



THE BAR  
OF IRELAND

*The Law Library*

BARRA NA hÉIREANN

*An Leabharlann Dlí*

Submission to the Department of Justice on the  
Public Consultation on the Reform of the  
Coroner Service

January 2024

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## A. Introduction

The Council of The Bar of Ireland (“the Council”) is the accredited representative body of the independent referral Bar in Ireland, which consists of members of the Law Library and has a current membership of approximately 2,159 practising barristers. The Bar of Ireland is long established, and its members have acquired a reputation amongst solicitors, clients and members of the public at large as providing representation and advices of the highest professional standards. The principles that barristers are independent, that they owe an overriding duty to the proper administration of justice and that the interests of their clients are defended fearlessly in accordance with ethical duties are at the heart of the independent referral bar.

## B. Scope of submission

The Department of Justice (“the Department”) is currently undertaking a public consultation on the reform of the Coroner Service. There are four broad areas for consideration, namely:

1. Structure of the Coroners Service
2. Pathology and related Services
3. Reported Deaths
4. Inquests

The Council have considered whether our members can add the value to the consultation process when it comes to each of the above areas. In respect of areas 1-3, it does not appear that the matters within contemplation by those areas fall within the expertise of our members and there are likely to be more appropriate stakeholders to address such areas. However, it is possible that individual practitioners may be in a position to provide the Department with their professional experience relating to those areas: they have been notified of the consultation and invited to make standalone submissions where appropriate.

In respect of Inquests (covered by area 4), the Department seeks views and opinions on the role and responsibilities of coroners in relation to the reform of inquests. Members of The Bar of Ireland represent both the State and bereaved family members on a regular basis in the Coroners Court. As such, our members regularly experience and observe the operation of the Coroners Court at close quarters and are in a position to offer practical insight, observations, and expertise, which we hope will be of benefit to the Department.

In considering its response, the Council is guided by the fundamental principle of a constitutional right of access to the court (and all administrative bodies) and the importance of access to legal representation, particularly where fundamental rights are concerned.

## C. Part Four: Inquests

The coroner, in presiding over an inquest, seeks to determine the facts of the death of the person, without ascribing liability. In completing this important fact-finding role, the State complies with its obligations under Article 2 of the ECHR. In that sense, the Coroner's Court provides a non-adversarial means of complying with a public law duty. The State, in complying with this duty, must seek to provide the greatest possible access to same and, in providing that access, the service itself should be consistent across the State. It is for that reason that Council makes the following recommendations to the Department:

- 1) Legal Aid should not be subject to financial qualification.
- 2) The empanelment of a jury should be consistent with the Juries Act 1976
- 3) Training should be mandatory and continuous throughout the coroner's appointment.

### 1) The provision of Legal Aid

The Department, as part of this consultation, seeks to ensure that the hearing of an Inquest provides the best possible service to bereaved families, while completing its function: legal advice and representation is a key aspect of this. Moreover, access to legal services at an early stage may serve to anticipate and manage conflict that might otherwise arise during the coronial process (or in other, related, processes) forward. In particular, adequate and equal representation through the provision of Legal Aid ensures that the family can have a clearer understanding of the role of the coroner and ensure additional confidence that the process is meeting the needs of all of those with an interest in the outcome. It is our members' experience that family members may not have a clear understanding of the role of the coroner (including the limitations of that role under the Coroners Acts) and, through the provision of proper legal advice, are in a better position to engage with the process. Furthermore, the provision of legal representation before an inquest helps to ensure that the questions of the family are clearly articulated to the coroner, providing the coroner with an opportunity to properly address those questions (assuming that they are within the scope of an inquest). It is our members' experience that by providing this service, bereaved families feel their concerns have been heard and they have much greater comfort in that their questions about the death of their loved ones have been raised in an official forum.

In those circumstances, the Council advocates for the removal of the means test for legal aid services

in the Coroner's Court. In addition, it is the view of the Council that all compulsory contributions are eradicated for individuals that qualify for civil legal aid. The Department, in reviewing the Civil Legal Aid Scheme in June 2022, have already acknowledged that there are persons with unmet legal needs in the State. The Council submitted extensive submissions for this review and refer the Department to those submissions, and we confine ourselves here to reiterating that the provision of legal aid has long been recognized as an essential component of ensuring that a person's constitutional rights are vindicated. Furthermore, all quasi-judicial processes should (and can be seen to) operate on an "equality-of-arms" basis, which in turn can be characterised as an essential element of the administration of justice in a democratic society.

In considering the provision of Legal Aid in the Coroners Court, the Department should consider the five key principles borne out of seminal judgments of the European Court of Human Rights and approved by the Court of Justice of the European Union (CJEU)<sup>1</sup>:

- a) The importance of what is at stake for the applicant.
- b) The vulnerability of the applicant and their capacity to represent themselves.
- c) The emotional involvement of the applicant which impedes the degree of objectivity required by advocacy.
- d) The complexity of the relevant law or procedure.
- e) The need to establish facts through expert evidence and the examination of witnesses.

