

TRANSCRIPT OF “FILE ON 4” – “FAMILIES VERSUS THE STATE: AN UNFAIR FIGHT?”

CURRENT AFFAIRS GROUP

TRANSMISSION: Tuesday 1<sup>st</sup> October 2019 2000 - 2040  
REPEAT: Sunday 6<sup>th</sup> October 2019 1700 - 1740

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PROGRAMME NUMBER: 19VQ6246LH0

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“FILE ON 4”

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Editor: Carl Johnston

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MUSIC

EXTRACT FROM PHONE CALL RECORDING

OPERATOR: Hello, police.

AMBULANCE WORKER: Hi police, it's Ambulance here.

OPERATOR: Hello there.

AMBULANCE WORKER: Hi, I just wanted to report an RTC.

EXTRACT FROM NEWS REPORT

NEWSREADER: There's been a two-vehicle collision on the M5 this afternoon. It happened on the southbound carriageway between 24 and 25.

BECKY: She didn't answer her phone, there was no answer at all.

BRIAN: And she wasn't home, that was unusual, you know.  
No message – nothing like that.

OPERATOR: What information have you got on injuries?

AMBULANCE WORKER: There's supposed to be someone trapped but we don't have a number.

BECKY: My stepdad came home and she wasn't there, so we ended up calling the police and it turned out that the police already knew where she was.

REPORTER: A woman has been removed from one of the vehicles.  
All lanes going southbound ...

POLICE: Single vehicle RTC, blue vehicle crossed the central res. Debris on both sides of the carriageway.

BECKY: She'd been in a major car accident on the M5. We're talking about both sides of the motorway got closed, so it was a multi lane, multi vehicle collision. So she'd been weaving, we found out, was what the police had said afterwards, across various lanes of the motorway and had then pulled out in front of a heavy goods vehicle, and that had pushed her into the central reservation, so she'd had to be cut out of the car. And she was so lucky that that car accident did not kill her. She only had cuts and bruises, so she'd come out of it relatively unscathed, and that should have been the warning signal for everyone.

HASSALL: Julie Carter-Montecute was a loving mother to Becky and Alex. Her whole life revolved around her children. She grew up in a 60s semi on a quiet family estate just outside of Bristol, where she's still very much centre stage.

ACTUALITY IN HOUSE

HASSALL: Is this Julie up on the wall here?

BRIAN: Yes, that's her, yes.

HASSALL: Oh wow, it's a beautiful photo. How old is she then?

BRIAN: I'm not too sure, I would say 35.

HASSALL: Looking very glamorous though, definitely.

BRIAN: Yeah.

HASSALL: Julie's dad, Brian, is retired now, but he spent most of his life working as an electrician at Bristol docks. Julie was his second child and his first and only daughter.

BRIAN: She took to me right from a baby, sort of, and she wouldn't leave me alone.

HASSALL: Daddy's girl?

BRIAN: Yeah, and even if I went up the toilet, she'd come and sit outside.

BECKY: She loved going out when she was in her twenties.

BRIAN: Oh yeah, she was always out.

BECKY: Good on her.

BRIAN: Yes, but she was very good. She wouldn't come home much later than about 1 o'clock in the morning and I would sort of stay awake until she come home, I'd heard her car come up the drive and I think she's home so ...

BECKY: And then you can finally relax.

BRIAN: Yeah, yeah.

HASSALL: Brian shares memories with his granddaughter, Becky – Julie's youngest child.

BRIAN: Yes, she was a very loving girl.

BECKY: Well, she called you every day, didn't she?

BRIAN: Well yes, every day she would call us.

HASSALL: After Becky was born, Julie developed Post Natal Depression. She became more anxious and over the years, her mental health deteriorated. In 2017, she was placed under the care of the Avon and Wiltshire Mental Health NHS Trust.

BRIAN: I had rang quite a lot and suddenly they started taking notice and they decided to section her, and it'll stay with me.

HASSALL: That must have been really hard to see her taken away like that.

BRIAN: Well they had two burly people there and I was going to sort of try and stop them, but they took her in the end.

