



BRIEFING PAPER

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Legal aid for representation at an inquest

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Summary

The provision of publicly funded legal services to bereaved families at inquests, which is governed by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) is extremely limited. The costs of legal advice and preparation in the run-up to an inquest can be met by legal aid. However, the costs of representation at the inquest itself will only be met in cases deemed to be exceptional.

Under LASPO there are two grounds for granting exceptional funding for representation at an inquest:

- where representation is necessary for an effective investigation into the death, as required by **Article 2** of the European Convention on Human Rights; or
- where the Director of Legal Aid Casework has made a **wider public interest** determination that the provision of advocacy for the bereaved family at the inquest is likely to produce significant benefits for a wider class of people

Caseworkers in the Legal Aid Agency's exceptional case funding team follow [guidance issued by the Lord Chancellor](#) when deciding whether or not an application for funding will be granted.

Applicants for exceptional case funding must also satisfy financial eligibility rules for legal aid. As of April 2019 the financial eligibility limits are, generally:

- Gross monthly income of £2,657; or
- Monthly disposable income of £733 and disposable capital of £8,000

Applicants may still be required to augment a grant of legal aid by making contributions to the costs of funding their representation. There is, however, a discretion to waive both the means-testing and requirement to make financial contributions.

It has long been argued that legal aid should be available for bereaved families to have legal representations at inquests where the state is funding one or more of the other parties. Recent recommendations to this effect have been made by (among others) Dae Elish Angiolini in her [Report of the Independent Review of Deaths and Serious Incidents in Police Custody](#) (January 2017), and by Bishop James Jones in his report [‘The patronising disposition of unaccountable power’: A report to ensure the pain and suffering of the Hillsborough families is not repeated](#) (November 2017). The charity [INQUEST](#) is also campaigning on this issue.

The Government position is that the relative informality of inquests and their inquisitorial (as opposed to adversarial) nature does not, save in exceptional cases, require bereaved families to be legally represented. Following a [review of legal aid for inquests](#) it has recently confirmed that it will not be introducing non-means tested legal aid for inquests where the state is represented. It will, however, “be looking into further options for the funding of legal support at inquests where the state has state-funded representation”. The Government will also be reviewing thresholds for legal aid entitlement, and making provision to backdate legal help waivers.

Other Commons Library briefing papers provide further information about coroners and inquests:

- [Coroners' investigations and inquests](#), number 03981, 28 June 2017
- [Challenging coroners' decisions](#), number 00525, 27 June 2017

1. LASPO: the general approach

Legal aid is only available to bereaved families during a coroner's investigation on an extremely limited basis. The current rules are governed by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).

The basic approach under LASPO is that a case will only be within scope for legal aid funding if it is of a type listed in [Schedule 1 to LASPO](#). A case of a type not listed in Schedule 1 can only be eligible for legal aid if the Legal Aid Agency determines that it is an "exceptional case" as set out in [section 10 of LASPO](#).

In very basic terms, legal aid relating to inquests is available as follows:

- **'Legal Help'** – the advice and assistance level of legal aid – is available to members of the deceased's family in the run-up to an inquest, as such cases are listed in paragraph 41 of Schedule 1 and are therefore within scope. This level of legal aid can fund the preparatory work for the inquest, such as preparing submissions to the coroner setting out the issues the family wishes the coroner's investigation to cover.
- **'Legal representation'** – the advocacy level of legal aid involving representation in court – is excluded from scope by virtue of the exclusions set out in Parts 2 and 3 of Schedule 1. Legal aid for legal representation for a bereaved family at inquest proceedings is therefore only available if the application relates to an "exceptional case" under [section 10 of LASPO](#).

The Government's reasoning for excluding advocacy at inquests from scope was set out in the Ministry of Justice's 2010 consultation paper on reforms to legal aid:

Inquests are inquisitorial processes rather than adversarial court proceedings. Participants do not have to present legal arguments, and can ask coroners to question witnesses on their behalf.

