

## **Public Office (Accountability) Bill:**

### **Parity of Arms Factsheet**

#### **Background**

At the first Hillsborough inquest, families received no public funding for legal representation. By contrast, senior police officers were represented by five separate legal teams - with state funded legal representation also provided to a range of other public bodies. This imbalance of power was just one of many injustices the Hillsborough families experienced, and it prevented them from properly participating in the first inquests.

In November 2017, The Bishop James Jones' report, 'The Patronising Disposition of Unaccountable Power', set out the importance of addressing the "inequality of arms" between families and the state at inquests, in circumstances where the latter was more likely to be able to employ publicly funded legal advocacy. This report recommended that "Publicly funded legal representation should be made available to bereaved families at inquests at which a public authority is to be legally represented", to ensure proper participation of bereaved families at inquests. The report of the House of Commons Justice Committee's inquiry into the coroner service in 2021 and the findings of their follow-up inquiry in 2024 also called for publicly funded legal representation to be available for bereaved families at inquests where public bodies are represented. Both reports set out that it can be challenging for grieving and bereaved families to apply for legal aid Exceptional Case Funding and to comply with the means and merits tests. Hillsborough Law Now, as well as other campaigning groups and Non-Governmental Organisations, has campaigned for legal aid to be expanded in this manner.

Despite reforms in recent years, non-means tested legal help for inquests is still only available in limited circumstances, while the application process for advocacy is long and complicated, causing even more distress to grieving families at their most vulnerable.

The Government recognises that significant change is needed to improve the inquest process for bereaved families. As part of their commitment to introduce a Hillsborough Law, the Government committed in their 2024 manifesto to provide legal aid for victims of disasters or state-related deaths.

The Public Office (Accountability) Bill ensures that the families of victims of disasters or state-related deaths are able to access non-means tested legal help and advocacy at inquests where public authorities are interested persons. The Bill also provides greater support for bereaved families to participate fully and effectively in inquests, inquiries and other investigations where the state is involved; and introduces new requirements and guidance for public authorities to ensure their actions support the inquisitorial nature of these processes.

## **Expanding legal aid for bereaved families to all inquests where a public authority is an interested person**

### **What are we going to do?**

The Government is expanding the scope of legal aid for inquests, allowing bereaved families to access legal help and advocacy for inquests whenever a public authority is an interested person.

The current legal aid regime for inquests consists of two services: “legal help” and advocacy. Legal help (advice and assistance) is available to bereaved family members at all inquests, subject to a means and merits test (the means test can be disapplied in certain circumstances). Legal aid for advocacy (representation by an advocate at the inquest itself) is currently available only through Exceptional Case Funding (ECF) where the Director of Legal Aid Casework (DLAC) determines that legal aid is required to prevent a breach, or there is a risk of breach, of the European Convention on Human Rights or makes a “wider public interest determination” that the provision of advocacy is likely to produce significant benefits for people other than just the applicant and the members of the applicant’s family.

The Bill expands access to legal aid and simplifies the process through which bereaved families can access it. We are bringing advocacy into scope, thus removing the requirement for families to navigate the ECF process to access representation at an inquest hearing. Following the passage of this Bill, to be eligible for legal aid (legal help and advocacy) families will only need to demonstrate that a public authority is an interested person at the inquest.

Furthermore, we are removing the means test for applications for both legal help and advocacy, meaning bereaved families can access this vital support regardless of their financial situation where they are within scope of legal aid.

When advocacy is granted to a member of an interested family, we have placed provisions in the Bill to limit the number of legal representatives at the inquest hearing. In our view, one legal aid funded advocate should generally be sufficient to support each family through the inquest hearing and it is reasonable to ask family members to collaborate with one another for the purposes of instructing that advocate. Increasing the number of advocates at hearings could make inquests into a forum for competing submissions and could obstruct its investigative nature, and we want to ensure that this process remains effectively inquisitorial.

### **How are we going to do it?**

The Bill amends:

- The Legal Aid, Sentencing and Punishment of Offenders Act 2012 to remove the requirement to apply for ECF in order to access “other legal services” (i.e. advocacy) and states the conditions which must be met in order to be

eligible for these services (i.e. that a public authority is an interested person at the inquest and that the family does not already have a legal aid funded advocate).

- References to the Coroners Act 1988 at section (10) subsection (4a) and Schedule 1, Part 1 paragraph 41 (1) and replaces these with the Coroners and Justice Act 2009 to reflect the repeal of the Coroners Act 1988, with the exception of proceedings under section 13 of the Coroners Act 1988 at Schedule 1, Part 1 paragraph 41 (applications to the High Court to open or reopen inquest proceedings).
- The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 to allow for the financial means test for legal help and “other legal services” to be disapplied in relation to inquests where a public authority is named as an interested person.
- The Civil Legal Aid (Merits Criteria) Regulations 2013 (the Merits Regulations) to ensure “other legal services” will be recognised as an appropriate form of civil legal services at an inquest where a public authority is represented and so representation will be recognised as an appropriate form of civil legal services in relation to an appeal to the High Court to open or re-open an inquest (under section 13 of the Coroners Act 1988).

## **Conduct of public authorities at inquests and public inquiries**

### **What are we going to do?**

In addition to the changes to legal aid, the Bill will include a package of measures to decisively address the conduct of public authorities and their legal teams at inquests and public inquiries, by driving cultural change within those public institutions. This Bill will work to ensure the state supports the inquisitorial nature of the process, with a focus on finding answers for the bereaved and other affected persons.

These provisions work as an interlocking package with the measures on the duty of candour and assistance, and alongside the expansion of legal aid, will work to decisively address any potential disparity in power between the state and bereaved families and others in inquests and inquiries.

### **How are we going to do it?**

- The Bill will create a new duty on public authorities to only engage legal representation in a necessary and proportionate way.

- This duty will apply across inquests and both statutory and non-statutory public inquiries. The Bill sets out the principles they should take account of when discharging this obligation (such as taking in to account the comparative position of the bereaved and other affected persons in respect of their means to engage legal representations).
- The Bill will also introduce a power for new statutory Lord Chancellor guidance for public authorities.
- This Guidance will set out clear principles to guide the conduct and behaviour of public authorities and their legal representatives at inquests and inquiries. This will be based on and develop existing non-statutory guidance already in place for government departments, which include principles such as supporting the inquisitorial approach, communicating with the bereaved in a sensitive and empathetic way, and keeping in mind that the bereaved should be at the heart of the inquest process.
- To ensure the effectiveness of this provisions, public authorities will also be under an additional and specific duty to ensure that those legal representatives conduct themselves in a way which is consistent with this Guidance.
- This will be further reinforced in the Bill by a new 'overriding objective' intended to be delivered via the Inquest and Inquiry Rules, aimed at ensuring that affected persons – the bereaved and others - are able to participate fully and effectively in proceedings. This will be modelled on overriding objectives in place elsewhere, including in the Civil Procedure Rules.
- The Bill will also create a power for the coroner and inquiry chairs to raise concerns about the conduct of legal representatives acting on behalf of a public authority. This will ensure a new, formal route is available in inquests and inquires for concerns to be raised.