

Baker, John (LSC)

To: Code A
Subject: RE: Exceptional Funding - Inquest - Gillian Mackenzie

Agreed. I will get it and advise further but likely to be after 8th August when I get back from leave.

John

From: Code A
Sent: 20 July 2011 16:50
To: Baker, John (LSC)
Cc: Code A
Subject: RE: Exceptional Funding - Inquest - Gillian Mackenzie

Hi John,

I think that the best option might be to get hold of the final bill for the original inquest so that we can check that we're making reasonable comparisons, especially with regard to the brief fee. Then we can look again and see if it's necessary to go back to the solicitors.

Many thanks,
 Selma

From: Baker, John (LSC) [Code A]
Sent: 20 July 2011 16:22
To: Code A
Cc:
Subject: RE: Exceptional Funding - Inquest - Gillian Mackenzie

Hi [Code A]

Happy to have my brains picked.

You are absolutely right to raise this but it may assist if I indicate that the final costs agreed in the Gosport Inquests (I think there were more than 4 inquests but could be wrong) was £93,000. That is £23,250 per person if 4 for a 6 week inquest. Weekly cost was £15,500. In this app the cost is 13,500 per week. I don't have the file to hand and am taking this from our electronic records. I thought that we got at least some of that back from separate compensation claims but could be wrong.

This case was allocated to a different coroner so the coroner who did the original Gosport inquests will not be taking part.

On the numbered points

1. I think some generic issues will have been resolved but appears that some will be distinguished ie solicitors will seek to say why this deceased was different from those in the original inquest. I think they refer to the coroners approach not to go into certain issues as resolved by original inquests as one which they need to overcome in certain issues thus going into evidence not only of what happened but also why different.
2. I agree with you. There will be a difference of approach but it should be shorter given a jury is made up of 11 lay people and the Coroner should be used to dealing with the issues. How much of a difference it makes is the issue.
3. I think I/we could either a) get the final bill in the original inquest as a guide or b) raise with the sols and get to justify c) reduce to level we see as appropriate. Happy to do either but am on leave for 2 weeks from Friday afternoon.

Ophelia,
 Can you send
 Gosport Hospital Inquest
 files to me if you
 have them?
 Need the original bill

Ta

Code A

*93k ÷ 5 = 18,600. (18,600 returned
 we cannot
 claim.)*

Can you let me know what you would like to do? I am happy to delve deeper if you or the minister will be uncomfortable with the figures and may be being too generous!

John
20-7-11

From: Code A
Sent: 19 July 2011 15:27
To: Baker, John (LSC)
Cc: Code A
Subject: Exceptional Funding - Inquest - Gillian Mackenzie

Hi John,

Can I pick your brains about the costs in this case? I do agree that this looks like a case that should be funded, but I'm not sure whether the Minister will agree to the amount of funding requested. I'm not a remuneration expert but I'm mindful of the following stats:

- Betty Packman et al (the 2009 GWMH inquest) - we granted £30,251.50 + VAT (£15,064.00 solicitor costs and £17,687.50 counsel costs). This was based on a 6-8 week inquest and 4 clients.
- Gillian Mackenzie - we are being asked to grant £27,391.25 + VAT (£15,490.40 solicitor costs and £11,901.25 counsel costs). This is based on a 2 week inquest for 1 client.

It's not clear from the application why this inquest did not proceed at the same time as the others that we funded in 2009 (I suppose the coroner must have had his reasons) but I think we need to know what is different about this inquest to justify the relatively high costs. I don't think that the solicitor has addressed this issue satisfactorily, and would be interested to know what you think.

The solicitor argues that it would be wrong to conclude that, because representations have already been made in the GWMH inquest in relation to a similar set of factual circumstances, representation is unnecessary in this case because the issues have been aired already. They proffer 3 points on the subject:

1) The Coroner "has already stated (at the pre-inquest hearing) that there was no need to go over issues which had been considered by the previous inquest. Therefore it is clear that the submissions made previously on behalf of family members of those who died at GWMH will not be sufficient to cover the case of Mrs Richards."

- I interpret this as saying that many of the issues that are relevant to both inquests have already been dealt with at the first inquest and will not need to be repeated, so the reasoning of the second sentence seems a bit odd (i.e. I don't think that it's quite right to say that the previous submissions are insufficient for the purposes of this inquest if those submissions have apparently already covered some of the issues pertinent to this inquest).

2) Unlike the first inquest, the coroner is not summoning a jury, so submissions "would need to be presented in an entirely different way" from the previous inquest. In addition, the fact that Mrs Mackenzie attended most of the previous inquest hearings does not qualify her to represent herself in this one.

- I agree that it would be unrealistic to expect Mrs Mckenzie to represent herself, particularly in light of the complex nature of the evidence and the length of the hearing. For exceptional funding purposes, the assertion about the distinction between jury and non jury inquests strikes me as rather spurious though, and again it's hard to see how this line of argument would justify costs that are nearly as high as for the first one.

3) The enquiries and conclusions of the previous inquest have not "drawn a line under the events that took place at GWMH", and other interested parties will be fully represented.

I accept that these points are relevant, but the solicitor has not explained/summarised what the issues are in this case which have not been previously dealt with at the first inquest. Of course, I accept that many of the individual facts of this case inevitably differ from those explored in the previous inquest, and complexity is a reason for the inquest being listed for two weeks. However, the first inquest also dealt with different facts for each client, and I think that this time around they are asking for a sum of money which needs to be justified with a bit more detail.

I've had a look at the breakdowns of estimated costs for both cases to try and see which specific items of work are particularly high in the Mckenzie application, bearing in mind the difference between the number of clients in each case, and the fact that the solicitor doesn't seem to have said that Mrs Mckenzie's case is more complex than the previous one. Grateful for your views on the proportionality or otherwise of the following:

- Brief fee: £4,500.00, c/w £1,000.00 in the first inquest.
- Preparation of documents: 6 hours of senior solicitor time, c/w 12 hours of solicitor time in the first inquest.
- Telephone calls: 4 hours of senior solicitor time, c/w 8 hours of senior solicitor time in the first inquest.
- Briefing counsel: 3 hours of senior solicitor time, c/w 2 hours of 2 hours of senior solicitor time in the first inquest.
- Correspondence: 2 hours of senior solicitor time, c/w 4 hours of senior solicitor time in the first inquest.

Thanks, and happy to discuss.

Code A