



INQUEST-LIBERTY-JUSTICE
Joint suggested amendments
to the Coroners & Justice Bill 2009 on
the admissibility of intercept evidence
and the relationship between inquests
and public inquiries
Report Stage – House of Lords

October 2009

About Inquest

INQUEST is the only charity in England and Wales that works directly with the families and friends of those who die in custody. This includes deaths at the hands of state agents and in all forms of custody; police, prison, young offender institutions, secure training centres and immigration detention centres. We provide a free, confidential advice service to bereaved people and conduct policy and Parliamentary work on issues arising from the deaths and their investigation.

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

About Justice

JUSTICE is an independent all-party legal and human rights organisation, which aims to improve British justice through law reform and policy work, publications and training. It is the UK section of the International Commission of Jurists.

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Admissibility of Intercept Evidence

Amendment 1

To move the following clause—

- '(1) Section 18 of the Regulation of Investigatory Powers Act 2000 (c. 23) is amended as follows.
- (2) At the end of subsection (7) insert—
 - '(d) a disclosure to a coronial judge or to a person appointed as counsel to an inquest or to members of a jury at an inquest or to an interested person in which the coronial judge has ordered the disclosure.'
- (3) After subsection (8A) insert—
 - '(8B) A coronial judge shall not order a disclosure under subsection (7)(d) except where the judge is satisfied that the circumstances of the case make the disclosure necessary to enable the matters required to be ascertained by the investigation to be ascertained.
 - (8C) An order for disclosure made under subsection (7)(d) may include directions enabling the redaction of any material relating to the method or means by which the information was obtained.'
- (4) After subsection (13) insert—
 - '(14) In this section “interested person” has the same meaning as in section 38 of the Coroners and Justice Act 2009.
 - (15) In this section “coronial judge” means a judge nominated by the Lord Chief Justice under the Coroners and Justice Act 2009 to conduct an investigation into a person’s death and who has agreed to do so.'

Effect

This amends the *Regulation of Investigatory Powers Act 2000* (RIPA) to remove the prohibition on intercept material to a judge, counsel, jury members and other interested persons in an inquest when the judge considers it necessary to do so in the circumstances of the case.

Amendment 2

Schedule 20, Part 1, page 212, line 28, at end insert—

‘4A Section [*amendment to RIPA*] has effect in relation to investigations that have begun, but have not been concluded, before the day on which that section comes into force (as well as to inquests beginning on or after that day).’.

Effect

This amends Schedule 20 which contains transitional provisions to ensure that the amendments in amendment 1 will apply to current and future inquests.

Amendment 3

To move the following clause—

In section 15 of the *Regulation of Investigatory Powers Act 2000* (c. 23) after subsection (4)(c) insert—

‘(ca) it is necessary to ensure that an inquest has the information it needs to enable the matters required to be ascertained by the investigation to be ascertained;’.

Effect

This amends section 15 of RIPA to require that a copy made of any of the intercepted material or data is not destroyed before an inquest if it may be necessary in the investigation (without this amendment, current law and practice means that intercept

material that may be relevant to an inquest is likely to be destroyed as soon as an investigation is complete).

Inquests and Inquiries

Amendment 4

Schedule 1, Part 1, page 115, leave out lines 28 to 44.

Schedule 1, Part 2, page 117, lines 14 to 47.

Schedule 1, Part 2, page 118, lines 1 to 30.

Effect

This would remove paragraphs 3 and 8 from Schedule 1 of the Bill. Paragraph 3 allows for an inquest to be suspended if an inquiry is launched under the *Inquiries Act 2005* that would adequately investigate the death. Paragraph 8 deals with the resumption of an inquest suspended if there is an inquiry.

Alternative Amendment 4

Schedule 1, Part 2, page 117, leave out lines 16 to 17 and insert—

‘(a) it must be resumed;’

Schedule 1, Part 2, page 118, leave out lines 27 to 28.

