Legal Aid Agency

Inquests - Exceptional Cases Funding – Provider Pack

Version:	Issue date:	Last review date:	Owned by:	Reviewed by:
1	1st April 2013	1st April 2013	ECF Team	ECF Team Leader

Contents

1. Overview
2. Legal Aid for inquests
3. Legal Help (in scope)
4. Other Legal Services (advocacy)
5. Experts
6. Making an application
7. Costs
8. Contribution towards costs
9. Effective date of certificate
10. Review process
11. Individual case contracts
12. Claims for payment
13. Statutory charge
14. ECF team contact details

1. Overview

This guidance provides information about the application process for civil legal services for advocacy in proceedings at an inquest. It also provides information about controlled work for inquests. A separate pack covers applications for funding for other exceptional cases.

2. Legal Aid for inquests

Section 41 of Part 1 of Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the Act") says that civil legal services provided to an individual in relation to an inquest under the Coroners Act 1988 into the death of a member of the individual's family are within scope subject in particular to the exclusions in Part 3 of Schedule 1, which excludes advocacy. Regulation 30 of The Civil Legal Aid (Merits Criteria) Regulations 2013 says that Legal Help is the only form of service which is appropriate in relation to such a matter.

Under Section 10 (2) and 10 (4) of the Act Civil legal services other than those described in Part 1 of Schedule 1 of the Act are to be available by way of exceptional case funding on one of two grounds.

The first is that required by Article 2 ECHR where the services consist of advocacy in proceedings at an inquest under the Coroners Act 1988 into the death of a member of the individual's family.

The second is where the Director has made a "wider public interest determination" in relation to the individual and the inquest. This 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.

Prior to submitting an application providers should refer to the Lord Chancellor's Exceptional Funding Guidance (Inquests).

In order for an exceptional inquest case to be funded the client must in general satisfy the financial eligibility limits as set out in The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 and the relevant merits criteria set out in The Civil Legal Aid (Merits Criteria) Regulations 2012

An individual is a member of another individual's family if—

(a) They are relatives (whether of the full blood or half blood or by marriage or civil partnership),

(b) They are cohabitants (as defined in Part 4 of the Family Law Act 1996), or

(c) One has parental responsibility for the other.

3. Legal Help (in scope)

The provision of Legal Help for advice, assistance and preparation, including the preparation of written submissions to the coroner setting out the family's concerns and any particular questions that the family wishes the coroner to raise with witnesses, is retained within the scope of the legal aid scheme. Legal Help can also cover the attendance of a McKenzie Friend to offer informal advice in court with permission of the Coroner.

Regulation 10 of The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 says that the Director may, if the Director considers it equitable to do so, disapply the eligibility limits in respect of a Legal Help inquest application. Application for waiver of financial eligibility limits for Legal Help should be submitted to the ECF Team. In considering whether to disapply the eligibility limits the Director must have regard in particular to any applicable rights under Article 2 ECHR. For a decision to be made on waiver full details of the family's resources would be considered (not simply the figures for the Legal Help applicant as set out on the CW1form).

There is no longer any provision to add the costs of preparatory work to any certificate for other legal services for advocacy at an inquest

4. Other legal services (advocacy)

Where the Director, having applied the relevant merits criterion in Regulation 45 of the Civil Legal Aid (Merits Criteria) Regulations 2013, makes a determination that a client qualifies for services under section 10(4) of the Act, and subject to financial eligibility, a certificate for "other legal services" will be issued. "Other legal services" means the provision of civil legal services to instruct an advocate, to prepare to provide advocacy or to provide advocacy. Regulation 45 says that an individual may qualify if it would be reasonable in all the circumstances for the individual to be provided with other legal services.

Advocacy costs include:

- Counsel or solicitor costs as advocate
- Costs of another legal representative attending the hearing, if justified
- Costs of instructing counsel for the hearing (drafting the instructions)
- Conference costs immediately before the hearing
- Costs of any pre-inquest review hearing at which advocacy is required
- Counsel's written submissions or arguments

5. Experts

The costs of experts attending the inquest are not paid by legal aid. These costs should be met by the coroner's court where the coroner has concluded that the attendance of the expert at the inquest is necessary as the evidence is relevant to the investigation of the death. An expert report may be obtained under the Legal Help scheme to assist in the preparation of the client's submissions or questions and the preparation of the client's case.