HASSALL: After just a few weeks, Julie was released from hospital and for a while she appeared to have made progress. But as the months passed, Julie and the family grew deeply concerned that she wasn't well enough to look after herself. They called the mental health team constantly, asking for help.

BECKY: She was getting obviously progressively worse. If anyone had looked at how often she was calling them, you would have been able to see that she was struggling and declining.

HASSALL: On a Monday afternoon in February 2018, she got in her car and drove to the M5 motorway south of Bristol. It was there that witnesses say she swerved into the path of a heavy goods vehicle.

BECKY: When the police had found her in the car accident, they then brought her to A&E. We think that they said to A&E staff that they were worried that she'd purposefully crashed the car to try to harm herself. That should have been the warning signal for everyone – this person was sectioned last year, she's been trying to reach out to mental health support for weeks, she's now been in this car accident that people at the time were worried could have been purposeful in some way - somebody needs to do something. They didn't really ask in detail at all how she'd ended up in that car accident and they basically just released her, saying 'Go home and recover from the car accident.'

BRIAN: Having an accident like that and having to be cut out of a car, you would have thought they would say, 'We'll keep her overnight.'

BECKY: We all took her home and then I stayed with her all of the next morning and was calling up, we were all calling up the mental health line and they kept saying to us, 'Yeah, we'll come, we're going to come soon, we're going to come and see her soon,' and that just went on for days. They gave her an appointment date on the 27<sup>th</sup> February for someone to come and assess her.

HASSALL: Five days before her appointment though, Julie went missing.

ACTUALITY OF HELICOPTER

BECKY: I then came back from London, so, it's quite a long journey to get back, and just as I was about to leave, my brother called me and said, 'Becks, I'm really worried, there's helicopters over where the lake is, I'm getting really worried now.' My friends had come round my house, they sort of just bundled me into a taxi, and I just remember I was going over a bridge, because I got the phone call and my stepdad said, 'I'm really sorry, but they've found her body.' That journey back, like, sitting in Paddington and Bristol and having to know that she'd died and it was going to take me hours to get home, it was, I can't explain how horrible it was.

HASSALL: Becky believes her mum died because of the failings of her mental health team.

BECKY: There's no doubt personally in my mind that if she'd been seen that night, she wouldn't have died the next day, and my mum was just allowed to slip through multiple cracks of people thinking, well, you know, ultimately they're under the responsibility of this person so I don't need to worry about it.

MUSIC

HASSALL: Just two days after Julie died, Becky went to identify her body. At that point, she was told an inquest would be held. But the only guidance she received came in the form of a leaflet, explaining the procedure.

BECKY: The three of us went in to identify her - me, my brother and my stepdad - and that also is the first time they ever mentioned the inquest, and they just give you a little leaflet in the waiting room that explains it, but it doesn't really explain it at all. And you're on a timeline immediately where this inquest is going to happen by a certain time, you've only got a limited amount of time, you're in a place where you're not really in a state to be reading a lot of stuff and learning a lot of stuff, but you're forced to, so the first block I found was even understanding what I was meant to do.

HASSALL: The type of inquest where families are given Legal Aid automatically is something called an Article 2 inquest. These are held when someone dies whilst they are under the protection of the state – so in a hospital or in police custody, for



COLES: I'm sorry, but they are a battle at the moment, because it is not a level playing field. We have state borders and representatives who have unlimited access to public funding. At a time when they are most vulnerable, families have to fight to even get some contribution towards their costs.

HASSALL: Do you think the current system is having an effect on justice? Do you think that the right outcomes are not being brought about because some people do not wish to go down the lines of trying to get funding in the first place?

COLES: I think there is a clear link between families' meaningful access to the inquest process through good quality legal representation and the outcome of that legal process, and I think unrepresented families undermine the preventative potential of the inquest process.

MUSIC

HASSALL: The Ministry of Justice launched an investigation into Legal Aid funding last year. It followed calls from, amongst others, Bishop James Jones, who chaired the Hillsborough Independent Panel. They demanded non means tested Legal Aid to be awarded to families at all inquests where public bodies are represented. But in February this year, the Government rejected the idea. Fortunately for Becky though, she had a friend who was a lawyer who was able to offer her some good advice.

