



Legal Aid
Agency

Inquest Funding – Provider Pack

**[In-scope Legal Help and Exceptional Case Funding (for
advocacy)]**

Version:	Issue date:	Last review date:	Owned and Reviewed by:	Reason
1	1 st April 2013	1 st April 2013	ECF Team Leader	New
2	1 st April 2017	1 st April 2013	ECF Team Leader	Amendments to Legal Help including information about the waiver provision. Amendment to remuneration information. Updated to include CCMS and information on urgency
3	10 th February 2020	1 st April 2017	ECF Team Leader	Additions concerning Legal Help waiver process including template. Updated generally including link for guidance on authorities and contact details.
4	15 May 2020	10 February 2020	ECF Team Leader	Updating contact details. Amending heading to section 5. Amendment to include the provision for backdating Legal Help waiver determinations
5	12 January 2022	15 May 2020	ECF Team Leader	Amendments to include the provision to remove means testing for ECF applications (and associated legal help granted with ECF funding)
6	26 October 2022	12 January 2022	ECF Team Leader	Amendments to replace Queen's Counsel (QC) with King's Counsel (KC).
7	4 September 2023	26 October 2022	ECF Team Leader	Additions concerning Associated Legal Help, further in-scope Legal Help guidance, applying for exception to means testing for Legal Help. General updating about the application process and statutory charge

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1. Overview

This guidance provides information about the exceptional case funding application process for civil legal services for advocacy in proceedings at an inquest. It also provides information about in-scope controlled work for inquests.

A separate pack covers applications for funding for other exceptional cases.

2. Legal Aid for inquests

Paragraph 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 (as replaced by the Coroners and Justice Act 2009) into the death of a member of the individual’s family are within scope subject 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 principally by Article 2 ECHR where the services consist of advocacy in proceedings at an inquest before the Coroner's Court 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 applying for advocacy funding, providers should refer to the Lord Chancellor's Exceptional Funding Guidance (Inquests) ("the Guidance"). Providers should identify cases where the procedural obligation automatically arises (see paragraphs 11 to 13 of the Guidance) and in these cases, proceed to address the second stage of the test: is funded representation for the family of the deceased required to discharge the procedural obligation?

Where the Article 2 procedural obligation is not automatically triggered, more information will be needed to show the state is arguably in breach of one of its substantive duties and/ or to address the wider public interest test

For an exceptional inquest case to be funded the client must satisfy the relevant merits criteria set out in The Civil Legal Aid (Merits Criteria) Regulations 2013 (see section 4 below)

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, as amended), or
- (c) One has parental responsibility for the other.

For applications for exceptional case funding for advocacy determined on or after 12 January 2022, funding is available without a determination of the individual's financial resources, and without the need for an individual to make any financial contribution

3. Legal Help (in scope)

The provision of Legal Help for advice, assistance, and preparation for a family member, including the preparation of written submissions to the coroner setting out the family's concerns and any 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. Legal Help does not cover instructing an advocate, preparing to provide advocacy or advocacy.

Under Regulation 23 of the Civil Legal Aid (Procedure) Regulations 2012, a provider must have a contract in the relevant category to undertake in-scope Legal Help work.

Legal Help in relation to an inquest will fall into the Category of Law which relates most closely to the underlying subject matter of the inquest, taking into account the legal issues that will be raised in the inquest, the place and manner of the death, and the classification of any separate proceedings related to the issues in the inquest. The widest definition of each Category should be used to determine classification of the case. See further the 2018 Standard Civil Contract Category Definitions 2018 guidance. When an inquest does not fall within one of the Categories, it will be classified as Miscellaneous Work.

The requirement in Regulation 23 about having the correct contract category for the work can only be waived under Regulation 23(1A) Civil Legal Aid (Procedure) Regulations 2012 if an ECF determination is made and the effective administration of justice test is met for an individual contract to be granted (see section 12 below). Otherwise, the client should be referred to a contracted provider

Categorisation of the inquest is also relevant to remuneration for legal help work to apply the correct fee or hourly rates for escape fee cases, under Schedule 1 of the Civil Legal Aid (Remuneration) Regulations 2013

A financial determination must usually be carried out by providers, with reference to the Lord Chancellor's Guidance on determining financial eligibility for Controlled Work.