...

Inquests themselves are not directly comparable to other court or tribunal proceedings. Nor are the issues they consider comparable with those dealt with in civil litigation. There is generally no need for representation in inquests because of the inquisitorial nature of the proceedings and the fact that participants are not required to present legal argument...¹

Bereaved families and their lawyers have repeatedly challenged the "inquisitorial, not adversarial" argument as a basis for not funding representation of families at inquests. They point to the public funds spent on the lawyers representing the interests of public bodies at the same inquests (see section 3). Furthermore, as a coroner is a judicial officer holder conducting an independent and impartial investigation, coroners cannot ask questions on behalf of bereaved families or any other interested person.

¹ Ministry of Justice, [Proposals for the Reform of Legal Aid in England and Wales](#), Cm 7967, November 2010, page 52

2. Exceptional case funding

Legal aid is only available to fund advocacy at an inquest if the Director of Legal Aid Casework makes a determination that the case is eligible for exceptional case under [section 10 of LASPO](#).

Section 10 permits legal aid for an inquest on two grounds:

- where representation is necessary for an effective investigation into the death, as required by **Article 2** of the European Convention on Human Rights (ECHR);² or
- where the Director of Legal Aid Casework has made a **wider public interest** determination in relation to the individual applicant and the inquest.³

Applications for exceptional case funding are considered by caseworkers at the Legal Aid Agency. In coming to their decisions they must apply the detailed guidance set out in the [Lord Chancellor's Exceptional Funding Guidance \(Inquests\)](#) issued under section 4 of LASPO.

2.1 Article 2 of the ECHR

[Article 2 of the ECHR](#) imposes an obligation on the member states of the Council of Europe to protect the right to life. This obligation extends beyond the 'negative' duty not to take life and includes a 'positive' duty to protect it.⁴ States meet this 'substantive obligation' by:

- not taking life without justification and doing all that can be reasonably expected to avoid a real and immediate risk to life (the 'operational duty'); and
- establishing a framework of laws, precautions, procedures and means of enforcement which will, to the greatest extent reasonably practicable, protect life (the 'systemic duty').

Article 2 ECHR also imposes a 'procedural obligation' to initiate an effective public investigation by an independent official body into any death the circumstances of which 'give ground for suspicion that the State may have breached a substantive obligation imposed by Article 2'.⁵ In England and Wales, the state discharges this procedural obligation by way of a coroner's inquest.

Where the circumstances of a death call for the inquest to satisfy this procedural obligation, the inquest is often referred to as an 'Article 2 inquest' or a '*Middleton* inquest'.⁶

² LASPO, section 10(2) and (3)

³ Ibid, section 10(4)

⁴ See European Court of Human Rights, [Guide on Article 2 of the European Convention on Human Rights - Right to life](#), Updated on 31 December 2018 for full details of the state's obligations under Article 2

⁵ [R \(Smith\) v Oxfordshire Assistant Deputy Coroner \[2010\] UKSC 29](#) at para 84

⁶ Named after the case of [R \(Middleton\) v West Somerset Coroner \[2004\] UKHL 10](#) - a leading case on application of Article 2 ECHR to inquest proceedings.

The Lord Chancellor's guidance

The [guidance](#) sets out a two stage test to be applied by caseworkers when considering exceptional case funding applications based on Article 2:

- Does the procedural obligation under Article 2 arise?
- If so, is funded representation required to discharge the procedural obligation in the particular circumstances of the case?

Stage 1: Is the procedural obligation triggered?