BECKY: She said to me, 'Write down everything you remember right now, because you will forget,' and that is so true, because that document was read out at the inquest as what our version of events had been from our standpoint, and again nobody tells you to do that. If I'd not had a friend who was a lawyer – which a lot of people will not have – I'd have had no idea that I needed to do that.

HASSALL: Becky faced the daunting prospect of representing the family herself at the preliminary hearings.

BECKY: I was terrified, absolutely terrified that I would do it wrong, that I would mess up, and I knew this was the one chance I had to make sure that what happened to my mum was found.

HASSALL: Becky's a confident public speaker. She was part of the debating team at university. Other people wouldn't have this on their side.

BECKY: It was a struggle for me and I had every possible advantage in being able to do it, so I do not understand how anybody else can, and I think they're not learning from deaths because of that.

HASSALL: For the inquest itself, Becky did get legal representation, when a lawyer offered to take on the case for a reduced fee. The coroner concluded there had been a number of failings, which amounted to a gross failure by the mental health trust.

BECKY: A case like this, which wouldn't have gotten Legal Aid, very much has resulted in changes in practices for other patients, and I think just really illustrates how the system fails at the moment.

HASSALL: After the inquest, Avon and Wiltshire Mental Health NHS Trust said they accepted the findings of the coroner and apologised to the family. They also said they'd changed their working practices as a result of the coroner's findings.

BECKY: One thing that was so important from the inquest was getting that vindication that you know, no, they did do this wrong, and just in terms of how you cope with it going forward, knowing that they did do it badly, that there were failures in her care. It's taken such a long time for me to get to the point where I can say, I can't have sat with her the rest of my life, like, I can't make up for state failings in care and look after someone who was too sick for me to look after them.

HASSALL: On behalf of the foundation set up in her mum's memory, Becky submitted Freedom of Information requests to the 53 mental health trusts in England, asking how much they'd spent on lawyers at inquests in the financial year

HASSALL cont: 2017-2018. Around half of them responded, revealing they'd spent more than £4 million. That compares to just £118,000 made available to families in Legal Aid. Matthew Hill is a barrister who's worked in the coroner's court for both sides – the state and the families.

HILL: Inquests are inquisitorial, which sounds like lawyers playing with words, but it's important. The coroner will lead the investigation - that is what is meant by it being inquisitorial. There aren't sides, there aren't pleadings, there isn't an indictment. It is an investigation to try and establish the facts of what happened and to answer four questions: who died, when, where and how. In those circumstances, in theory, you don't need lawyers at all, because the coroner is doing the job of the investigator. I agree that it will be difficult to ensure exact parity between the two sides, but I think it's important to remember that there are different interests at play. So in the example of a clinical negligence incident - or alleged clinical negligence incident - the doctor is facing criticism. The doctor is facing criticism that could end his or her career. The family is in a different position. The family wants answers, the family wants to know what has happened to their loved one, but the family isn't facing criticism.

HASSALL: Twenty years ago, Legal Aid funding for inquests didn't even exist. In 1997, Ann Power had taken her sons on a day trip while her husband Onese stayed at home.

POWER: Well Onese was very, he was very caring and loving, very supportive and protective of his family. He fixed everything for us. I suppose we thought he was invincible until the day he died.

HASSALL: It was a sunny August day, so while Ann took her boys to the seaside, her husband Onese went riding his motorbike through Kentish Town in London. He was followed by two police cars who thought he was speeding, but because he'd been disqualified from driving, he didn't stop. The pursuit lasted for nearly five minutes and ended in a collision which killed him.

POWER: Well, I didn't know until 11 o'clock that night. My son and I, youngest son and I were watching a documentary on Elvis Presley and it was quite a hot summer's night and I saw a police car roll by and, being nosy, I looked out to see where it was going to stop, and it stopped just past our place and then walked back to us, and ...

HASSALL: I can see it's still really, really difficult for you.

POWER: They said, 'Your hu ... Your husband's been killed.' My son ran out screaming into the darkness and my brain was just bouncing off the walls. That was that, that's how we found out.

HASSALL: Because Onese died in a police chase, the case automatically went to inquest and Ann went to court to represent herself.

