INQUEST response to the Ministry of Justice Consultation on establishing an Independent Public Advocate
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About INQUEST

INQUEST is the only charity providing expertise on state-related deaths and their investigation to bereaved people, lawyers, advice and support agencies, the media and parliamentarians.

Our policy, parliamentary, campaigning and media work is grounded in the day to day experience of working with bereaved people. INQUEST’s specialist casework focuses on deaths in police and prison custody, immigration detention, mental health settings and deaths involving multi-agency failings or where wider issues of state and corporate accountability are in question such as, Hillsborough and the Grenfell Tower fire. INQUEST’s Executive Director, Deborah Coles, sits on the cross-government Ministerial Board on Deaths in Custody.

INQUEST regularly consults with bereaved families and the INQUEST Lawyers Group. We organise listening days to ensure that the voices of the bereaved are heard directly, on their experiences of investigation and inquest processes.

INQUEST response

Our consultation response draws on longstanding evidence from INQUEST’s casework and our unique overview of the legal processes following state related deaths. This submission has benefited from the input of several stakeholders including families impacted by mass fatalities and lawyers representing bereaved families at inquests/inquiries.

1. Introduction

In recent years, we have seen unprecedented scrutiny of how the state investigates and examines contentious deaths. There is ongoing work developed in response to the increasing evidence about flawed investigations, inquests and inquiries, the impact of traumatic bereavement, and the importance of families having access to justice.

Moreover, INQUEST has been involved in several landmark reviews in an advisory capacity. These include:

- ‘The Angiolini Review of Deaths and Serious Incidents in Police Custody’ (Angiolini, 2017);
- Bishop’s Review of Hillsborough Families’ Experiences ['The patronising disposition of unaccountable power: A report to ensure the pain and suffering of the Hillsborough families is not repeated'] (Jones, J. 2017) and;
• The Care Quality Commission ‘Review of the way NHS trusts review and investigate the deaths of patients in England.’ (Care Quality Commission, 2016).

Our Executive Director Deborah Coles was appointed special adviser to Dame Elish Angiolini and INQUEST were commissioned to provide detailed submissions to the reviews and hold family listening days so that the review teams could hear directly from families bereaved after state related deaths. Central to these reviews was the voice of families and their testimonies about being thrust into a minefield of official processes at their most vulnerable time and the impact this has on their physical and mental health. Both reports recognised the need for families’ legal representation in aiding families’ participation and securing meaningful access to justice.

Across INQUEST’s work, we see multiple examples of families coming up against state and corporate denial, defensiveness, secrecy, insensitivity, delays, and lack of accountability. The Hillsborough Stadium and Grenfell Tower disasters, as well as other state-related deaths, offer a vivid demonstration of how bereaved families are marginalised and disempowered during post-death proceedings. To prevent their systematic exclusion, families require resources and mechanisms which elevate their voices following a death.

Empowerment of this kind is dependent on: access to automatic publicly funded legal representation at inquiries and inquests; and state and corporate bodies acting with transparency and candour. Families' meaningful engagement in post death inquiries and investigations has huge public benefit. By maximising opportunities for public scrutiny and learning, it not only advances families’ search for truth, justice and accountability, it can prevent the continuation of dangerous practices.

2. Summary

It is important to look at the context in which this consultation is taking place. The Government has failed to respond to the report of Bishop James, has failed to endorse the Public Accountability Authority Bill sponsored by the Hillsborough families and has failed to bring forward proposals to properly fund legal advice and representation for bereaved people generally. This despite a series of reports asserting that this is essential to making Article 2 investigations work and ensuring the effective participation of victims.

INQUEST has serious concerns about the current proposals for an Independent Public Advocate (IPA). As it stands, the proposal for an IPA risks further diluting the voices and power of bereaved families and survivors. Rather than answer the specific questions outlined in the consultation document, our response identifies key issues and offers suggestions for an approach that sees the IPA as part of a broader package.

Our proposals seek to genuinely empower and engage families, rather than opt for paternalistic state assistance. The importance of this distinction cannot be overemphasised. The consultation repeatedly refers to the failed Hillsborough processes and the complexities of the Grenfell fire investigations, the Francis report into failings within an NHS Trust and the Gosport Inquiry.