The circumstances of certain deaths mean that the procedural obligation is **automatically** triggered.⁷ The guidance states that such circumstances include:

- all intentional killings by state agents (e.g. a police shooting);
- all violent or non-natural deaths and suicides of persons detained in police or prison custody or during the course of arrest or search; and
- all violent or non-natural deaths and suicides of persons detained in mental hospitals⁸

The suicide of a psychiatric patient, admitted voluntarily, may also automatically trigger the procedural duty.⁹

Where the procedural obligation is not automatically triggered the duty to investigate may still arise if the circumstances of the death are such that the state was arguably in breach of its substantive obligation (i.e. if the state failed to comply with its operational or systemic duty).

A coroner may express a view ahead of the inquest as to whether or not he or she considers the procedural obligation to be triggered, and may indicate an intention to conduct an 'Article 2 inquest' or '*Middleton* inquest'. Representatives of bereaved families often seek such indications from coroners to bolster their applications for exceptional case funding. Some coroners are willing to write letters in support of such applications explaining why the complexity of the inquest requires representation for effective involvement of the family. However the Lord Chancellor's guidance makes clear that a coroner's views are 'material and not determinative'.

⁷ The Lord Chancellor published revised guidance on 20 August 2015 to take account of the High Court's decision in [R \(Letts\) v the Lord Chancellor \[2015\] EWHC 402 \(Admin\)](#). The previous guidance was found to be materially misleading and inaccurate in the absence of a clear recognition of the category of cases where the investigative duty arises quite irrespective of the existence of an arguable breach by the state of the right to life.

⁸ The guidance was updated on 15 June 2018 to make it clear that legal aid was likely to be awarded for "non-natural" as well as "violent" deaths or suicides of persons detained by police, in prison or in a mental health unit. See Ministry of Justice press release, [Changes to the Lord Chancellor's exceptional funding guidance for inquests](#), 15 June 2018.

⁹ See [R \(Letts\) v the Lord Chancellor \[2015\] EWHC 402 \(Admin\)](#) at para 92 - this will depend on the facts of the case.

Stage 2: Is funding for representation of the bereaved family necessary to discharge the procedural obligation?

Where the procedural obligation does arise, the inquest must be compliant with the principles identified by the European Court of Human Rights in the case of *Jordan v UK*.¹⁰ The criteria are set out in the Lord Chancellor's guidance:

- the inquiry must be on the initiative of the State, and it must be independent;
- it must be capable of leading to a determination of whether any force used was justified, and to the identification and punishment of those responsible for the death;
- it must be prompt and proceed with reasonable expedition;
- it must be open to public scrutiny to a degree sufficient to ensure accountability; and
- the next-of-kin of the deceased must be involved in the inquiry to the extent necessary to safeguard their legitimate interests.

The guidance states that "in most cases the coroner can conduct an effective investigation, with the family's participation, without the family of the deceased needing to be legally represented".

In determining whether funding for representation is necessary, the Lord Chancellor has directed caseworkers to weigh-up the following factors:

- the nature and seriousness of the allegations against state agents (e.g. whether there are allegations of gross negligence, systemic failures or criminal conduct);
- whether there have been any previous investigations into the death (e.g. by the Crown Prosecution Service or the NHS), and whether the family has been involved in such investigations; and
- the particular circumstances of the applicant (e.g. whether the applicant is suffering from emotional distress or a severe mental health condition or disorder, whether English is the applicant's first language, their level of education or if they have a learning disability).

2.2 Wider public interest

The second ground on which exceptional case funding is available for advocacy at inquests is where the Director of Legal Aid Casework has made a wider public interest determination in relation to the individual applicant and the inquest.

The [Lord Chancellor's guidance](#) provides the following definition:

A "wider public interest determination" is a determination that, in the particular circumstances of the case, the provision of advocacy for the individual for the purposes of the inquest is likely to produce significant benefits for a class of person, other than the applicant and members of the applicant's family.

¹⁰ [Jordan v UK \(2003\) 37 EHRR 2](#), paras 105 and 107

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The guidance identifies the most likely wider public benefits as “the identification of dangerous practices, systematic failings or other findings that identify significant risks to the life, health or safety of other persons”.