POWER: There was only me and my three boys and that's that, you know.

HASSALL: The inquest returned an open verdict, but Ann believed the police had played a part in her husband's death. Because she didn't have a solicitor, she believed vital evidence was missed. She spent the next twenty years trying to get another inquest and finally, earlier this year, she got another chance to get to the truth. How did you feel at that point?

POWER: Elated, because I felt at last somebody is listening to me.

HASSALL: But her elation didn't last long. Even though a judge had ordered another inquest should take place, Ann was told she'd have to pay her own legal fees. She's a retired woman in her seventies living on a pension. Apart from her home, she has no other assets.

POWER: It was making me ill because, you know, there was, I thought, well, it could run into thousands and thousands and I haven't got it, you know - the house, and I could lose the house and I sort of, well, I think I did, I backed out.

HASSALL: Ann was on the brink of giving up, but then her lawyer suggested crowdfunding.

POWER: I'm not on social media so I don't have a great load of people that I can reach out to. It's like you're going out with a begging bowl.

HASSALL: After working for twenty years to get to this point, did it seem fair that you were then asked to pay for it?

POWER: No, of course it didn't, you know, it's ... What you have to realise is that the state institutions that families are up against, their legal fees are paid for, they're funded by the state. And where's that money come from? Taxpayers' money? Well, I've paid my tax, so I'm paying them to contest me and then I've got to pay my own fees, so I don't know what's fair about that.

HASSALL: Thanks to crowdfunding, Ann was able to pay for legal representation. The police were found to have been at fault and critical details that led to Onese's death were heard for the first time. The inquest heard the length and intensity of the pursuit was a contributing factor to Onese's death. The coroner also found that once engaged in the pursuit, the required ongoing assessment of risk by police officers was inadequate and their actions were not properly reported back to police central command. When you got that conclusion, how did you feel?

POWER: It's about truth, justice and accountability, and I think grieving families are entitled to that. I don't think they should have the door shut in their faces every time they try to find out, you know, because families never get over this. Time may ease the pain, but the wounds never heal. The police never thought they'd see me twenty years later. I never thought I'd see it twenty years later, but there you are. It's better to have done it than not to have done it at all.

MUSIC

HASSALL: Because of the passage of time between the incident and the inquest, the coroner did not make a prevention of future deaths report. The Metropolitan Police said there had been considerable changes in police pursuits, including significant changes in the technology available and in police policy since the incident. But how often are we failing to learn from the mistakes of the state, when robust legal challenges aren't made? Deborah Coles from the charity Inquest.

COLES: Families need legal representation because without it, their voices are too easily silenced, and because the reality of inquests, particularly those into state related deaths, are that they are drenched in lawyers acting on behalf of different state or corporate agencies, whose interest is very often to deny or delay the answers to the families. Their objective is reputation management to defend their interests and not a searching inquiry into the broader circumstances of the death.

HASSALL: Is that not an assumption that the state has something to hide? Surely the state are quite willing to give over the evidence to find the truth as well.

COLES: I think you need to really go along and attend an inquest into the death of somebody in a mental health setting or the self-inflicted death of a prisoner or the death of someone as a result of neglectful public services to see the reality of what those inquests are like - where you have lawyers whose biggest concern is to try and avoid criticism, to defend their practices, to defend their reputation. That's the reality for families. That's the reality of what they confront at an inquest.

HASSALL: Barrister Matthew Hill believes more families should be given free legal representation, but he doesn't think inquests should be seen as adversarial.

HILL: An inquest should be an investigation into the facts and different parties have different roles to play in that. I don't think that the legal representation needs to mirror each other in that respect, but I do think that the key, the touchstone is to ensure that the family can participate effectively in the inquest. I don't think it's a case of one side having lost and the other side having to defend their position. I think that good lawyers will help all parties and will help the coroner to achieve an effective conclusion and an effective investigation. I don't think that it should be seen necessarily as one side fighting

HILL cont: for justice and the other side seeking only to defend its reputation. That isn't how inquests should work. And in my experience - at least in most cases - that isn't how inquests do work.

