



THE ROYAL BRITISH
LEGION

*"Things can be done to help
bereaved families like mine."*

Do your bit for bereaved Armed Forces families

Bereaved Armed Forces families need the next government to:

- Fund an independent **legal advice** service to provide bereaved Armed Forces families with support and guidance through the inquest process.
- Introduce an **Independent Advisory Committee on Military Deaths** to provide advice, review recommendations from coroners and to give families a voice.
- Introduce **mandatory training** in Armed Forces policies and procedures to better equip coroners to investigate operational or training related Armed Forces deaths.
- Give the Service Complaints Commissioner **additional powers to investigate complaints** made by bereaved Armed Forces families.
- Create specialist **bereavement counselling services** for Armed Forces families, including parents and children.

Support for bereaved families

The number of casualties being experienced in both Iraq and Afghanistan has highlighted the need for the Government to improve the support arrangements for bereaved Armed Forces families. While significant improvements have been made over recent years, there is more still to be done.

The operations in Afghanistan and Iraq have meant that since 2001 large numbers of military casualties have been repatriated to the UK, and therefore, been subject to a coroner's investigation. Families often cite a need to know what has happened as an important part of the grieving process. The inquest is an essential part of this process where there has been a death overseas.

Inquests are carried out in the public interest to determine how, when and where a person died. The purpose is to find out the medical cause of death; draw attention to the existence of circumstances, which, if nothing is done, might lead to further deaths in the same manner; advance medical knowledge; and preserve the legal interests of the deceased person's family or other interested parties.

At the time of writing there had been a total of 389 deaths on operations in Iraq and Afghanistan. Over the same period there had been a total of 254 inquests completed into the deaths of Service personnel, including those who died of their

injuries in the UK¹.

There were also 71 inquests to be concluded into the deaths of Service personnel who died in Iraq and Afghanistan, 38 of these involve fatalities which occurred over six months ago. Of these 71 inquests, 38 have been retained by the Wiltshire and Swindon Coroner and 33 have been referred to other coroners near to where the next of kin lives¹.

What we're calling for:

- Fund an independent legal advice service to provide bereaved Armed Forces families with support and guidance through the inquest process.

Why?

In 2008 the Legion and the War Widows Association of Great Britain held an event with bereaved Armed Forces families to consider how they could be better supported during the inquest process. One of the families invited described how legal advice during this period could have helped:

“Had we known half of the information before we went to inquest, the agenda and the proceedings would have been entirely different, and we could have provided more assistance to the coroner. All bereaved families, we believe, should be entitled, no matter what their means, to legal assistance under the legal aid system.

“This process leaves us still today, over two years since losing our son, bereft of not only losing our son but of any sense of being treated with respect and receiving any natural justice.”

“The MOD is a powerful machine and if our ‘small voice’ can be used to make the experience of other families, that inevitably will be following in our footsteps, [and if] a more transparent and open process can be achieved, then writing this today has been worth the heartache and pain in reliving not only the traumatic pictures of that very fateful day but the experience of what we have had to endure over the last couple of years.”

Many families only feel that legal advice or representation is necessary following an inquest, not necessarily before the process starts, independent advice could assist families with making this decision. The Government is not in favour of legal representation for families:

“We have said it before: coroners preside over inquests and are responsible for ensuring that all interested parties are properly heard. They have a duty to protect and look after the interests of those who are not legally represented. No witness or interested person to the inquest is expected to present complex legal arguments. Most inquests do not need representation of any kind because by their nature they are inquisitorial and not adversarial².”

The latter point is not in dispute. However, military inquests have some nuances which need to be considered. This includes the need for formal disclosure applications for some military evidence, the need to protect the identity of some witnesses and the need for knowledge of the military and the Ministry of Defence. Until recently, it was Ministry of Defence policy to be represented by Treasury

¹ Written Ministerial Statement, Ministry of Justice, 30 April 2008, Official Report 12WS

² Lord Bach, Coroners and Justice Bill, House of Lords Committee Stage Day 2 (10 June 2009, Hansard Column 715)

Solicitors at every inquest; this has recently been scaled back in response to the concerns of families.