The guidance emphasises that the wider public interest must be significant and says this will depend on a number of factors:

- what the benefits are;
- whether the benefits are more or less tangible;
- whether they will definitely flow to other people or whether this is merely a possibility; and
- the numbers of people who stand to benefit (the guidance comments that it will be “unusual for significant wider public interest to apply to something that benefits fewer than around 100 people, for example”).

That there is great public interest in an inquest is not enough to secure funding for a bereaved family; the wider public interest must be not in the inquest alone **but in the bereaved family being represented at the inquest.**

The guidance also directs Legal Aid Agency caseworkers to consider whether there are suggestions of large-scale systemic failures; whether the coroner would be assisted in uncovering systemic failings by the bereaved family being represented; and whether there are likely to be improvements to systems as a result of the inquest.

The guidance suggests that the likelihood of the inquest leading to significant benefits is lessened where:

- other investigations into the death have already made recommendations for improvements to systems; and/ or
- responsibility for failings that led to the death has already been accepted.

3. Financial eligibility

3.1 Financial eligibility limits

Legal aid applicants are normally required to pass a financial means test, which involves an assessment of the income and capital to check that the applicant's means do not exceed certain thresholds.¹¹ As of April 2019 the financial eligibility limits are, generally, a gross monthly income of £2,657¹² or a monthly disposable income of £733 and disposable capital of £8,000.¹³

The Legal Aid Agency has discretion to disapply the financial eligibility limits in applications relating to inquests.¹⁴ The [Lord Chancellor's guidance](#) states that the discretion to waive the financial eligibility limits is available 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. It goes on:

Whether this is reasonable will depend in particular on the history of the case, the nature of the allegations to be raised against State agents, the applicant's assessed disposable income and capital, the estimated costs of providing representation, and, in cases of deaths in custody, the particular circumstances of the family.¹⁵

3.2 Contributions to legal aid

Applicants who are eligible for legal aid may be required to make a contribution towards their legal aid if their finances are above a certain level. As of April 2019, contributions are payable where the individual's monthly disposable income exceeds £315 or their disposable capital exceeds £3,000.¹⁶ Contributions can only be required in respect of legal representation (i.e. advocacy), not in respect of legal help (i.e. pre-court legal advice).

The Legal Aid Agency has discretion to waive the contribution requirements (in whole or in part) in applications relating to inquests.¹⁷

The [Lord Chancellor's guidance](#) comments:

Where it is appropriate for a contribution to be payable this may be based upon the applicant's disposable income and disposable capital in the usual way ignoring upper eligibility limits. As funding will cover only one-off advocacy services at the inquest, an appropriate total contribution will normally consist of one month's

¹¹ As set out in the [Civil Legal Aid \(Financial Resources and Payment for Services\) Regulations 2013](#)

¹² Regulation 7(4) of the 2013 Regulations

¹³ Regulation 8(2) of the 2013 Regulations

¹⁴ Regulation 10 of the 2013 Regulations

¹⁵ A reference to the "other financial resources of the family" was removed in 2018, with the Ministry of Justice commenting that this would "ensure that only the individual applicant's financial means will be tested and not the means of family members, helping to ease the burden of the application process". See Ministry of Justice press release, [Changes to the Lord Chancellor's exceptional funding guidance for inquests](#), 15 June 2018.

¹⁶ Regulation 44 of the 2013 Regulations

¹⁷ Regulation 10 of the 2013 Regulations

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assessed income contribution. Capital contributions will not take into account the client's home, or any award of damages received by the family in compensation for the deceased's death. Contributions should always be based on what can reasonably be afforded by the applicant in all the circumstances of the case.

4. Calls for change

There have been numerous calls for the Government to review and extend the provision of legal aid for bereaved families at inquests, particularly where public bodies have received state funding for legal representation.

Such calls are not new, and many examples pre-date LASPO.

