CHANGES TO THE LORD CHANCELLOR’S EXCEPTIONAL FUNDING GUIDANCE FOR INQUESTS

I am writing to update you on the progress made by my Department to drive the Ministerial Board’s work programme forward.

As the Committee will be aware, there is public and parliamentary interest in the provision of legal aid for inquests, and death in custody cases in particular. The Ministry of Justice is undertaking several pieces of work in this field.

In response to Dame Elish Angiolini’s report of her review of deaths and serious incidents in police custody, the Government made a number of commitments to the Board including the following:

i) To review the Lord Chancellor’s Exceptional Funding Guidance for Inquests; and

ii) To review provision of legal aid for inquests alongside the Post Implementation Review (PIR) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).

We will be announcing amendments to the Lord Chancellor’s Exceptional Funding Guidance for Inquests tomorrow on the government website. I therefore wanted to make sure you had sight of those amendments.

As you will be aware, the previous Lord Chancellor committed to reviewing the Lord Chancellor’s Exceptional Funding Guidance for Inquests, to reflect:

- a clear starting presumption that legal aid should be awarded for representation of the bereaved at an inquest following the non-natural death or suicide of a person detained by police, in prison or in a mental health unit and
- that in exercising the discretion to disregard the means test, consideration should be given to the distress and anxiety caused to families of the bereaved in having to fill out complex forms to establish financial means following the death of a loved one.

In relation to the first commitment, we have made the following changes:
• the guidance has been amended so that the starting presumption for cases involving a death in custody is that the criteria will be met for the ECF scheme.
• the wording has been changed to reflect the policy intention under the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) as to whose means should be assessed when any application is made.
• the reference in the guidance to ‘violence’ has been changed to include as an alternative ‘non-natural’ deaths, with the intention of broadening the types of cases eligible for the ECF scheme.

With the aim of alleviating some of the distress and anxiety felt by families involved in the application process, we have made the following changes:

• the types of cases in which the Director of Legal Aid Casework (DLAC) might exercise discretion to waive the requirement for financial means testing will be broadened; and
• the wording of the guidance will be amended to expand the factors included in the decision-making process. The additional factors now include ‘whether the applicant is suffering from emotional distress, severe mental health concerns (potentially arising from the circumstances of the death), whether English is the family’s first language, their level of education or if they have a learning disability.’

The Ministry of Justice is also reviewing the provision of legal aid for inquests which will be published later this year, alongside the review of the wider reforms of legal aid (PIR). This will serve as a comprehensive overview of the provision of legal aid for inquests. It will also, importantly, look at other potential areas for improvement to ensure that families are provided with support they need to understand and properly participate in the proceedings.

Evidence gathering is currently underway. We are holding official-led meetings with key stakeholder groups, some of which have already taken place. We will also be publishing a call for evidence on this subject. This will provide an opportunity for anyone affected or interested in this area of work to contribute to the review and feed into future work. We invite and welcome Board members to contribute to this, details of which will be announced in due course.

A more detailed update paper will be circulated ahead of the next meeting of the Board on 27th June.

Yours sincerely

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