The Government reported in March 2008 that the total cost for legally aided representation for families at inquest into military deaths in Iraq and Afghanistan was circa £100,000. Between 2003 and 2007 the costs incurred by the Ministry of Defence on its own legal representation amounted to £1,160,282³.

The Legion is calling for Government funding for an independent legal advice service, which will offer information and guidance to families, rather than representation. This should ensure that families are fully equipped with all the information they require before an inquest begins and that they are prepared for the events to follow. It also means that the family will be able to make an informed decision as to whether or not to engage representation, at their own expense, or if they are eligible for legal aid.

What we're calling for:

- Introduce an Independent Advisory Committee on Military Deaths to provide advice, review recommendations from coroners and to give families a voice.

Why?

Part of the role of the coroner is to make recommendations to employers, public and other relevant bodies for the purposes of future accident prevention. Based on the evidence given at the inquest, the coroner can make recommendations under Rule 43 of the Coroners Rules 1984. These rules have recently been extended to allow coroners to make reports to prevent future deaths, impose duties on employers or organisations to respond to reports and to publish and promote the use of such reports.

In the military context, these recommendations are normally made to the Ministry of Defence. There is currently no independent body set up to monitor actions against these recommendations or to oversee their implementation. We believe that an Independent Advisory Committee on Military Deaths could consider these reports and help ensure action against recommendations. This body could also monitor the implementation of health and safety recommendations and provide families with a way to air issues of concern following the death of a family member.

What we're calling for:

- Introduce mandatory training in Armed Forces policies and procedures to better equip coroners to investigate operational or training related Armed Forces deaths.

Why?

Over the past few years, military inquests have essentially been held at either the Oxfordshire or Swindon and Wiltshire coroners. This is because the bodies have been repatriated to RAF Brize Norton or Lyneham respectively, and therefore, fall within these jurisdictions.

However, due to the number of inquests required, it has become Government policy to refer single fatalities to coroners near to the next of kin and for multiple fatalities to be completed by the Swindon and Wiltshire coroner. What this means is that a large

³ 11 March 2008, Column 373W, Armed Forces Inquests, Bridget Prentice

number of military inquests are being conducted by coroners without any previous experience of the military or operational deaths.

New legislation due to come into effect in 2010 will provide an opportunity for the Chief Coroner to introduce training requirements for coroners. We believe that secondary legislation should provide for coroners receiving referred military deaths, resulting from operations or training incidents, to have completed specialist training as directed by the Chief Coroner.

What we're calling for:

- Give the Service Complaints Commissioner additional powers to investigate complaints made by bereaved Armed Forces families.

Why?

The role of Service Complaints Commissioner (SCC) was introduced by legislation in 2006 in response to the investigation into the deaths of Service personnel at Deepcut Barracks. The current remit of the SCC is to review investigations undertaken by the Chain of Command relating to bad behaviour or employment issues such as discrimination, sexual harassment and bullying. The SCC can undertake reviews if approached by members of the Armed Forces.

The remit of the SCC means that once someone is deceased, there is no longer any scope for the SCC to review an incident or past complaint to the Chain of Command. This means that next of kin are excluded from making complaints through this route. We believe that this course of action could be undertaken by families, particularly relating to past incidents in the individuals Service career, if the scope was broadened. This is particularly pertinent to non-combat deaths, including suicides in the UK, where the family is not satisfied with the outcome of any subsequent inquiry.

What we're calling for:

- Create specialist bereavement counselling services for Armed Forces families, including parents and children.

Why?

Bereavement services provided by the Ministry of Defence are currently ad hoc and generally provided by different voluntary organisations. Next of kin are notified of these, but self referral is required. In the past, bereavement and counselling services have been available to dependants of the deceased only. The Legion believes that all next of kin should be able to access these services, that a dedicated service for the Armed Forces should be commissioned and that this should include specialist services for parents and children.