4.1 Pre-LASPO

The Luce Review of coroner services in 2003 recommended a more liberal interpretation of the criteria for awarding legal aid at inquests in cases where a public authority is represented.¹⁸

In 2004, the Joint Committee on Human Rights (JCHR) said:

Participation of the next-of-kin in the investigation into a death in custody is an essential ingredient of Article 2 compliance. We recommend that, in all cases of deaths in custody, funding for legal assistance should be provided to the next-of-kin.¹⁹

In 2006, Baroness Jean Corston's review of vulnerable women in the criminal justice system recommended that public funding should always be provided for bereaved families at inquests following deaths in state custody. In Baroness Corston's view the need for proper legal representation was so great that any financial eligibility test should be disapplied in cases where Article 2 ECHR is engaged.²⁰

In 2009 the JCHR again expressed concern at the difficulties faced by bereaved families seeking legal assistance and representation at inquests. It recommended that the Government "make a concrete commitment to an independent review of the current system for assessing access to legal aid and other funding for bereaved families to access legal advice and assistance, preparation and representation at an inquest".²¹

In its response to the JCHR, the Labour Government said it was considering how families could have more accessible opportunities for involvement in the inquest process. However, it did not agree that a formal review was the best way to achieve this. It also highlighted the discretion to waive the financial eligibility limits and challenged the view that means testing represented an obstacle for representation in exceptional inquests.²²

¹⁸ Home Department, [Death Certification and Investigation in England, Wales and Northern Ireland: The Report of a Fundamental Review 2003](#), Cm 5831, June 2003, p148

¹⁹ Joint Committee on Human Rights, [Deaths in Custody](#), 14 December 2004, HC 137-I 2004-05, para 309

²⁰ Home Office, [The Corston Report - A report by Baroness Jean Corston of a review of women with particular vulnerabilities in the criminal justice system](#), 2006, p5

²¹ Joint Committee on Human Rights, [Legislative Scrutiny: Coroners and Justice Bill](#), 20 March 2009, HC 362 2008-09, para 1.113

²² Joint Committee on Human Rights, [Government replies to the Second, Fourth, Eighth, Ninth and Twelfth reports of Session 2008-09](#), 25 June 2009, HC 592 2008-09, pp19-20

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In late 2009 the Labour Government did legislate, through [section 51 of the Coroners and Justice Act 2009](#), to extend the scope of legal aid in England and Wales to include provision for the representation of bereaved families at inquests into:

- deaths of military service personnel who die on active service;
- deaths in custody or in the course of arrest or other action by the police.

However section 51 was never commenced and was ultimately repealed by LASPO without ever having been brought into force.²³

For full background on section 51 please see section 1.10 of [Library Briefing Paper SN05211 Coroners and Justice Bill: Lords amendments](#).

4.2 Post-LASPO

The calls for change have continued since LASPO took effect.

In her January 2017 [Report of the Independent Review of Deaths and Serious Incidents in Police Custody](#), Dame Elish Angiolini commented that the argument that families did not need legal representation at inquests involving deaths in police custody on the grounds that these are “inquisitorial processes” where the Coroner can look after the families’ interests was a “wholly unfounded” premise.²⁴ She continued:

The reality is that inquests into death in police custody are almost always adversarial in nature. This has been the unanimous opinion of Coroners, lawyers and families who have given evidence to this review. There is nothing inherently wrong with an adversarial approach as it may be the best way to robustly test evidence in court. However, it needs to be recognised as such. The expectation that the Coroner can meet the family’s interests during the inquest is wholly naïve and unrealistic as well as unfair to families and to the Coroner.