Across various inquiries and reports, bereaved families and survivors of disasters and healthcare failings, alongside their lawyers and INQUEST have identified key concerns. These include:

a. A lack of automatic non-means tested public funding during and in advance of inquests/inquiries, to put bereaved families on a level playing field with public authorities and corporate bodies
b. A lack of candour from state and corporate bodies.
The proposals outlined in the IPA consultation do not address these needs and fall short of what families have been campaigning for over many decades. However, if these two issues are properly addressed then the institution of the IPA could be a useful complementary mechanism to fill gaps and provide a process where investigations have failed. The IPA could also monitor and accumulate learning from families’ experiences at inquiries, with a view to reporting best practice to the Government.

Without the recommended reforms, the aims of the IPA can be nothing more than aspirational against powerful public and private institutions who fear the consequences of accountability.

We propose the reintroduction of the Public Authority (Accountability) (PAA) Bill, previously tabled in March 2017. The Bill, originally sponsored by Hillsborough families, calls for a duty of candour from state and private bodies, and public funding for legal representation to put victims on a level playing field with public bodies. The Bill would:

“Set a requirement on public institutions, public servants and officials and on those carrying out functions on their behalf to act in the public interest and with candour and frankness; to define the public law duty on them to assist courts, official inquiries and investigations; to enable victims to enforce such duties; to create offences for the breach of certain duties; to provide funding for victims and their relatives in certain proceedings before the courts and at official inquiries and investigations; and for connected purposes.”

In his review of Hillsborough families’ experiences, Bishop James Jones identifies a pervasive culture of defensiveness and denial across public and private bodies. To counter these practices, the Bishop’s Review supported the reforms proposed in the PAA Bill.

INQUEST has grave concerns that if the IPA is not considered alongside other reforms, then it will be used as a vehicle to justify the erosion of legal advice for bereaved families and those affected by disasters. The IPA must not be relied upon as a substitute for the independent, specialist legal advice bereaved people desperately require if they are to participate effectively in such processes.

The remainder of this document expands on INQUEST’s concerns about the IPA proposals on the basis of a) Effective participation of families; b) Independence, and c) The role and remit of the IPA.

3. Effective participation

Firstly, we would like to address an underlying misconception about the barriers to families’ participation throughout post-death proceedings. The consultation refers to complex procedures following mass fatalities, in which the families’ experiences “can be daunting, confusing and overwhelming”. Bereaved relatives’ trauma is often compounded by a systematic disregard for their needs and concerns, and the lack of information they are given about their legal rights in these processes. Families with whom we work, describe their shock at the adversarial, unsympathetic and defensive approaches deployed by corporate and state bodies.

Moreover, the IPA proposal is at odds with what families and INQUEST have been campaigning for over many decades. While the consultation proposes paternalistic state assistance from an IPA purporting to act on behalf of families, families themselves have consistently asked for

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1 Private Members’ Bill (2017), Public Authority (Accountability) Bill. Download.
measures that enable and empower them to address state injustices. As one Grenfell survivor said during an IPA stakeholder meeting (organised by Ministry of Justice, 21 Nov 2018):

“The bereaved and survivors have their own voice, we know what we want to say from our own lived experiences. We don’t want our voices to be diluted”

The lengthy struggles of the Hillsborough families are a key example of how families were rendered powerless against powerful state bodies. The Bishop’s review draws on relatives’ testimonies of the first inquests, where families did not receive legal aid and were excluded from the process:

“The lack of legal representation led to a mini disaster...I don’t recall seeing any statements beforehand. We didn’t have any advance disclosure, so our legal team had their hands cuffed behind their back and that makes the whole thing a farce. We didn’t know which witnesses would be called to give evidence.”

Barry Devonside, father of Christopher Devonside

“The mini inquests were just unbearable. All the coroner said was that it was about who, where, how and when they died and there are to be no controversial issues brought up, and if there are, I will close them down so that you can get on with mourning your loved one. At the end of the day it was used against us because we did not challenge anything at the inquests.”

Edna Murray, mother of Paul Murray (Jones, J. 2017)

Early access to independent legal representation and advice is crucial to empowering families. It enables families to participate in proceedings to ensure those responsible are held to account, whilst identifying opportunities to prevent future deaths.

Whilst a review of legal aid at inquests by the Ministry of Justice is currently underway, the Government are yet to commit to properly fund non-means tested legal advice and representation for bereaved people². This is despite a series of Government commissioned reviews, including those from Bishop James Jones and Dame Elish Angiolini, and the Bach Commission and annual reports from two Chief Coroners, all recommending publicly funded legal representation for bereaved families at inquests.

4. Independence

Following disasters involving the state, trust and confidence needs to be rebuilt. Families often describe feelings of suspicion, anger and a scepticism towards information received by state and corporate bodies, particularly if the state is implicated in the death. The issue of independence is a central concern for the many families INQUEST works with.

