

LEGAL AID AND CORONERS' COURT BILL (33/11-15)

Supplementary Submissions made by KRW LLP

1. We note from the Committee of Justice website the following request made to the Committee on the foot of the Legal Aid and Coroners' Bill (33/11-15) by the Attorney-General:

“The Committee has also received a proposal from the Attorney General for Northern Ireland for a potential amendment to the Bill. The Attorney General has the power under section 14(1) of the Coroners Act (Northern Ireland) 1959 to direct an inquest where he considers it ‘advisable’ to do so but has no powers to obtain papers or information that may be relevant to the exercise of that power. He has experienced some difficulty in recent years in securing access to documents that he has needed and the proposed amendment to the 1959 Act would confer a power on the Attorney General to obtain papers and provide a clear statutory basis for disclosure. He has indicated that the principle focus of his concern is deaths that occur in hospital or where there is otherwise a suggestion that medical error may have occurred. The Committee would also welcome views on the inclusion of such a provision in the Bill.”

2. Whilst the proposal of the Attorney-General has a principal focus we consider that it has broader effect especially in relation to the conflict related legacy cases. We note that when considering whether to order a fresh inquest under section 14 (1) of the Act those bereaved victims in a conflict related application for a fresh inquest (compliant with Article 2 (right to life) of the ECHR) are assisted if they can furnish the Attorney-General with the original inquest papers which can inform his decision.
3. We therefore support the proposal of the Attorney-General on the proviso, as he suggests, of a clear statutory basis for disclosure. Our request is that should an Article be drafted to legislate the proposal of the Attorney-General or amend the existing legislation then there should be provisions in place that disclosure of material directly relating to the deceased is automatically made to the families of the bereaved being so considered for a new inquest by the Attorney-General to comply with the next of kin participation requirement of the Article 2 procedural investigatory obligation arising following a breach. This would be in the form of a presumption of disclosure following an Article 2 assessment of risk by the Attorney-General.

KRW LLP