It is difficult to justify the belief that families do not need a solicitor to represent them when several individual state bodies at the Inquest hearing are routinely represented in contentious Article 2 cases by their own Queen’s Counsel, who are very senior lawyers. To a family appearing at an inquest, seeing the scale of legal representation for the various branches of the state does little to enhance their faith in the process.²⁵

She described it as “manifestly nonsense” to suggest that families could represent themselves at such inquests, and that in practice it would not always be possible for the Coroner to “level the playing field”. She called for automatic non-means tested funding for legal advice and representation from the earliest point following the death.²⁶

In its response to the Report, the Government said that it would review guidance to legal aid caseworkers and would “consider the issue of publicly-funded legal advice and representation at inquests, in particular

²³ LASPO, Schedule 5, Part 2

²⁴ Dame Elish Angiolini DBE QC, [Report of the Independent Review of Deaths and Serious Incidents in Police Custody](#), January 2017, para 16.56

²⁵ Ibid, paras 16.57-16.58

²⁶ Ibid, paras 16.61-16.65

the application of the means test in these cases” as part of its planned post-implementation review of LASPO.²⁷

In September 2017, the final report of Lord Bach’s [Commission on Access to Justice](#) recommended that 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 bereaved family.²⁸

Bishop James Jones set out a similar recommendation in his report into the Hillsborough disaster. He noted the apparent inequality of arms at the original Hillsborough inquests:

2.11 Families received no public funding for representation at the first inquests. Publicly funded representation was however provided jointly to South Yorkshire Metropolitan Ambulance Service and Trent Regional Health Authority, as well as to Sheffield City Council. Senior South Yorkshire Police officers were represented by five separate legal teams.

2.12 Representation for the families stood in stark contrast. No public money was provided for the families’ legal expenses, and so what representation they had was self-funded. At the ‘mini-inquests’, a single solicitor represented the interests of over 90 families. At the ‘generic inquest’, one barrister represented 43 families, one family was represented by the mother of the person who had died and the remaining families had no representation at all.

2.13 As a result, families told me that they felt underrepresented and lacked access to necessary advice. Public bodies, however, appeared to spare no expense on their own legal advice and representation. Many families shared the view that ‘You can’t have families footing the cost of their legal representation while the taxpayer funds the police’.²⁹

He said it had been suggested to him that proper legal representation for the families at the original inquests may have avoided the need for fresh inquests some 25 years later. He also noted that the families had received Government funding for representation at the fresh inquests, and that they considered this to have improved both their experience and the outcome of the inquests.³⁰

He said that a fundamental point of learning from the experience of the Hillsborough families was that “the state must ensure ‘proper participation’ of bereaved families at inquests at which a public body is to be represented”. Proper participation would include the following four strands:

I. Publicly funded legal representation for bereaved families at inquests at which public bodies are represented.

²⁷ HM Government, [Government response to the Independent Review of Deaths and Serious Incidents in Police Custody](#), October 2017, paras 2.80-2.84

²⁸ Bach Commission, [The Right to Justice: The final report of the Bach Commission](#), September 2017, p33

²⁹ Bishop James Jones, [‘The patronising disposition of unaccountable power’: A report to ensure the pain and suffering of the Hillsborough families is not repeated](#), HC 511, 1 November 2017

³⁰ Legal representation for the Hillsborough families was funded directly by the Home Office, and not by legal aid: see Gov.uk, [Transparency data: Bereaved Hillsborough families: legal representation costs](#)

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II. An end to public bodies spending limitless sums providing themselves with representation which surpasses that available to families.

III. A change to the way in which public bodies approach inquests, so that they treat them not as a reputational threat, but as an opportunity to learn and as part of their obligations to those who have died and to their family.

IV. Changes to inquest procedures and to the training of coroners, so that bereaved families are truly placed at the centre of the process.³¹

On the first of these strands, he added:

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.

The cost of this change should be borne by those government departments whose agencies are frequently represented at inquests – including the Home Office, Department for Health, Ministry of Justice and Ministry of Defence – based on the number of inquests which in an average year relate to each department's areas of responsibility.³²

The Chief Coroner made similar recommendations in his most recent Annual Report to the Lord Chancellor.³³

The charity INQUEST has long criticised the imbalance in representation of interested persons at inquests as unfair and antithetical to justice. It is calling for the following:

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.

