

Independent Advisory Panel on Deaths in Custody submission to the inquiry by the Justice Committee on the Future of Legal Aid – October 2020

About the Independent Advisory Panel on Deaths in Custody

The Ministerial Council on Deaths in Custody formally commenced operation on 1 April 2009 and is jointly sponsored by the Ministry of Justice, the Department of Health and Social Care and the Home Office. The Council consists of three tiers:

- Ministerial Board on Deaths in Custody
- Independent Advisory Panel (IAP)
- Practitioner and Stakeholder Group

The remit of the IAP (and overall of the Council) covers deaths, both natural and self-inflicted, which occur in prisons, in or following police custody, immigration detention, the deaths of residents of approved premises and the deaths of those detained under the Mental Health Act (MHA) in hospital. The principles and lessons learned as part of this work also apply to the deaths of those detained under the Mental Capacity Act in hospital.

The role of the IAP, a non-departmental public body, is to provide independent advice and expertise to Ministers, senior officials and the Ministerial Board. It provides guidance on policy and best practice across sectors and makes recommendations to Ministers and operational services. It assists Ministers to meet their human rights obligations to protect life. The IAP's aim is to bring about a continuing and sustained reduction in the number and rate of deaths in all forms of state custody in England and Wales.

Juliet Lyon CBE chairs the IAP.

Members of the IAP appointed in July 2018:

- Deborah Coles, Director, INQUEST
- Professor Seena Fazel, professor of Forensic Psychiatry, University of Oxford
- Professor Jenny Shaw, professor of Forensic Psychiatry, University of Manchester
- Jenny Talbot OBE, Prison Reform Trust
- John Wadham, Chair, National Preventative Mechanism

Further information on the IAP can be found on its website:

www.iapondeathsincustody.org

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Key points:

- **The Independent Advisory Panel on Deaths in Custody’s principle concern is to prevent state custody deaths and ensure similar cases are prevented in the future. A ‘disparity of arms’ at an inquest – where bereaved families are still denied an automatic right to non-means tested legal aid – undermines a key purpose of investigation at the inquest: to identify how future deaths can be prevented.**
- **This decision represents a failure in the state’s duty of care and undermines a family’s meaningful involvement in the inquest process (and therefore Article 2 compliance). Inquests are a time of heightened stress and grief for families who have lost someone. The complications and demands of applying for means tested legal aid simply adds to their trauma.**

1. The IAP welcomes the opportunity to submit evidence to the Committee on reforms required to the Legal Aid system. The role of the Independent Advisory Panel on Deaths in Custody¹ (IAP) is to advise Ministers and officials on how they can prevent deaths in state custody and meet their human rights obligations in line with Article 2 of the European Convention on Human Rights.² The IAP’s focus in this submission falls on the deaths of people in custody and the support their families receive in trying to learn of the circumstances of their deaths.

2. Article 2 also places a duty on the state to independently investigate state related deaths where steps taken to protect life have been inadequate. A key part of this is delivered through the inquest process. The Convention outlines that:

*“the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests”.*³

3. Bereaved families currently do not have an automatic right to funding for legal representation. Even when funding is available for an inquest, it may not be available for any subsequent judicial review to challenge the coroner’s decision. Countless major independent reports – stretching back to the Stephen Lawrence inquiry and including the Corston Report in 2007, INQUEST/T2A’s Stolen Lives report in 2015 and the report of the Independent Review of the Mental Health Act in 2019 – have emphasised the importance of effective family participation in an inquest following the death of a loved-one, and have recommended that legal assistance should be provided to the next-of-kin without being means-tested.⁴

¹ Independent Advisory Panel, ‘About the Independent Advisory Panel on Deaths in Custody’, <https://www.iapondeathsincustody.org/about-us-1>.

² European Convention on Human Rights, https://www.echr.coe.int/Documents/Convention_ENG.pdf.

³ Letts v Lord Chancellor (2015). EWHC 402 (Admin), at 68, 15 February 2015, para 53.18 <http://www.bailii.org/ew/cases/EWHC/Admin/2015/402.html>.