No payment will be made for interpreter costs for the inquest hearing. These should be met by the coroner's court.

6. Making an application for exceptional funding

Form CIV ECF1 must be submitted along with some pages from form CIV APP1 to apply for civil legal services for advocacy at an inquest. In particular pages 1,2,9-12 and 14 should be completed on CIV ECF 1 and pages 1,2 and 13 of CIV APP1. The applicable means form(s) must always be supplied.

All completed applications for an exceptional case funding must be sent to the ECF Team at Legal Aid Agency, Post Point 6.42, Sixth Floor, 102 Petty France London SW1H 9AJ or Legal Aid Agency, DX 161440 Westminster 8

All applications to the Legal Aid Agency must be received within 2 months of the date of signature of the relevant means forms provided by the applicant. Any applications received where the date of the client's relevant means form is more than 2 months ago upon receipt by the Legal Aid Agency will be rejected and the client will need to make a fresh application. This would apply even if the application form is dated within the 2 month window but the means form is dated longer than 2 months ago on receipt by the Legal Aid Agency.

In general applicants must satisfy the financial eligibility tests as set out in the regulations. However there is discretion to waive eligibility limits relating to inquests in Regulation 10 Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013. You should refer to the guidance in paragraphs 37-38 of the Lord Chancellor's Exceptional Funding Guidance (Inquests). Whether it is reasonable or not to expect the family to bear the full costs of legal representation at the inquest will depend on the history of the case, the nature of the allegations to be raised against Stage Agents, the applicant's assessed disposable income and capital, other financial resources of the family, and the estimated costs of providing representation.

It is important to note that we do not have discretion to waive an assessment of means. To process the application within the target timeframe we need to have full details of the resources of all other relevant family members. You should specify on page 9 of the CIV ECF1 form who all the relevant family members are and you should provide relevant means forms with the application. We would generally expect to have means information from the following family members

- If the deceased was a child, means information from the parent or parents or anyone with parental responsibility for the child
- If the deceased was an adult, means forms from his or her partner and adult children
- If the deceased was an adult who had no partner, means information from the deceased's parents, adult children and siblings

Full details should be provided of all attempts to obtain relevant means information. It is not necessary for each family member to instruct you in relation to the inquest. It will not be sufficient to say that other family members are unwilling to take part and/ or it is inconvenient to obtain such information and/ or that the family member has not been in contact for some while.

We aim to process the application, provided we have all relevant information, within 20 working days. Because we aim to deal with all aspects of the application within this timeframe we may request additional means or other information during the process. It is particularly important to note that a request for additional information does not indicate whether or not exceptional case funding may be granted.

Upon determination of your client's application the ECF team may return original documents to you. Where this happens then the documents must be held by you on the file and if required by the Legal Aid Agency for audit purposes they should be produced upon request.

7. Costs

A schedule of costs should be provided with the application. Every application must specify a figure for the total amount of funding required and broken down to specify the hours claimed for the advocacy services and the rates charged. A legal aid certificate for "other legal services" will be issued if exceptional funding is granted. It will contain a binding costs limitation. This limitation cannot be exceeded without prior agreement from the Legal Aid Agency.

The remuneration rates are set out in the Civil Legal Aid (Remuneration) Regulations 2013. For other legal services for advocacy Regulation 9 (3) applies. Payment is in accordance with the relevant contract (see section 11below) and the rates set out in Schedule 4. For the purposes of Schedule 4 "Senior Solicitor" means a solicitor with over eight years' qualified experience.

However if due to exceptional circumstances we consider it reasonable to do so, instead of paying remuneration in accordance with the rates set out in Schedule 4, we may pay remuneration to solicitors and counsel in accordance with the payment rates set out in Section 7 of the 2010 VHCC [Crime] Contract (for organisations and self employed advocates). "Exceptional circumstances" must relate to one or more of the following—

(a) The unusual length of the inquest;

(b) The volume of material; or

(c) The complexity of the issues.