Effect

This alternative amendment would amend paragraph 8 to ensure that if an inquest is suspended because an inquiry is being held, the inquest must be resumed once the inquiry is finished (rather than leaving it to the discretion of the senior coroner to resume or not to resume the inquest). It would also remove paragraph 8(11)(a) which provides that where an inquest is resumed after an inquiry has been held a determination as to the cause of death etc cannot be inconsistent with the outcome of the inquiry, thus effectively tying the hands of the jury or coroner.

Briefing

1. The amendments to the Coroners and Justice Bill 2009 suggested above relate to the admissibility of intercept material in inquests and the relationship between inquests and the *Inquiries Act 2005*. INQUEST, Liberty and JUSTICE were delighted that the government decided to abandon its proposals for 'secret inquests' in the face of significant cross-party opposition. These proposals were simply unnecessary. INQUEST, as experienced practitioners working on deaths in custody and other contentious deaths for the last 28 years, could not envisage a situation where the proposed legislation would have been appropriate. Similarly, Liberty and JUSTICE, with over 125 years of experience between them in the criminal and coronial justice systems saw no arguments or evidence from the government to justify the proposed broad powers. As well as undermining the rights of the bereaved, the proposals were logically flawed and amounted to a fundamental attack on the independence and transparency of the coronial system in England, Wales and Northern Ireland.

2. While the withdrawal of previous clauses 11 and 12 is to be welcomed the governments planned replacement is not. In a Written Ministerial Statement of 15th May 2009 the Lord Chancellor stated that where it was not possible to proceed with an inquest under current arrangements, the Government will establish an inquiry under the *Inquiries Act 2005* to ascertain the circumstances the deceased came by his or her death. Debate at Committee Stage in the House of Lords confirmed that the government intends to use provisions in Schedule 1 of the Bill to circumvent the inquest process by moving some inquests to a parallel inquiry system for certain – and potentially the most politically embarrassing – deaths.

3. We do not believe that a public inquiry can ever be a substitute for an inquest. Neither do we believe that this was intended by parliamentarians when the *Inquiries Act* was passed in 2005. Instead it seems that this innovation is being pursued in the hope that adapting the purpose of a legislative scheme already in place will be less controversial than creating a parallel coronial system. We believe that the government's new approach should be opposed in its entirety as, like the 'secret inquests' proposal it would wholly undermine the integrity of the coronial system. Indeed we believe that that the current proposals before the House are even worse than the previous 'secret inquest' provisions at safeguarding the rights of victims' families.

Government's most recent proposals

4. Under Schedule 1 to the Coroners and Justice Bill a senior coroner will be required to suspend an inquest (and discharge any jury) following a request by the Lord Chancellor that an inquiry, held under the *Inquiries Act 2005*, is to be held instead to investigate the cause of, and circumstances around, an individual's death. Once the inquiry has concluded an inquest *may* be resumed, but only if the senior coroner thinks there is sufficient reason for resuming it. Thus, there is no requirement for an inquest to be held if an inquiry has been held that investigates the cause of death. Even if an inquest is resumed after an inquiry is held, paragraph 8(11) of Schedule 1 greatly restricts the role of the inquest by providing that a determination as to how, when and where the deceased came by his or her death may not be inconsistent with the outcome of the relevant inquiry. This effectively ties the hands of the coroner (and any jury) meaning there can be no true independent and effective inquest.¹

5. On 14th October 2009 the Government tabled further last minute amendments to the current provisions.² These amendments do very little to allay concerns about executive impunity, and the likely corresponding impact on public trust and confidence. Even under the most recent version of the new government model:

- A 'secret inquiry' will still be convened at the behest of the executive;³
- A Minister, or the Chair of an Inquiry, will be able to restrict attendance at an inquiry, or at a part of the inquiry, and restrict disclosure or publication of any evidence or documents;⁴
- Such restrictions can be ordered for a wide variety of reasons, including because it is necessary to do so in the public interest (which is very broadly defined).
- At the end of the inquiry a report must be given to the Minister setting out the facts determined and any recommendations;⁵

¹ Note, currently section 17A of the *Coroners Act 1988* provides that an inquest must be adjourned if a judge is holding an inquiry into the events surrounding a death. The inquest is not required to be resumed, but if it is, it begins afresh and the findings of the inquiry are not binding.