HASSALL: In order to qualify for Legal Aid, you have to have less than £733 in disposable income every month. You can't own anything worth more than £3,000 and you must be on some kind of income support. And even if you meet all these criteria, it's still down to the Legal Aid Agency to decide if your case warrants funding. Even if they do, they may only decide to offer partial funding, leaving families to pay for the rest themselves. Merry Varney is a lawyer who specialises in representing families at inquest.

VARNEY: It is about bereaved families being represented in the inquest process, which is an enormous public sort of service, so it seems, given the importance of them, the steps families are put through and the approach and system as it stands is just completely flawed.

HASSALL: Merry has been providing legal guidance in a case which has yet to be heard by the coroner. It involves a young man who died whilst under the care of the NHS. We can't identify the family because the inquest hasn't happened yet – but the man's father has told us he found the application for Legal Aid incredibly intrusive at a very difficult time for him and his family.

FATHER: We've been through two pre-inquests and with the help of Merry we've now got 50% Legal Aid, and it's incredibly difficult without someone to help you a little bit to do anything, you know, and to make any sense of it, and that's what I suppose I'm trying, as a person I want to try and make sense of it.

HASSALL: As you said, you've got funding, you've got some funding and some Legal Aid towards this process, but how difficult was that process of actually getting to this point?

FATHER: I don't know, but I think I would have found it nearly impossible without legal help to actually have got that funding. It was as difficult - if not more difficult - than getting divorced. When I was divorced, every penny had to be accounted for, and it was the same in this situation. And when you're in grief and stress and pain, to go through that financial thing as well, to get all the sort of every note of every bank account, all your savings, your wife's savings – I'm fortunate that I love, I married and I live with someone who has got some funds because her father died.

HASSALL: So you're having to use your wife's inheritance to pay for this?

FATHER: Yeah, that's right, yeah, yeah.

HASSALL: Merry Varney believes partial Legal Aid funding can create more difficulties for families.

VARNEY: Generally speaking, percentage contributions, which the Legal Aid Agency can ask for, are incredibly problematic, and to some extent put us in the position that we could be in conflict with the bereaved families we're working for, because if our view is that it would be better to bring a matter back before a coroner, to have another pre-inquest review hearing, for instance, we are increasing what our client therefore has to pay in circumstances where we may know how difficult it is for them to make those payments. I mean, I ask anyone who suggests that you don't need legal representation to stop and think for a minute how you would feel, being in a courtroom, untrained, with the people that you believe are responsible for your loved one's death.

MUSIC

HASSALL: Of those we've spoken to who have qualified for Legal Aid, they've only been given a percentage of the fees needed to pay for legal representation and have been required to top that up themselves. File on 4 has uncovered a huge disparity in the amount of money spent on legal representation by the state compared to that given to families at inquest. In 2018, for example, we discovered that just £41,000 in Legal Aid funding was given to families of those who had died in police custody. But the amount spent

HASSALL cont: by the police forces involved in those cases was much higher. We submitted Freedom Of Information requests to all 44 police forces in England, Wales and Northern Ireland, asking them what they'd spent in legal fees during inquests into deaths in custody. 32 of those forces came back to us, revealing that their legal bills came to almost £410, 000 – that's ten times the amount given to families in Legal Aid. We haven't got figures from Scotland because their inquest system is different. Deborah Coles from the charity Inquest.

COLES: It's not good enough. Inquest is very clear that there should be non means-tested funding for people bereaved after state-related deaths and there needs to be a much bigger pot of money available for exceptional funding to deal with those important public interest cases.

HASSALL: Throughout our investigation, I thought that the worst case scenario is that a family could not go to inquest and not ask their questions because the process is so difficult. Do you come across that?

COLES: We've had families that have withdrawn from the legal inquest process because they found it too traumatic, they found the process for funding too traumatic and, you know, some of the worst cases I think have been ones where families have tried to represent themselves.

#### EXTRACT FROM NEWS REPORT

NEWSREADER: Now we've got details of a potentially serious incident coming to us from various news agencies ....

NEWSREADER 2: Our political Editor, Laura Kuenssberg says a police officer has told her someone has been shot outside Portcullis House. Now that's ....