It will be unusual for the costs of a senior solicitor at court to be allowed where counsel is instructed. We would usually expect to allow the costs of attendance by a junior fee-earner or trainee, if appropriate, to attend with counsel. Senior solicitor attendance with counsel must be justified in each case.

Unless reasonable and justifiable any costs incurred as a result of the instruction of a non-local solicitor and / or counsel will not be approved.

Funding for Queen's Counsel is approved in the most exceptionally complex of cases. Information about the exceptionally complex issues must be provided to demonstrate why funding is sought for the instruction of specialist leading counsel.

Once a certificate is granted you must make a request for an increase in the allowance for costs and ordinarily this should be done before additional work is incurred. This can be by using form CIV APP8 or by letter clearly headed "Application for Amendment – Inquest". If however an increase is required due to circumstances beyond your control when you are unable to contact the ECF Team you should apply as soon as reasonably practicable, which we would usually accept as a period of 5 working days. Often increases are required because the estimated length of the hearing changes or because an additional pre-inquest review hearing is listed for which advocacy is required.

8. Contribution towards costs

Pursuant to Regulation 10 (2)(b) of The Civil Legal Aid (Financial Resources and Payment for Services) Regulation 2013 where funding is granted to provide advocacy at an inquest into the death of a member of the client's family, the Agency may waive financial contributions payable under regulation 44 in whole or in part.

As a starting point, where eligibility is waived, we will calculate the contribution due under the Regulations ignoring the upper eligibility limits. We will then consider whether and to what extent to reduce it. As funding will cover only advocacy services at the inquest, the appropriate total contribution will normally consist of one month's assessed income contribution and a proportion of the assessed capital contribution. Contributions will be based on what can fairly and reasonably be afforded by the applicant and his or her family in all the circumstances of the case. Capital contribution will not take into account the applicant's home.

9. The effective date of legal aid

There is no provision for emergency representation for determinations under section 10 of the Act. Regulation 68(1) Civil Legal Aid (Procedure) Regulations 2012 says that a determination under Section 10 of the Act may specify that the determination is to be treated as having effect from a date earlier than the date of the determination.

We will generally exercise our discretion to backdate funding where the application to the Agency was made at the earliest opportunity. Usually funding will take effect from the date of the determination by the Agency but in appropriate cases it may be backdated to the date of the initial application to the Agency.

Legal Help may, in appropriate cases where financial eligibility is waived, be backdated to the date of first attendance upon the client. Otherwise for ordinary Legal Help cases where waiver is not applicable the usual controlled work rules will apply. In most legal help cases we will pay the legal help fixed fee for claims for payment and only if the case costs exceed the escape fee threshold would we pay hourly rates when we assess the claim as from the effective date of signature of the form. We will confirm the effective date of Legal Help commencement to you in writing.

10. Review process

Part 8 of the Civil Legal Aid (Procedure) Regulations 2012 that applies to exceptional cases says that the procedures that apply to licensed work also apply to other legal services except as provided in Part 8. Regulation 66 of the regulations says that there is no appeal but regulation 69 provides that a client may apply for a review.

Within 14 days of a decision that the applicant does not qualify for an exceptional case determination the applicant may apply for a review of the decision to refuse the application.

The applicant should provide a letter setting out the grounds for review clearly headed “Application for Review of Refusal – Inquest”. The applicant should include any supporting documentation and send the application for review to the ECF Team at Legal Aid Agency, Post Point 6.42, Sixth Floor, 102 Petty France London SW1H 9AJ or Legal Aid Agency, DX 161440 Westminster 8.

We aim to process the application for review within 20 working days and notify the outcome. The application for review will be determined by a separate caseworker and the decision may be confirmed or amended or a new decision may be substituted.

There is no further review process. Only one application for review may be submitted.

11. Individual case contracts

Legal Help in relation to an inquest into the death of a member of the client’s family (paragraph 41 of Part 1 of Schedule 1 to the Act) will fall into the Category which relates to the underlying subject matter of the inquest. For example, Legal Help for an inquest where the client died in prison will be funded in the “Actions Against the Police Etc” Category. Where an inquest does not fall within one of the Categories, it will be carried out as Miscellaneous Work.