Funding equivalent to that enjoyed by state bodies/public authorities and corporate bodies represented.³⁴

Full details of INQUEST's campaign are set out in its briefing [Now or never! Legal Aid for Inquests](#).

³¹ Ibid, Point of learning 9, p59

³² Ibid, Point of learning 9(i), p59

³³ Chief Coroner, [Report of the Chief Coroner to the Lord Chancellor - Fourth Annual Report: 2016-2017](#), November 2017, paras 183-185

³⁴ INQUEST, [Now or Never! Legal aid for inquests](#) [accessed 9 April 2019]

5. The Government's review

In July 2018 the Government launched a "[call for evidence](#)" on legal aid for inquests. It noted that criticisms had been levelled against the current availability of legal aid for inquests, and that it was therefore time to review the system and seek views on people's experiences. The evidence gathered would be used to inform a wider review aimed at establishing "what is needed to ensure that bereaved people can understand and properly participate in inquest proceedings".³⁵

In February 2019 the Government published the [outcome of its review](#) into legal aid for inquests. The Government said it had reached the following conclusions, and would be taking the following actions:

- i. In order to make sure that providers are aware of how the current system works in these cases, we will explore options to raise awareness and clarify the eligibility process in the provider funding pack;
- ii. In order to improve understanding of the eligibility criteria, we will set this out in separate guidance for families (...);
- iii. In order to address difficulties with the application process, we will look at the procedure for claiming under the Exceptional Case Funding Scheme to ensure it works as effectively as possible;
- iv. Having considered the impact of additional representatives on bereaved families, the financial considerations, and the impact of a possible expansion on the wider legal aid scheme, we have decided that we will not be introducing non-means tested legal aid for inquests where the state has represented. However, going forward, we will be looking into further options for the funding of legal support at inquests where the state has state-funded representation. To do this we will work closely with other Government Departments.
- v. The evidence we have gathered will be considered as part of a review into the thresholds for legal aid entitlement, and their interaction with the wider criteria.
- vi. We will be introducing a provision for the backdating of the legal help waiver, so that all such payments can be backdated to the date of application should a waiver be granted.³⁶

The Government set out further details on its decision not to introduce non-means tested legal aid for inquests where the state is represented:

129. We have looked at the impact of publicly funded family representatives on the conduct of inquest hearings, and the ability of the family to participate and understand the process. In the main, responses from bereaved families and representative bodies suggested that public funding for families in these cases is required to ensure that there is an equality of arms. However, a number of stakeholders pointed out that it should not be assumed that in cases where the state has legal representation, representation for the family is necessarily required nor that it enhances the results of the coroner's investigation. They suggested that the addition of further lawyers might actually

³⁵ Ministry of Justice, [Review of legal aid for inquests](#), 19 July 2018

³⁶ Ministry of Justice, [Final report: Review of legal aid for inquests](#), February 2019, p5

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hinder the process, by making the process more adversarial and legally complex.

130. We have also looked into the financial implications of this option. We have estimated that this option would result in an additional spend of between £30 million and £70 million.

131. Having taken all of these considerations on board, we have decided that we will not be introducing non-means tested legal aid for inquests where the state has representation. Means testing serves to determine the allocation of taxpayers' money to those most in need. This mechanism upholds the wider policy intention of the existing legal aid statutory framework of ensuring that legal aid is targeted at those who need it most, for the most serious cases in which legal advice or representation is justified. An additional spend of £30-70 million would run counter to this wider policy intention.

132. However, we would like to explore further options for the funding of legal support at inquests where the state has state-funded representation. To do this we will work closely with other Government Departments.³⁷

The charity INQUEST has expressed its disappointment at this outcome, saying "[this is not what justice looks like](#)".

³⁷ Ibid, pp24-25

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