

Inequality of arms

That bereaved families have so little hope of obtaining legal aid for inquests is indicative of the UK's broken system, says **Jonathan Wheeler**



With only a week to go before the opening of the inquests into the 1974 Birmingham pub bombings last month, the Legal Aid Agency (LAA) rejected the victims' application for legal aid. Northern Ireland firm KRW Law, representing half of the families, was instead awarded only a tenth of the funding requested—certainly insufficient for the well-resourced legal team it required.

The following day, a crowdfunding page was created in a last-ditch attempt to source the funds desperately needed for the families' legal representation. This was, however, too little too late, after a succession of snubs by LAA, and when a boycott of the inquest by the families had been floated as a serious option. The fact that the families found themselves in this situation at such a late stage is indicative of the broken legal aid system in the UK.

Exceptional cases only

The rules on legal aid representation relate to 'exceptional cases'. There are two classes of case where LAA will—in theory—grant funding: if there is a human rights issue, or a wider public interest in the inquest.

Human rights are engaged where a death has potentially been caused by the state, and applies generally to deaths in state detention—for example in prison or police custody, or for those detained under the Mental Health Act 1983. Media coverage has in the past assisted the bereaved in securing legal aid funding for public interest cases, as happened for the inquests into the Hillsborough

tragedy. Even in these circumstances, legal aid is only available where the applicant has a gross monthly income of less than £2,657, or a monthly disposable income of less than £733 and disposable capital of less than £8,000. These financial limits can be waived if the circumstances are such that it cannot be expected for the family to pay for representation.

Public funding is available for 'legal help' before an inquest, but this does not cover hearings, and those are arguably where the family needs the most assistance. The majority of coroners' officers do an excellent job of trying to assist families as much as possible with the pre-inquest process, but they are unable to help during the inquest hearing itself.

Away from the spotlight of public attention, families have little hope of obtaining legal aid for inquests. Many do not pass the restrictive means test, and LAA rarely uses its discretion to disapply it. As a result, relatives have been forced to represent themselves, rely on pro bono help, or turn to crowdfunding campaigns, as has been the case with the Birmingham pub bombings.

An inquest can be a confusing and deeply upsetting event for any family, with the trauma of hearing the details of a loved one's death in cold medical terminology. The focus of the hearing is not the family, but on the state's duty to find out the cause of death.

The real injustice facing the bereaved is that they are often the only party without representation. State agencies implicated or

involved in a death (maybe the police, the prison service or an NHS hospital) will pay for professional representation. The government consistently claims the process is not adversarial, and that for the vast majority of inquests, legal representation is not necessary, but this raises the question: why do public bodies still opt for lawyers?

Unaccountable power

The renewed focus following on from the independent review of deaths and serious incidents in police custody in 2017, as well as Bishop James Jones' review of Hillsborough, *The patronising disposition of unaccountable power*, prompted the Ministry of Justice (MoJ) to launch a review of legal aid for inquests; their response to the consultation was published in February 2019 (see [bit.ly/2NKa1Qj](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/788112/20190220-legal-aid-for-inquests-response-to-consultation.pdf)). Although more than 70 legal firms, human rights organisations and families made submissions backing change, the MoJ decided not to alter the funding model for inquests.

The charity INQUEST, which has campaigned for decades on these issues, has in response called on the government to reverse its decision and introduce automatic non-means-tested legal aid funding for bereaved families after a state-related death. Their campaign is now gathering political support. The shadow Lord Chancellor Richard Burgon has taken the step of pledging automatic legal aid funding for bereaved families if the relative has died under the control of state agencies, such as in prison or a police station, which accounts for around 500 inquests a year.

There are around 32,000 inquests a year. The reality is that the number which involve the state or have a wider public interest is very low, and to allow families representation at those would be a tiny proportion of the legal aid budget. One solution could be to agree a fixed fee for representation per day, keeping overall costs low. Arguably though, any cost is more palatable than allowing families to suffer the indignity and disparity of the current system, and—as Burgon says—be reduced to 'shaking a collection tin' through online crowdfunding.

Ultimately, it is unfair and unedifying in a civilised society for the bereaved to be effectively denied representation, when the public bodies involved or implicated in the death of their loved one turn up to an inquest, tooled up with lawyers paid from the public purse. Equality of arms and basic fairness and decency means that the government should heed INQUEST's campaign and move to reverse its decision.

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