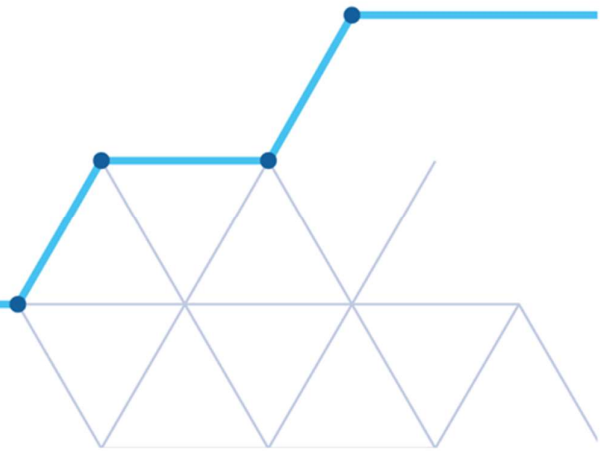




Ministry  
of Justice

# Review of legal aid for inquests

## Equalities Statement





## **Policy Summary**

1. This Equalities Statement has been written to be read alongside the Final Report: Review of the Provision of Legal Aid for Inquests, to which this statement is an Annex.

### Legislative change:

2. The only legislative change proposed in the final report is to the provision of Legal Help – public funding for legal advice and assistance – for inquests.
3. Currently, the Director of Legal Aid Casework (the ‘Director’) has the ability to grant funding for legal help regardless of the results of an applicant’s financial means assessment. This discretion is often referred to as the ‘legal help waiver’. This means that it is possible for some applicants who might not normally satisfy the financial means test can be granted funding.
4. In order for this to be considered, providers need to submit a separate legal help waiver application. Currently, if the application is granted, funding takes effect from the date of the determination by the Director.

### This change will enable funding to be backdated to the date that the application for the legal help waiver was made.

5. As part of this work, we conducted a call for evidence. We asked a question on the current practice for the legal help waiver. Responses to this question did not raise any equalities issues or concerns.

### Other commitments:

6. The final report also commits to the following changes to the inquests system, provision of legal aid for bereaved families, and coronial system:
  - Better provision of information to families about how the inquest process works and what they can expect before and during the inquest.
  - Development of better signposting of support services at coroner’s courts and making sure families know who is in the courtroom and what their role is; and
  - Provision of separate guidance for families which sets out the legal aid system in lay terms.

## **Pool of affected individuals**

### Types of people affected:

7. This legislative change concerns the way in which providers are paid for Legal Help work undertaken for inquest cases. As such, the proposed legislative change has the potential to affect legal aid providers with clients who:
  - i. Have submitted applications for Legal Help for inquests on behalf of a bereaved family member who is seeking to attend an inquest hearing(s);
  - ii. Have received a grant for legal aid for Legal Help; and

- iii. Have submitted a separate application for a Legal Help Waiver.

### **Anticipated policy impacts**

#### Legislative change:

8. This policy will mean that in cases where an application for the legal help waiver is granted, the Director will have the power to ensure that funding takes effect from the date the application was made instead of the date of determination by the Director, which is the current practice.
9. This will ensure that providers are able to be paid for any work undertaken between the date of application for the legal help waiver and the date the Director grants the legal help waiver.
10. We consider that this policy change will benefit legal aid clients and providers.
11. It is likely to result in fewer families will opt to pay privately for early legal advice while waiting to find out about the waiver. It is also likely that providers will be more likely to take on the early legal advice work, in the knowledge that if a legal help waiver is granted, they can be paid for all the work they have already undertaken ahead of the determination.

#### Other commitments:

12. As set out above, we will also be making the following changes:
  - Better provision of information to families about how the inquest process works and what they can expect before and during the inquest.
  - Development of better signposting of support services at coroner's courts and making sure families know who is in the courtroom and what their role is; and
  - Provision of separate guidance for families which sets out the legal aid system in lay terms.
13. These changes are aimed at improving the current legal aid process and developing a more supportive system for bereaved families. Based on the evidence provided by a wide range of stakeholders, we anticipate that these changes will have a positive impact on bereaved families going through the inquest process. We envisage that these changes will help families to have a better understanding of the inquests process; of the support available; and a better understanding of the availability of legal aid for bereaved family members.