In cases of difficulty or doubt, advice may be sought in accordance with paragraph 3.3 of the 2018 standard civil contract specification. Enquiries can be submitted to PA-CivilLegalHelpQueries@justice.gov.uk

Standalone non-means legal help

Alternatively with effect from 4 September 2023 (by virtue of Regulation 3 (2)(c) Criminal and Civil Legal Aid (Amendment) Regulations 2023) a financial assessment is not required in circumstances where the Director of Legal Aid Casework having considered the available evidence decides that if the individual were to make an

application under s10(2) or (4) of the Act for representation at the inquest, the application would be reasonably likely to succeed

The waiver provision in Regulation 10 of The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 is removed for applications from 4 September 2023

Applications to be excepted from the financial eligibility test for legal help in an inquest into the death of a family member should be made on form CW1 INQ and should be submitted to the ECF Team. We aim to make a decision in 5 working days.

There is no delegated function to providers in relation to deciding not to apply the financial eligibility test. It is important to note that delegated functions are provided for all other aspects of controlled work decision making. We would expect providers to apply for a decision about means-free legal help as soon as possible after the applicant has signed and dated the Controlled Work form.

We may specify that the determination about means-free funding takes effect from a date earlier than the date of the application. When exercising the discretion, we will generally backdate the determination to the date the Controlled Work form was signed and dated by the applicant. Providers should include any representations about the effective date of funding in their application.

Providers should refer to paragraphs 37 to 44 of the Lord Chancellor's Exceptional Funding Guidance (Inquests) for guidance on the test to be excepted from the requirement for a financial determination

If an application to be excepted from the means test is refused, a provider can decide to assess financial eligibility and provide legal help where the means and merits test is met.

A fresh application to except an individual from the means test may be made at any time, for example when new information is available. There is no right of appeal; however, the ECF team will consider any representations by way of an informal review

Associated Legal Help

Where exceptional case funding is provided on or after 12 January 2022 without a determination of an individual's financial resources, legal help is similarly available at that point without a financial determination (associated legal help). From 4 September 2023, by Regulation 4 of the Criminal and Civil Legal Aid (Amendment) Regulations 2023 any such associated legal help determination can be backdated.

When you apply for ECF advocacy funding, in the CCMS merits assessment you will complete the questions about previous legal aid and explain whether legal help is already being provided.

Where it is not, and you are applying for associated legal help, you should make this application by answering the questions in the “previous legal aid” section and/ or in the statement of case text box stating that you require associated legal help. It is not necessary to complete the CW1 application form. You should state whether your client has already received legal help from a previous solicitor on this matter and if so, when.

Where associated legal help is provided, we will enter the matter on the CWA system and provide a payment reference number.

There is no provision to add the costs of preparatory work to any certificate for other legal services for advocacy at an inquest. Legal help will continue for all the preparation of the inquest alongside any advocacy funding under a certificate.

You should use Controlled Work application form CW5a to apply for prior authority for experts outside codified rates or for use of Kings Counsel or more than one counsel for controlled work. It is expected that prior authority should be applied for in advance, but consideration may be given to requests made after the event

Legal Help and Other legal services for advocacy at an inquest are defined in regulation 13 and 19 Civil Legal Aid (Merits Criteria) Regulations 2013

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(2) and/ or 10(4) of the Act, 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 may 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 before the hearing for the purposes of preparing to provide advocacy
- Costs of any pre-inquest review hearing at which advocacy is required

5. Experts and Disbursements

The costs of experts attending the inquest as a witness 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 where it is in the best interests of the client and reasonable to obtain it.

No payment will be made for interpreter costs for the inquest hearing. These should be met by the coroner's court nor will legal aid pay for any costs for the venue where the inquest is held including private meeting rooms

See section 7 below for the link to guidance on authorities

6. Making an application for exceptional funding

Applications for other legal services should be made using CCMS. Whilst you will click on the means assessment report during the application process, you will only confirm that the application is for an inquest, and no financial information will be required. The means task will auto-grant

Application form CIV ECF2 (INQ) can continue to be used by those providers applying for an Individual Case Contract (ICC) (see section 12 below)

We aim to process the application, provided we have all relevant information, within 25 working days. We may request additional 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.

