths and Serious Incidents in Police Custody by Rt. Hon. Dame Elish Angiolini DBE QC.	<i>For the state to fulfil its legal obligations of allowing effective participation of families in the process that is meaningful and not "empty and rhetorical" there should be access for the immediate family to free, non-means tested legal advice, assistance and representation immediately following the death and throughout the Inquest hearing.</i>



2017	Bach Commission The Right to Justice: The final report of the Bach Commission.	<i>Where the state is funding one or more of the other parties at an inquest, it should also provide legal aid for representation of the family of the deceased.</i>
2017	Hillsborough Review The patronising disposition of unaccountable power: A report to ensure the pain and suffering of the Hillsborough families is not repeated by The Right Reverend Bishop James Jones.	<i>Publicly funded legal representation should be made available to bereaved families at inquests at which a public authority is to be legally represented. This could be achieved through amendments to the Ministry of Justice's Lord Chancellor's Exceptional Funding Guidance (Inquests) and should not need primary legislation. The requirement for a means test and financial contribution from the family should also be waived in these cases. Where necessary, funding for pathology or other expert evidence should also be made available.</i>
2017	HHJ Mark Lucraft QC, Chief Coroner Report of the Chief Coroner to the Lord Chancellor. Fourth Annual Report: 2016-2017.	<i>The Chief Coroner therefore recommends that the Lord Chancellor gives consideration to amending the Exceptional Funding Guidance (Inquests) so as to provide exceptional funding for legal representation for the family where the state has agreed to provide separate representation for one or more interested persons.</i>
2018	Joint Committee on Human Rights Enforcing human rights. Tenth Report of Session 2017-2019.	<i>While inquests are theoretically inquisitorial, in practice they often have a more adversarial nature. If inquests are to remain inquisitorial, families must be given non-means tested funding for legal representation at inquests where the state has separate representation for one or more interested persons.</i>
2018	Ministry of Justice: Review of legal aid for inquests	<i>Recent reports have highlighted the need to examine the provision of legal aid for death in custody cases and deaths where the state may have been involved. A better understanding of cases where the state has legal representation is needed to inform discussions about equality of arms for bereaved people more generally.</i>
2018	Independent Office for Police Conduct Consultation response: to MoJ's call for evidence regarding legal representation for families at Inquests.	<i>We believe legal aid should be automatically available to bereaved families following deaths in custody or other state detention. This is particularly critical at inquests, as legal proceedings are often complex and other parties, including the police, will ordinarily be represented.</i>
2019	Final report of the Independent Review of the Mental Health Act Modernising the Mental Health Act: Increasing choice, reducing compulsion chaired by Sir Simon Wessely.	<i>Funding should be available for the families of those who have died unnaturally, violently or by suicide whilst detained, to receive non means tested legal aid. This would be to help families to understand the processes, their rights, and what steps they can take. This would include funding to attend the inquest, but should also be available to support families immediately after the death of the patient.</i>
2019	Ministry of Justice, Final Report: Review of legal aid for inquests	<i>We have decided that we will not be introducing non means tested legal aid for inquests where the state has representation.</i>

Further information

The issues of legal aid for inquests and support for bereaved families are explored in full in [INQUEST's 2018 evidence](#) to the Ministry of Justice and submission to Bishop James Jones' Review. INQUEST organised Family Listening Days for a number of reviews as outlined below. This body of evidence provides unique insight into the challenges faced by bereaved families and illustrates the necessity of access to non means tested specialist legal representation.

- Angiolini, E. (2017) *Report of the independent review of deaths and serious incidents in police custody*. London: Home Office. [Download](#).
- INQUEST (2018) *INQUEST response to the Ministry of Justice call for evidence on legal aid for inquests*. [Download](#).
- INQUEST (2018) *Evidence to the Joint Committee on Human Rights Inquiry, Enforcing Human Rights*. [Download](#).
- INQUEST (2017) *Angiolini Review into Deaths and Serious Incidents in Police custody: policy briefing*. [Download](#).
- INQUEST (2017) *INQUEST submission to the Review of the Hillsborough Families' Experiences by the Rt. Rev Bishop James Jones*. [Download](#).
- INQUEST (2017) *INQUEST report of the Family Listening Day held to support the Rt. Rev Bishop James Jones' Review of the Hillsborough Families' Experiences* (April 2017). [Download](#).
- INQUEST (2016) *Summary of INQUEST response to the Independent Review of Deaths and Serious Incidents in Police Custody*. [Download](#).
- INQUEST (2016) *INQUEST report of the Family Listening Days held to support the independent review into deaths and serious incidents in police custody*. [Download](#).
- Jones, J. (2017) *'The patronising disposition of unaccountable power': A report to ensure the pain and suffering of the Hillsborough families is not repeated*. London: Home Office. [Download](#).
- Ministry of Justice (2019) *Final report: Review of legal aid for inquests*. [Download](#).



"Families are often left in the dark, trying to sort out numerous matters associated with a loved one dying whilst under the protection of the state, while trying to make sense of what has happened both emotionally and legally. Having access to funded legal representation is paramount for justice"



Louise and Simon Rowland, family of Joseph Phuong



"We were told we didn't need legal representation because inquests are 'inquisitorial' hearings. This couldn't have been further from the truth. The coronial process is an intricate, law-drenched and adversarial journey in which families without expert legal representation are too easily silenced. From the moment Connor died, it felt like a well-oiled state machine was cementing a wall of denial."



Sara Ryan, mother of Connor Sparrowhawk



"The power imbalance between bereaved families and the state is the most significant injustice of the coronial process. Yet the Ministry of Justice have disregarded the evidence and ignored the voices of bereaved families. INQUEST and the families we work with refuse to be silenced. We call on the government to act now and urgently introduce fair public funding for legal representation at inquests, to end this unequal playing field."



Deborah Coles, Executive Director, INQUEST



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