

Exceptional funding for inquests

An overview of key points

Exceptional Funding

- Lord Chancellor’s new guidance
- Applicable from 1 April 2013
- Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Exceptional Funding

- Not generally available because an inquest is a relatively informal inquisitorial process, rather than adversarial (para 4)
- Two grounds for granting:
 - Required by Article 2 ECHR; or
 - Director makes a ‘wider public interest’ determination in relation to the individual and the inquest.

Exceptional Funding

- Article 2
- EF will be granted where it is established that:

(1) There is an arguable breach of the state's substantive obligation under article 2 (negative or positive) on the facts; and

(2) Funding for representation for the family is required in order for the state to discharge its procedural duty to investigate that arguable breach.

Exceptional Funding

– Problems arise where:

- Fatal shooting of one private individual by another and seek to argue authorities had knowledge or forewarning prior to death.
- Death in state detention through natural causes.
- Can you establish that the state played some part in the death, for example a failure to take reasonable steps to prevent the death.
- Hospital authorities – it will not be sufficient to show that a case involves allegations of ordinary medical negligence, but instead must show that there have been systemic breaches. (*R (Claire Humberstone) v Legal Services Commission [2010] EWCA Civ 147*)

Exceptional Funding

- Is funding necessary to discharge the procedural obligation?
- Take all facts and circumstances of case into account including:
 - Nature and seriousness of allegations against State agents; and
 - Previous investigations into the death; and
 - The particular circumstances of the family.

Exceptional Funding

- Nature and seriousness of the allegations
 - Allegations based on evidence of gross negligence
 - Systemic failures
 - multiple and related deaths from same cause and same institution
 - Criminal conduct
 - Attempts to conceal information
 - Attempts to interfere with an investigation

Exceptional Funding

- Previous investigations
- By, for example, IPCC, NHS Trust, CPS or PPO
 - Has the family played an active part?
 - Adequacy of that investigation?
 - Experts?
 - Does the investigation meet requirements of Art 2?
 - Did the investigation make recommendations for improvements to systems or training – if so that may reduce the potential for benefits to flow from inquest unless can show investigation flawed.

Exceptional Funding

- Eligibility
- Discretion to waive where reasonable. Look at history of case, nature of allegations , disposable income and capital, other financial resources of the family, estimated costs.
- Contribution – usually one month’s assessed income.

Exceptional Funding

- Some practical tips:
 - Get applications in asap
 - Supposed to consider within 20 working days
 - Frequently request further information
 - Family members – reasonable to request their details
 - Supportive letter from coroner can be helpful, but not determinative.

Funding Challenges

- Refusal of EF – challenge by way of judicial review for which would need separate funding. Problematic.
- Challenge delays, unreasonable requests for information from family members.
- Refer to guidance.
- Anticipate more refusals than previously.

Funding challenges of coronial decisions

- Public funding – can be obtained
- Protective costs orders
- Coroner will adopt a neutral stance
- Risk of having to pay interested parties' costs
- Goodson v HM Coroner for Bedfordshire and Luton (Protective Costs)
- Could use this to client's advantage (e.g. Seek costs from IPs where coroner adopts neutral stance)