7. Urgent Applications

It will be unusual for an application for "other legal services" to be urgent. You should clearly indicate if a full inquest hearing is imminent especially in a non-automatic Article 2 and/or wider public interest application.

We would not ordinarily regard a forthcoming PIRH as urgent, especially in an "automatic Article 2" inquest application. We are not able to prioritise cases only on the basis that you seek associated legal help

An application for prior authority should be applied for, for the use of a KC or more than one counsel – any need for urgency in such a case should be clearly specified. Guidance on authorities can be located here

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/737505/Guidance_on_authorities_and_legal_aid_for_cases_in_courts_outside_England_and_Wales_August_2018_clean_copy.pdf

Where any application becomes urgent, you should contact us on 0300 200 2020 and provide us with information about the urgency of the application. It is helpful for any information about urgency to be included in the subject heading of any email sent to ContactECC@justice.gov.uk and in the merits assessment section on CCMS (rather than in separate uploaded documents)

8. Costs

An **estimate** of costs should be provided with the application based on the anticipated number of PIRH and inquest hearing days. A legal aid certificate for “other legal services” will be issued if exceptional funding is granted. It will contain a **binding costs limitation**. The intention is to reduce the number of transactions between the provider and LAA as to the costs of the case.

This limitation cannot be exceeded without prior agreement from the Legal Aid Agency. Once a certificate is granted you must make a request for an increase in the cost limitation with an updated estimate and ordinarily this should be done before additional work is incurred. This can be by using CCMS or by using form CIV APP8 on an application made between 12 January 2022 and 25 March 2022 where the certificate is generated through our CIS case management system. 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.

A **detailed schedule of costs** need only be provided in any case where costs exceed £25,000 or for an inquest with exceptional circumstances (see below). Otherwise an estimate of costs is sufficient. Where applicable any schedule should specify a figure for the total amount of funding required and should be broken down to specify the hours claimed for the advocacy services and the rates charged.

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 11 below) 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 Part 2 Schedule 2 of the CDS (VHCC)(Funding) Order 2013. “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 additional costs incurred as a result of the instruction of a non-local solicitor and / or counsel will not be approved.

Funding for advocacy by King’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. Guidance on authorities for counsel can be located at the link provided in section 7 above. It is important to note that contract requirements are that **prior** authority must be applied for and then granted for payment for KC or more than one counsel to be made for advocacy in a case.

This document also provides guidance on legally aided client’s travel costs and expenses at section 1.5. We would not expect that an application for prior authority is needed in many cases as most expenditure will not be unusual in nature or amount and will have the potential to be allowed on costs assessment, subject to reasonableness

9. Contribution towards costs

For exceptional case funding determinations made on or after 12 January 2022, there will be no financial determination and no requirement for an individual to pay a contribution towards costs.

For certificates that remain live on 12 January 2022, where determinations were made before it, the transitional arrangements in the Civil Legal Aid (Financial

Resources and Payment for Services) (Amendment) Regulations 2021 say that an individual is not liable to make any further contributions towards other legal services

Any change of financial circumstances on a live certificate but after the coming into effect date would fall to be considered under the 2013 Regulations, as amended. As any financial change after 12 January 2022 would not affect the funding determination, there is no duty to report any change of financial circumstances on these certificates.

10. 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 application to the Agency but in appropriate cases it may be backdated to a different date. Any representations concerning the effective date of funding should be provided in the application

For ordinary standalone Legal Help cases 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.

Where you assess the client as financially ineligible for Legal Help and wish to apply for means-free legal help you must make application to the ECF Team (see section 3 above). We aim to deal with these applications in 5 working days. We will confirm the effective date of Legal Help commencement to you in writing when we have made a decision to except the individual from a means test

Associated Legal Help (granted at the same time as an ECF determination is made) can be backdated for decisions made from 4 September 2023

11. 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 apply on CCMS where the application has been started on the CCMS portal by using the Legal Appeal Request task which is in the drop-down list under “submit case enquiry” actions (this will enable us to perform an internal review) or on applications submitted using forms by email you should provide an APP9E or letter setting out the grounds for review (with any supporting documents) clearly headed “Application for Review of Refusal – Inquest” sent to the ECF team at the contact details below.