Families’ suspicions are also qualified by the experience of other bereaved relatives. INQUEST has held several Family Listening Days³ namely for the Bishop’s review on Hillsborough family experiences and Angiolini Review on deaths in police custody. These evidence numerous accounts of families battling for independent, unbiased information from various state bodies.

² You can find INQUEST’s and INQUEST Lawyers Group submission on legal aid at inquests here: https://www.inquest.org.uk/access-to-justice-for-families
³ A full list of Family Listening Day reports can be found here: https://www.inquest.org.uk/family-listening-days
During a listening day held for Bishop James Jones, relatives of those who died following state related deaths involving, police, prison, and healthcare settings referred to examples where state bodies provided misleading accounts of the inquest process. Families described the failure to be informed of their legal rights, entitlement and benefits in seeking legal representation for what in reality is an adversarial inquest.

While in theory inquests are supposed to be inquisitorial, lawyers representing state or corporate bodies tend to approach inquests in a defensive manner and as a damage limitation exercise, where their priority is to deflect criticism.

The consultation refers to the IPA as being ‘independent’ of the Government, however, this seems impossible as the Secretary of State for Justice is responsible for the appointment of the IPA. The Secretary of State would also decide which events would require the involvement of the IPA. Moreover, the families would not be involved in the appointment of the IPA and while the IPA would seemingly represent the bereaved and survivors’ interests, it would take instructions from the Government – not from those most affected.

It is crucial that support provided to families is viewed as structurally independent of Government, to allay families’ concerns of cover-ups and evasive practices. As one participant said during INQUEST’s family listening day for the Angiolini review, “When they (families) are feeling isolated in the face of institutional defensiveness, it becomes easier to question the independence of the investigation and raise questions over the fairness of the process.” An IPA appointed by the Government will simply not have the trust of those most affected.

Information provided by a Government appointed IPA would most likely be received cautiously by families. INQUEST is also conscious of the wording used in the consultation’s impact assessment, where it states the IPA could advise “bereaved families on the implications of engaging lawyers”.

Families we work with often inform us that they are rarely, if ever, advised at the outset by state funded bodies (including the coroner’s office or investigative branches such as the IOPC) to seek legal representation or where to go for specialist advice and support. Indeed, this was recognised following the Grenfell Tower fire when INQUEST in response to requests from the community produced a short leaflet translated into 22 languages, outlining families’ rights after the disaster and where to seek advice and support in the absence of accurate information from the state about the legal processes.

5. Remit and role of the IPA

There are outstanding ambiguities about what role the IPA would play, and to what extent it would duplicate the role of lawyers and independent charities. The consultation’s references to publicly funded legal provision are regrettable for the inference that there is existing appropriate provision to facilitate representation. This is compounded by the use of the term ‘advocate’ and the trespass into multiple areas where proper independent advice is required. As one example, in chapter 1 (para 16) the consultation asserts that the IPA’s role would include:

- “understanding and advancing their (the family’s) interests…
- providing support to ensure families can understand the purpose and proceedings of any investigation, inquest or inquiry that is established to determine the cause of the disaster and the resultant deaths;
• supporting them to be able to fully participate in the investigation (where there is a right to do so) …”

Supporting families to fully participate in investigations, ensuring they understand the purpose of proceedings, and advancing their interests, all come under the existing role of a family’s lawyer or charities such as INQUEST. Families must be empowered to provide instructions specific to their own circumstances and they must benefit from advocacy which is couched in those instructions. This would be best carried out by legal experts or caseworkers with knowledge of post-death investigations, coronial law and experience in supporting families affected by a sudden, traumatic and contentious death.

Further still, one IPA cannot realistically represent everyone’s interests. It is important for diverse views to be heard and this can only be done through individual families providing their own instructions and receiving truly independent advice and legal representation.

6. What is needed?

This consultation must be considered alongside two key recommendations in the Bishop’s Review, focused on elevating families’ status and participation in inquiries. These include: [1] A duty of candour from state and corporate bodies and [2] automatic, non-means tested public funding to put families on a level playing field with public authorities and private bodies.

As mentioned, these measures were outlined in a previous parliamentary bill, the Public Authority [Accountability] Bill. This Bill, which was sponsored by Hillsborough families, continues to receive cross-party political support and backing from those impacted by the Grenfell Tower fire.

We recommend that these legal standards be met first, and that the IPA be considered as part of this wider package of reforms. Otherwise it may well defeat the other desperately needed changes.

Below we discuss what value the IPA could add as an oversight and signposting body.