⁴ See, for example: Sir William MacPherson of Cluny, ‘The Stephen Lawrence Inquiry’, February 1999 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf; Baroness Jean Corston, The Corston Report: A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System <http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf>; INQUEST & T2A, Stolen

4. Disparities at inquest undermine a central purpose of investigation following a death: to uncover issues and prevent similar such instances from occurring again. Without funded access to representation, the potential of the independent inquest to interrogate evidence fully, assess cause and highlight inadequate policy and practice is undermined. Lawyers and NGOs representing families during inquests have often identified an overall reluctance to confronting systemic problems that may have contributed to, or caused, a death.
5. The IAP conducted the Harris Review into deaths of young people in prison custody. The Review took evidence from the then Chief Coroner, His Honour Judge Peter Thornton QC, who recognised the imbalance where the representation of multiple agencies at an inquest is funded by the state, and acknowledged that the exceptional provision of legal aid to families under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 may not be sufficient.⁵
6. The Review made the firm recommendation that:

“Families of the deceased should have a right to non-means tested public funding for legal representation at an inquest. The costs of legal representation for the families should be borne by NOMS [now HMMPS].”⁶

7. The IAP also contributed to Dame Elish Angiolini’s Review into Deaths and Serious Incidents in Police Custody, which recommended that:

“There should be access for immediate family to free, non-means tested legal advice, assistance and representation from the earliest point following the death and throughout the Inquest hearing.”⁷

8. In February 2019, the Ministry of Justice published its Review of Legal Aid for Inquests in which it rejected widespread calls for automatic legal aid for bereaved families, stating that:

“...a number of stakeholders pointed out that it should not be assumed that in cases where the state has legal representation, representation for the family is necessarily required nor that it enhances the results of the coroner’s

Lives and Missed Opportunities: The deaths of young adults and children in prison, 2015 http://www.barrowcadbury.org.uk/wp-content/uploads/2015/02/Inquest-Report_finalversion_Online.pdf. The INQUEST briefing, Legal Aid for Inquests, documents the extensive timeline in reports supports supporting this call. See INQUEST, Now or Never! Legal Aid for Inquests, February 2019. <https://www.inquest.org.uk/Handlers/Download.ashx?IDMF=a1ec7dcc-9ed6-405c-8af6-2639438e8d00>.

⁵ Stakeholder Hearing 8 (3 July 2014), His Honour Judge Peter Thornton QC, Chief Coroner. Summaries of hearings can be accessed at <http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2015/03/Stakeholder-Hearing-Chief-Coroner.pdf>.

⁶ The Harris Review, Changing Prisons, Saving Lives, July 2015, p174 <https://static1.squarespace.com/static/5c5ae65ed86cc93b6c1e19a3/t/5ee0f0fc53012b3f15e7a217/1591800075717/Harris-Review-Report2.pdf>.

⁷ Dame Elish Angiolini, Review into deaths and serious incidents in police custody, October 2017, p.221, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf.

*investigation. They suggested that the addition of further lawyers might actually hinder the process, by making the process more adversarial and legally complex.*⁸

9. This decision undermines the investigatory potential of an inquest and fails the families forced to undergo the painful process of reaching answers about the deaths of loved ones. While we welcome the Ministry of Justice's intended measures to improve guidance and signposting for families and representatives – including the coronial process, legal aid criteria, and support services – these reforms do little to address the 'inequality of arms' experienced by bereaved families or the painful and protracted process of applying for means tested legal support.

10. The IAP has consistently raised concerns with Ministers and at the Ministerial Board on Deaths in Custody, including at the most recent full meeting in June 2019 where a lack of pace and breadth to change was noted by the incumbent co-chairs.⁹ These issues with legal aid provision form part of the IAP's wider priority that bereaved families are fully supported following a death in state custody. In the interests both of fairness and the prevention of future deaths, the panel encourages the Committee to continue to press for necessary change in this area.

⁸ Review of Legal Aid for Inquests, Ministry of Justice, February 2019
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777034/review-of-legal-aid-for-inquests.pdf.

⁹ Ministerial Board for Deaths in Custody minutes, June 2019
<https://static1.squarespace.com/static/5c5ae65ed86cc93b6c1e19a3/t/5ec54a5f06e1413dd3ac8512/1589987945393/Minutes+of+June+MBDC+final.pdf>.