### **Equality duties**

14. Section 149 of the Equality Act 2010 ('the 2010 Act') requires Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:
  - i. Eliminate unlawful discrimination, harassment, victimisation and any other conduct unlawful under the 2010 Act;

- ii. Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
  - iii. Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).
15. Paying ‘due regard’ needs to be considered against the relevant ‘protected characteristics’ of race, sex, disability, sexual orientation, religion and belief, age, gender reassignment and pregnancy and maternity. In addition, the characteristic of marriage and civil partnership is relevant to (i).

### **Available data**

16. Current data sources are limited for this area of work.
17. Currently, there is a range of different categories which providers can choose to place inquest work (e.g. clinical negligence), and this has resulted in difficulties with analysis of data. Legal help for advice and assistance at an inquest can be funded under the Standard Fee Scheme for the relevant category of law.
18. In the absence of a separate Category of Law for inquests, providers choose the most relevant Category of Law for their inquest case when submitting an application for the legal help waiver. The most common Category of Law where inquests arise is Actions Against the Police. Other Categories include Miscellaneous, Clinical Negligence, and Mental Health.
19. We know from previous evidence that when compared to the general population the following groups were found to be overrepresented among legal aid clients and therefore more likely than other groups to be affected by the proposed legislative change :
- i. those aged 19-45, for civil legal aid;
  - ii. those with a long-standing illness or disability (among civil legal help clients);
  - iii. women;
  - iv. people with a Black or Black British ethnicity.<sup>1</sup>
20. We have also identified data published by the LAA which can be used in our equalities analysis. The LAA publishes data on the characteristics of legal aid clients for each category of legal aid (civil representation, legal help, mediation, crime lower and crime higher). The data covers age, gender, disability and ethnicity although data on all of these characteristics is not available for every category of legal aid.

### **Equalities impact**

#### *The need to eliminate unlawful discrimination on the basis of a protected characteristic*

21. Discrimination can be direct or indirect.

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<sup>1</sup> [https://consult.justice.gov.uk/digital-communications/legal-aid-eligibility-and-universal-credit/supporting\\_documents/annexbequalitiesstatementuniversalcredit.pdf](https://consult.justice.gov.uk/digital-communications/legal-aid-eligibility-and-universal-credit/supporting_documents/annexbequalitiesstatementuniversalcredit.pdf)

22. **Direct discrimination** occurs when a policy would result in people being treated less favourably because of a protected characteristic.
23. We do not consider that the proposed legislative change will result in any direct discrimination relating to any of the protected characteristics set out above, as the changes would be applied in the same way to all civil legal aid applicants irrespective of their protected characteristics. No-one would therefore be treated less favourably because of a protected characteristic. Similarly, to the extent to which the proposed legislative change may affect civil legal aid providers we consider that there would be no direct discrimination on the basis of protected characteristics due to the application of the changes in the same way to everyone.
24. **Indirect discrimination** occurs when a policy applies equally to all individuals in the pool but would put those sharing a protected characteristic at a particular disadvantage compared to those who don't.
25. On the basis of the available evidence, although we recognise that some people with the protected characteristics given in para 21 are likely to be over-represented as legal aid clients, we do not consider that the proposed legislative change will result in anyone suffering a particular disadvantage.

*The need to advance equality of opportunity between those sharing a protected characteristic and those not*

26. This part of the duty relates to the need to remove or minimise disadvantages suffered by people due to their protected characteristic, and to take steps to meet the needs of people who share a protected characteristic, where those needs are different from the needs of those who do not share that protected characteristic.
27. We have considered the potential for advancing equal opportunity. We consider it likely that the proposed legislative change will result in everyone benefiting from the backdating of the legal help waiver to the earlier date of application.
28. This is likely to be of benefit to people with the protected characteristics given in para 21 due to their over-representation as legal aid clients.

*The need to foster good relations between those sharing a protected characteristic and those not*

29. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposals.

*General*

30. We will continue to consider equalities throughout the implementation of the proposed legislative change and broader changes to the inquest system, legal aid system, and coronial system.









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