HASSALL: Following the Westminster Bridge terrorist attack in March 2017, families of the five people who died sought Legal Aid so that they could engage with the legal process at the inquest and question the actions of the Government and the security services. More than fifty people were injured – four of them fatally - when

HASSALL cont: Khalid Masood drove a car into pedestrians before crashing. He then ran into New Palace Yard, where he stabbed unarmed police officer Keith Palmer to death.

#### EXTRACT FROM NEWS REPORT

NEWSREADER: ... a man with a knife has been seen within the confines of the palace, according to eyewitnesses, and it's reporting that sounds similar to gunfire ...

HASSALL: The state spent nearly half a million pounds on legal fees at the inquest. But PC Palmer's parents and siblings had their application for Legal Aid rejected. The Legal Aid Agency justified its decision on the basis there wasn't a risk of a breach to their human rights, because PC Palmer's widow did have legal representation. Instead, PC Palmer's mother and his father and his sisters had to rely on pro-bono legal support, which was provided by Sarah Burton of the legal firm Kingsley Napley. I met her on Westminster Bridge – close to where PC Palmer was fatally stabbed.

BURTON: It's not something that you can do again and again. We could only act on a sort of one-off basis for the family of PC Palmer purely because we could see how important it was that they received legal representation, and so we wanted to make sure that we were able to provide that. It was very clear quite early on that there was some really serious issues that needed to be looked into.

HASSALL: The Metropolitan Police service in particular had questions to answer at the inquest. How had a terrorist been able to enter New Palace Yard and stab PC Palmer to death? Questions were raised about the lack of armed officers in the vicinity, and the issue was explored in detail at the inquest, but only after extensive complex legal arguments.

BURTON: For the Westminster Bridge inquest, there were about seven or eight different interested persons and they all had at least one, but in most cases two barristers and a set of solicitors. There's a lot of legal arguments, they go on for a long time. There was a huge number of documents in this case - thousands and thousands of documents



HASSALL cont: £70 million a year. They said means testing serves to determine the allocation of taxpayers' money to those most in need and for the most serious cases in which legal advice or representation is justified. We asked the Ministry of Justice for an interview to discuss its decision. Nobody was available. Instead they gave us a statement.

READER IN STUDIO: We sympathise with those who have lost loved ones and we are making changes to ensure there is more support available for them at inquests. While our review of Legal Aid showed that legal representation is not necessary at the vast majority of inquests, funding is available through the exceptional case funding scheme. Families are also supported by coroners, who can ask questions on their behalf to help them get the answers they need.

MUSIC

ACTUALITY AT LAKE

ALEX: This is it.

BECKY: Yeah, that's it.

HASSALL: Becky and her brother Alex have had a bench made in memory of their mother, Julie – there's a dedication to her carved into the backrest, and it's been placed by the lake where they shared many happy memories as family. It's also the place where Julie died.

ALEX: I'm pretty emotional really, but happy in a way, happy in a way because we're remembering her and, you know, that's one thing that will always kind of live on is the memory, so, you know, it's touching, it's good.

BECKY: I definitely feel like I could cry, it's so nice. I just think, yeah, it's nice to have a place that feels like it's for her here. So yeah, I really like it.

HASSALL: Becky's fight to get the answers she and her family needed is finally over. But she says it's been unnecessarily difficult - and very unfair.

BECKY: I think I'm glad that it's done. I think I wouldn't, I couldn't have done it again. I think if you ever really understood how much it was to do at the start, I think it would make you not be able to do it. So I think I just feel so glad, I guess that we can move on to the bit of having some sort of legacy and stuff for her. I don't think either of us will ever forget about the process and how horrible all of it was in the aftermath, but I think having stuff like this for her and trying to get positive change I think for other people from what happened to her is all you can ask for really, like.

ALEX: Yeah.

BECKY: And I think that's what she would have wanted. That's the thing I've always thought is that, I think if this happened to either of us, there's no question in my mind she'd have pushed so hard. She'd have had a checklist for it, I'm sure, [laughs] but she'd have, I think she would have really pushed and I think that's what's made me feel like we've had to try to do everything possible for her.