Where any relevant grant of exceptional funding is made (in accordance with section 10 of the Act) for advocacy at an inquest, this will fall into the Category which relates to the underlying subject matter of the inquest, and where the inquest does not fall within any given Category, it will be carried out as Miscellaneous Work.

For further guidance on the Category of Law definitions you should refer to the Category Definitions Document that forms part of the 2010 Standard Civil Contract or 2013 Standard Civil Contract as appropriate. For the avoidance of doubt, there is no “miscellaneous” Category of Law; this simply refers to all work falling outside of Contract Categories.

You will complete page 2 of the ECF1 to indicate that your office has a contract that allows you to do the legal aid work in the category of law that applies to the case. Otherwise if you are not a contract holder in the required category of law for the form of service applied for then you must explain why it is necessary for the effective administration of justice for you to conduct the matter. You should refer to regulation 31 (5) (a) – (d) Civil Legal Aid (Procedure) Regulations 2012 and complete page 2 of the application with full details. We may request additional information or documentation to make a determination under the effective administration of justice test and where we do so the application may not proceed until the additional information is provided.

If you make a successful application for an exceptional case and you satisfy the effective administration of justice test then you will be offered an individual case contract by the Lord Chancellor for the client's matter if you do not hold a standard civil contract. If you do hold a standard civil contract you will, in these circumstances, be authorised to conduct the case under the terms of your existing standard civil contract. When acting under an Individual Case Contract you are bound to comply with all requirements of the 2010 Standard Civil Contract or 2013 Standard Civil Contract as appropriate and all applicable legal aid regulations and requirements. If you do not meet the effective administration of justice test but otherwise the application for an exceptional case determination is successful and the client's case falls within our category definitions then you should refer the client to a contracted provider.

If the client's case does not fall within any contract category definition and the application for an exceptional case determination is successful then we can offer an individual case contract for the client's matter without you having to satisfy the effective administration of justice test, even though you do not hold a contract with the Lord Chancellor. Providers who do hold a standard contract will carry out such exceptional cases under the terms of that standard contract in the same way as for any other miscellaneous work, without the need for a separate individual case contract.

When you claim payment in a controlled work case if you do not have access to the Contracted Work and Administration (CWA) system to report completed controlled work cases then you should contact our CWA On-line Support Team on 020 7718 8359 for assistance with the claiming process. See section 12 below for claims in licensed (certificated) work.

12. Claims for payment

The ECF team will continue to manage any case where an exceptional case determination has been awarded except for claims for payment.

Claims for payment should be submitted on CIV CLAIM1 together with all disbursement vouchers and fee notes for counsel. The CIV CLAIM1 should be submitted to The Legal Aid Agency at Unit B8, Berkley Way, Viking Business Park, Jarrow, South Tyneside NE31 1SF or to DX 742350 JARROW

13. Statutory charge

The statutory charge under Section 25(1) of the Act will apply to the costs of representation in a case where civil legal services are made available if any damages are awarded or costs are awarded in the client's favour.

It should be noted that the statutory charge could apply if damages or costs are recovered in proceedings or in any compromise or settlement of a dispute in connection with which the services were provided. Given the potential connection between the inquest proceedings and any subsequent civil action, the charge could also arise if, ultimately, civil damages are recovered in a related case. The question to ask is “whether civil legal aid has been provided in connection with the proceedings or dispute in which property was recovered or preserved?” Whether the charge does apply will always depend on the facts of the case, the sequence of events and the outcome.

The costs of attendance at an inquest are capable of being recovered as costs incidental to subsequent proceedings following the decision in Roach & Roach v Home Office and Matthews v Home Office [2009] EWHC 312 (QB)

In compliance with regulation 15 of the Civil Legal Aid (Statutory Charge) Regulations 2013 you will be required to inform us of any civil damages recovered and implement the statutory charge in the usual way.

14. ECF Team Contact Information

The Exceptional Case Funding Team is located at:

Legal Aid Agency,
Post Point 6.42, Sixth Floor,
102 Petty France
London SW1H 9AJ

The Document Exchange details are:

Legal Aid Agency,
DX 161440
Westminster 8

You can e-mail the ECF Team at the e-mail address placed on our webpage

You can telephone the ECF Team on the number available on our webpage.

We are not accepting any applications or correspondence by fax.

End of Document