² Specifically, amendments to clause 170 and to paragraph 3 of Schedule 1 and new paragraph 3A of the Schedule

³ An inquiry under the *Inquiries Act 2005* can be held after a Minister calls for an inquiry either because particular events have caused, or are capable of causing, public concern or there is public concern that an event may have occurred (section 1 of the *Inquiries Act 2005*).

⁴ See section 19.

- Certain parts of the report may be withheld from publication if it is in the public interest to do so;
- Intercept material can be presented to an inquiry held under the *Inquiries Act 2005*, although the material can only be disclosed to the inquiry panel and to counsel appointed to assist the panel.⁶

The only concession now being made by government is that a senior judge would be appointed to chair the inquiry and the terms of reference (to be set by the executive) will include the purposes of a coroners investigation (as found in clause 5 of the current Bill).

‘Secret inquiries’ worse than ‘secret inquests’

6. Where a death occurs in state custody or where the death is alleged to have resulted from negligence on behalf of state agents, article 2 of the *Human Rights Act 1998*⁷ requires that an investigation into the death must be made and the investigation must be independent; effective; prompt; open to public scrutiny; and support the participation of the next-of-kin.⁸ An inquiry under the *Inquiries Act 2005* will not necessarily support the participation of the next-of-kin and, given the executive can order restrictions on public access to hearings and documents and the final report. It may well be that the next-of-kin, and the public at large, never find out the precise circumstances surrounding the death. An inquiry under the *Inquiries Act 2005* will not focus exclusively on the cause of death of an individual – by its nature its focus must be on matters more generally of public concern. In contrast, an inquest is concentrated solely on that individual’s death and the bereaved family are heavily involved and often represented. We believe that an inquest should be the first step in an investigation and if wider issues are raised during the course of the inquest which would warrant an inquiry looking at these broader concerns, this can then occur.

7. The extent to which the ‘secret inquiries’ could undermine public trust and confidence in the accountability of the State cannot be overstated. At Committee

⁵ See section 24.

⁶ See section 18(7)(c) of the *Regulation of Investigatory Powers Act 2000*.

⁷ Article 2 of the *European Convention on Human Rights* as incorporated by the *Human Rights Act 1998*.

⁸ *Jordan v UK* (2001) 33 EHRR 38 and *R v Secretary of State for the Home Department ex parte Amin* [2003] UKHL 51.

Stage, Baroness Miller of Chilthorne Domer summarised powerfully the unfeasibility of the 'secret inquiry' route:

We do not believe that we can have a situation in which the state, for whatever reason, however justifiable, shoots people, appoints someone under the Inquiries Act to investigate and sets the remit for the inquiry, when there is no jury and little or no openness. In other countries we would criticise that as impunity.

Lord Alton of Liverpool agreed:

We were very pleased that the Government responded to the concerns that were made at earlier stages of the Bill concerning the whole question of secret inquests. However, is replacing those inquests with secret inquiries not a move that could be said to be less transparent? It will involve no jury and may involve greater secrecy than even the original proposal...The Government could run into real difficulty here.

8. The government's original 'secret inquests' proposal was subjected to several modifications during its bumpy and ultimately unsuccessful parliamentary passage.⁹ Sadly as things stand, the government's current proposal is as bad if not worse than the original secret inquests model – before numerous amendments were tabled to ward off expected parliamentary rebellion.