On CCMS the system does not generate a document request. If you wish to upload supporting documents, you should either indicate this in the legal appeal task and ask for the document request to be opened or telephone us on 0300 200 2020.

We aim to process the application for review within 25 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. If there is any urgency, a request for expedition and details of the situation should be provided in the review request

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

12. 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 of Law which relates most closely 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 “Claims Against Public Authorities” Category. Where an inquest does not fall within one of the Categories, it will be carried out as Miscellaneous Work. Inquests do not fall into public law.

Where any relevant grant of exceptional funding is made (in accordance with section 10 of the Act) for advocacy at an inquest, this will likewise fall into the Category which most closely relates to the underlying subject matter of the inquest using the widest definition of each Category, 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 2018 Standard Civil Contract Category Definitions

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/738528/2018_Standard_Civil_Contract_Category_Definitions_August_2018_.pdf

For the avoidance of doubt, there is no “miscellaneous” Category of Law; this simply refers to all work falling outside of Contract Categories.

Application form CIV ECF2 (INQ) can continue to be used by those providers applying for an Individual Case Contract (ICC) The form is available on our website <https://www.gov.uk/government/publications/legal-aid-exceptional-case-funding-form-and-guidance>

The completed application for an exceptional case funding determination, with enclosures such as independent reports into the death must be sent to the ECF Team by email. Contact details are given below

In your application you will indicate whether 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 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 provide 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 in your contract schedule 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 2018 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. **However, it is a requirement under the ICC Contract that your organisation should hold Lexcel or the SQM quality standard.**

From 27th January 2017 we may waive the requirement in Regulation 23 (1) (d) of the Procedure Regulations for Legal Help to be provided by a contracted provider where we have made an exceptional case determination for the matter and the effective administration of justice test is met. In this scenario we do have the power in the CLA (Procedure) (Amendment) Regulations 2017 to specify that the determination that an individual qualifies for controlled work is effective from a date earlier than the determination

When you claim payment for legal help if you do not have access to the Contracted Work and Administration (CWA) system to report completed controlled work cases then you should complete an ECCLAIM1 form, which can be located here at <https://www.gov.uk/government/publications/escape-fee-case-claim-forms> and submit it for assessment to Legal Aid Agency by email to MHU-EC@justice.gov.uk . Following assessment, we will provide you with additional information on how to obtain the payment

13. 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 for advocacy should be submitted on CCMS where the application was made and the certificate issued using that portal. Otherwise claims are made on CIV CLAIM1 together with all disbursement vouchers and fee notes for counsel. The CIV CLAIM1 can be located at this link <https://www.gov.uk/government/publications/civ-claim1-civil-claim-form-not-fixed-fee> and should be submitted to The Legal Aid Agency at JARROWContactCivil@justice.gov.uk. Please see the website for full claiming details: <https://www.gov.uk/guidance/legal-aid-submit-a-claim#how-to-claim-paper-forms>

14. 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.

You should refer to the guidance in paragraphs 3.9.6 to 3.9.8 and 3.9.12 of the Statutory Charge Manual, which explains that in the context of inquest cases with connected proceedings (whether legally aided or not), questions in relation to the statutory charge arise in respect of recoverable costs

Where recovery of costs is made covering the work previously paid under a CCMS inquest certificate; please report to the LAA as follows:

- 1) Lodge an enquiry via CCMS (link below to training website)
[Submit a Case Enquiry via CCMS](#)
- 2) Within the request please ask the CCMS certificate is reopened and the previous Outcome cleared to allow for an updated Outcome
- 3) Submit a new Case Outcome with details of the recovery as an Award (link below to training website)
[CCMS Cost Award Interactive Module](#)
- 4) Ensure you indicate details of any legal help or interest on costs to be recouped as part of the submission

The LAA will then process the Outcome, recoup the previous bills paid and close the case again on CCMS.”

15. ECF Team Contact Information

You can e-mail the ECF Team at Contact ECC@justice.gov.uk

You can telephone our customer service team on 0300 200 2020

All transactions on CCMS cases must be submitted on CCMS for example correspondence should be submitted by a case enquiry.

We are not accepting any applications or correspondence by fax.

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