Given that legal aid is already provided in respect of inquests in certain kinds of deaths, there is implicit acknowledgement that Coroners' inquests engage these principles. On that basis, the Council recommends that legal aid be extended to all bereaved families to avoid any further propagation of a two-tiered system, where those of some means receive the least support from the State at an extremely vulnerable time. There is a need for bereaved families to know how a loved one died and the circumstances surrounding a death are often vitally important. In a more general sense, the benefits of a comprehensive death investigation process are dependent upon proper legal representation at an inquest. Society as a whole benefits from this as it gives an opportunity to make people safer and to learn from the mistakes of the past.

A recent commentary by Mr. Justice David Barniville, President of the High Court, highlighted the importance of "no foal no fee", while noting that the tradition is no substitute for appropriately addressing unmet legal need: -

<sup>1</sup> [DEB v Bundesrepublik Deutschland](#), (2010), Court of Justice of the European Union, C-279/09 ECLI:EU:C:2010:811.

*“People who don’t have money have been able to litigate because lawyers will take on their cases for nothing in the hope that they might win. That’s both branches of the profession and this should not be denigrated as it sometimes is. It should be praised because a lot of people who wouldn’t get civil legal aid for the cases involved would not get near a courtroom if they didn’t have solicitors or barristers willing to take a case on that basis. It creates a very unfair burden for the lawyers involved. They shouldn’t have to subsidise a legal aid system that doesn’t meet the needs of the community.”<sup>2</sup>*

By expanding the legal aid scheme already in place, a two-tiered system can be effectively ameliorated, while representing value for money. The provision of legal advice at an early stage may be invaluable in reducing unnecessary misunderstandings while assisting an inquest in getting to the crux of matters of concern to the family, potentially without the need for further proceedings, thus saving time and money. Most importantly however, the State will be providing better support to individuals in an effective way, at a time when they need it most.

Finally, the current provision for legal aid for families articulated in section 60(1), of the 1962 Act provides for the provision of legal aid to “a family member”. The Council recommend that the discretion of the coroner be extended so that more than one legal aid certificate can be granted to members of bereaved families in circumstances where one legal team cannot represent the interests of the family as a single unit. This is particularly relevant for inquests that pertain to deaths from suspected non-accidental injury or domestic violence. This would accord with provision of legal aid in other situations: for example, it is standard practice in child protection proceedings for parents to have separate representation, where a conflict between the respective parents arises.

## 2) The empanelment of a jury should be consistent with the Juries Act 1976

The Department has sought the views of stakeholders in respect of jury empanelment in the Coroners Court and the Council is supportive of the introduction of a jury selection process that is representative of society as a whole. On that basis, the Council recommends that the provisions of the Juries Act 1976 be applied to the Coroners Court. It is the position of the Council that uniform provisions across legislation ensure greater credibility for the State as a whole. Where juries are empanelled, a uniform approach is likely to maximise accountability and consistency, in those inquests where juries are required or otherwise thought desirable by coroners. This is to the benefit of the public and practitioner alike as it creates the potential for consistent decision making across all of the districts within the State.

<sup>2</sup> Phelan, S. (2022) [‘Senior judge warns of looming crisis in Circuit Court amid anticipated surge in personal injury cases’](#). *The Independent*. 16 December 2022

The Council have sought the feedback of members and there is anecdotal evidence of members appearing before the same jury members in a Coroners Court in a series of inquests. This may speak to practical issues being experienced at a local level in the jury recruitment process, but it is evidence that, in the absence of clear and composite obligations, there may be circumstances where the empanelment of juries is not consistent with the principles of fair procedure and natural justice. As such, the Council endorse the provision of an approach that is consistent with other Court processes.

In the alternative, section 55 of the Civil Law(Miscellaneous Provisions) Act 2022 made provision for the empanelling and summoning of jurors for the Stardust Inquiry. Section 55 provides the coroner with the authority to seek the assistance of the court services and country registrar for the purposes of summoning a jury. The county registrar will then draw up a panel of jurors, using a procedure of random and non-discriminatory selection for the benefit of the coroner. At present, these provisions are limited to the Stardust Inquest but could provide an alternative template for Government to address the need identified by the Council above.

### 3) Continued Education and Training for Coroners

In order to ensure the continued excellence of the Coroner's Service, the Council recommends that all persons appointed as Coroner should undertake a mandatory course of training upon appointment. The Council is also of the opinion that an continuing courses of training and education for serving Coroners should be established. This is likely to ensure consistency of delivery of the service – and of decision-making within that service – throughout the State.

The Council suggests that responsibility for the content and format of any such training and education should rest with the Department, and that adequate funding for such education and training programmes be provided by the Government through that body.

## D. Conclusion

The Council welcomes the review of the Coroners Service and is grateful to the Department for the opportunity to provide its views and will make themselves available to expand upon same were deemed of assistance. The Council would like to acknowledge the work of members in the preparing of these submissions.



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