Root of the Problem - Admissibility of Intercept

9. The government's planned 'secret inquests' and the replaced 'secret inquiries' appear to be motivated by a problem with the current legislative framework. Intercept evidence is currently inadmissible in a number of legal proceedings including coronial proceedings. However (as noted above) in Article 2-type deaths, the state is under a duty to instigate an independent, effective and prompt investigation into a death which is open to public scrutiny and which supports the participation of the next-of-kin. For certain deaths then, the state will be under a duty to allow intercept evidence to be considered by the independent investigation in order for that investigation to

⁹ The 'secret inquests' proposal began its parliamentary passage in the Counter-Terrorism Bill 2008 and having been dropped once was eventually axed again from the Coroners & Justice Bill in May 2009.

meet the necessary standards of effectiveness, transparency, and next-of-kin involvement. We agree with the government in that a change in the law *is* required so that inquests that necessarily involve intercept material are not unnecessarily stalled. We are aware of one such inquest – that of Azelle Rodney – which has so far been stalled for over four years as a result of the general bar on the admissibility of intercept evidence.¹⁰

10. Previous clause 12 of the Bill amended section 18 of RIPA to allow intercept material to be admissible in inquiries in ‘certified investigations’ – tacit acceptance by the government that intercept material could and should form part of the coronial process. Indeed, the piecemeal removal of the general bar on the use of intercept is a continuing trend. Intercept evidence may already be used in certain civil proceedings in relation to control orders, communications offences and offences under RIPA, cases before the Special Immigration Appeals Commission or the Proscribed Organisations Appeals Commission and now the *Counter-Terrorism Act 2008* allows intercept evidence to be used in terrorist asset-freezing proceedings. The fundamental flaw with the government’s proposal was that there was no principled reason why the removal of the general bar on intercept at inquests needed to be restricted to a new breed of ‘certified’ inquests.

11. Under our proposed amendments (above) it will remain possible for a judge conducting an investigation to ban or restrict the jury’s or public’s access to material that would be contrary to the interests of national security. Currently rule 17 of the *Coroners Rules 1984*¹¹ enables coroners to “*direct that the public be excluded from an inquest or any part of an inquest if he considers that it would be in the interest of national security so to do*”. A judge can also be appointed to head up the coronial inquest and Public Interest Immunity (PII) certificates can be issued if necessary. These powers are maintained in the present Bill.

¹⁰ Azelle Rodney,¹⁰ a 24 year old black man, died in April 2005 after a police operation in north London in which he was shot seven times by a Metropolitan Police Service (MPS) officer. The shooting took place after the car he was in was brought to a halt in a ‘hard stop’ in Edgware, north London, after being under police surveillance for several hours. In July 2006 the Crown Prosecution Service (CPS) announced that there was insufficient evidence for a successful prosecution. After the CPS decision, the family was told by the coroner that the full inquest could not be held because large portions of the police officers’ statements had been crossed out, probably pursuant to the *Regulation of Investigatory Powers Act 2000* (RIPA), which excludes information obtained from covert surveillance devices such as telephone taps or bugs from being used as evidence or even being seen by coroners.

¹¹ As enacted by SI 1984 No 552.

12. In legal terms the general bar on the admissibility of intercept is an anomaly. The UK is the only country in the world, to maintain the ban on such evidence. Elsewhere in the world, intercept evidence has been used effectively to convict those involved in terrorism and other serious crimes. While RIPA forbids the use of domestic intercepts in open UK court proceedings, foreign intercepts can be used if obtained in accordance with foreign laws. Bugged (as opposed to intercepted) communications or the products of surveillance or eavesdropping can be admissible even if they were not authorised and interfere with privacy rights. There are no fundamental civil liberties or human rights objections to the use of intercept material, properly authorised by judicial warrant, in criminal or coronial proceedings.¹² The most substantial argument advanced by the government against lifting the bar on intercept evidence is the concern that this would jeopardise security services sources and methods. It has argued that this would, accordingly, undermine the ability of the state to protect national security and to detect and investigate future criminal activity. In our opinion, however the significance of this argument has been exaggerated and the Government's position is in any case inconsistent. Foreign intercepts can be used if obtained in accordance with foreign laws.¹³ Bugged (as opposed to intercepted) communications or the products of surveillance or eavesdropping may also be admissible even if they were not authorised and if they interfere with privacy rights. It is difficult to see how this already admissible covert intelligence raises different secrecy concerns to intercept evidence which is not currently admissible. In recognition of concerns about the sensitivity of interception methods our amendment above inserts a specific safeguard to allow the redaction of material that may divulge methods and techniques used in interception.