7. The role an IPA could play

The IPA must be structurally independent of any ‘parent’ Government department. The Secretary of State for Justice (or any other minister) should play no role in triggering or limiting involvement in any particular event or events.

The IPA could have a signposting role in the immediate aftermath of a death. To include:

a. Signposting bereaved and survivors to proper independent legal advice and support, and to other welfare services as soon as possible after a disaster. This would include coordinating a coming together of the bereaved and survivors and directing them to relevant organisations, depending on their needs. The IPA could collate useful resources and information, and would most likely require a local knowledge of service providers and support networks (bereavement counselling, mental health support etc.)

b. Liaising with support organisations and independent legal representatives to ensure that official investigations work with bereaved people and their representatives.
The IPA could prompt reviews of failed investigations. A public advocate role was originally envisaged in 2014 by Lord Michael Wills⁴ and it was considered a mechanism that would rectify failed investigation processes where bereaved families felt that the full facts had not been established.

Drawing on the Hillsborough families’ experience at the first inquest, it proposed a public advocate scheme which had the power to set up a review panel along the lines of the Hillsborough Independent Panel. Following this logic, the IPA could provide a process whereby the bereaved and survivors can seek to have investigations reopened due to concerns that terms of reference were too narrow, the investigations did not consider all relevant matters or evidence, or for other significant reasons given. The IPA would be required to receive submissions from families or their representatives, look into the matters raised, and make recommendations as necessary (for example, to a minister to order a new public inquiry). This process would be additional to existing public law remedies. The IPA should be required to make reasoned decisions for recommendations made or any refusal to do so.

The IPA could identify and accumulate learning and best practice. There is currently no oversight of public inquiries; this is something that is needed and something that core participants will truly benefit from. The Grenfell Inquiry has seen bereaved families and survivors having to fight at every stage of the Inquiry to have their voices heard. Concerns about the lack of diversity of the Inquiry team, Secretariat and how the Inquiry was set up could have been avoided if good practice from previous inquiries had been adopted. The IPA could be assisted by an Advisory panel and could develop a hub of best practice responding to the needs of bereaved people after a disaster or a systemic pattern of deaths. Drawing on families’ experiences and recommendations from other inquiries, the IPA could play a key role in assisting in best practice in working with bereaved people and those that support them.

A further concern is that recommendations arising out of public inquiries are not binding on the Government. There have been 68 public inquiries since 1990, and only 6 of them have resulted in Parliamentary Select Committees looking at the implementation of recommendations (Norris, E. and Shepheard, M. 2017). The IPA could perform this role in inquiries and monitor and audit and report on action taken.

To ensure the role has teeth, the IPA could have statutory powers which enables it to compel bodies to implement recommendations made by inquiries. This could have a huge impact on future safeguarding practices. Organisations which are currently taking no action to address issues identified following large-scale disasters would understand that such non-implementation of policies and procedures could have serious repercussions. This would extend the remit of the IPA and would likely require greater regulatory powers.

Separate to this, INQUEST has consistently called for a national oversight mechanism to be established to allow for institutional and policy learning via coroner’s prevention of future death reports (PFDs). Existing processes within the coronial system should allow for this, however, there is no current body which oversees or enforces the implementation of recommendations. The Chief Coroner, which is expected to have oversight of PFDs does not have capacity to monitor and track learning. This not only results in the continuation of dangerous practices but adds to bereaved families’ frustrations regarding the lack of change.

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8. Conclusion

Only through learning from the lived experiences of families, who have been through tragic disasters, can the Government’s ‘victims strategy’ truly take shape. Their experiences and recommendations for best practice can inform policy and cultural change in the Inquiry process. For families to be able to secure the truth, justice and accountability, there must be a level playing field between them and the various state/corporate bodies involved in mass fatalities. This can only be guaranteed by automatic non-means tested legal advice and representation. Moreover, duty of candour obligations can put an end to the evasive and obstructive practices following contentious deaths. The IPA can only be considered alongside these reforms; as a supplementary measure which strengthens the role of the bereaved and survivors.

REFERENCES

- Jones, J. (2017) ‘The patronising disposition of unaccountable power’: A report to ensure the pain and suffering of the Hillsborough families is not repeated.’ London: Home Office. [Download](#).
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- INQUEST (2017b) INQUEST submission to the Review of the Hillsborough Families’ Experiences by the Rt. Rev Bishop James Jones. [Download](#).
- INQUEST (2016c) INQUEST report of the Family Listening Days held to support the Independent Review into Deaths and Serious Incidents in Police Custody. [Download](#).