13. It is nearly 10 years since lifting the bar on intercept evidence was first proposed by Lord Lloyd.¹⁴ In February 2006 the then Home Secretary stated that the government was working "to find, if possible, a legal model that would provide the necessary safeguards to allow intercept material to be used as evidence"¹⁵ and

¹² Indeed, Liberty and Justice have long argued that the bar on the use of intercept evidence in criminal proceedings should be lifted. See e.g. Liberty's evidence to the JCHR, 'Relaxing the Ban on the Admissibility of Intercept Evidence', February 2007, available at: <http://www.liberty-human-rights.org.uk/pdfs/policy07/liberty-intercept-evidence.pdf> and JUSTICE's 2006 report *Intercept Evidence: Lifting the Ban* available at <http://www.justice.org.uk/images/pdfs/JUSTICE%20Intercept%20Evidence%20report.pdf>

¹³ Cf *R v. P and Others*, [2000] All ER (D) 2260.

¹⁴ Lord Lloyd, *Inquiry into Legislation against Terrorism*, 1996, Cm 3420.

¹⁵ HC Deb, 2 Feb 2006, col 479

promised a report on this matter in 2006.¹⁶ Eventually a Privy Council Review of Intercept as Evidence (the Chilcot Review) was convened and first reported back on 4 February 2008 recommending the abolition of the absolute prohibition contained in section 17 of RIPA.¹⁷ However, progress since then has been slow. In the meantime, the compelling reasons for why, at a minimum, the ban on intercept evidence should be lifted in coronial inquests persist. It remains our position that the ban on the admissibility on intercept evidence should be removed in respect of all proceedings,¹⁸ and it is disappointing that there have been no legislative proposals from the government to achieve the removal of the bar. However as important coronial investigations will remain stalled in the meantime, we believe that the amendments above are urgently necessary.

Suggested Amendments

14. Our proposed amendments seek to remove the provisions that would allow inquests to be suspended pending an inquiry and binding an inquest by any findings of an inquiry. If parliamentarians do not wish to remove the ability to suspend an inquest pending an inquiry, at the very least the Bill should ensure that any suspended inquest must resume at the end of the inquiry, and the inquest should not be bound by any of the inquiry's findings. Our proposed amendments also allow for the limited use of intercept material in coronial proceedings in tightly defined circumstances with powerful safeguards in place to protect national security interests. We are fully prised of the sensitive nature of intercept admissibility and we have not approached the framing of these amendments lightly.

15. These amendments and similar amendments tabled following the withdrawal of the 'secret inquests' proposal from the Counter-Terrorism Bill in 2008 have a strong history of support in the House of Lords. In 2008 amendments tabled by Baroness Miller of Chilthorne Domer, were supported by the Conservative Front Bench. Shadow Minister for Security and National Security and Adviser to the Leader of the Opposition Baroness, Lady Neville-Jones said:

¹⁶ HC Deb, 2 Feb 2006, col 482

¹⁷ Privy Council review of Intercept as Evidence available at: <http://www.official-documents.gov.uk/document/cm73/7324/7324.asp>

¹⁸ Particularly if a verdict of unlawful killing is given by an inquest that has heard intercept evidence, as a subsequent criminal investigation that did not have the same access to evidence may not be able to reach a verdict.

There is widespread support for this measure across your Lordships' House and in another place. It will address an anomaly in RIPA and ensure that all inquests comply with Article 2 of the ECHR. The point is not simply that inquests should be institutionally independent, but that they should be prompt. Part of the problem here is that we are delaying justice in several cases, which is not good for the reputation of British justice.¹⁹

16. At Committee Stage of the Coroners and Justice Bill the current suggested amendments again attracted substantial parliamentary support. In particular, peers expressed support for the care and consideration with which the amendments had been drafted and the inherent safeguards provided for. Lord Pannick stated:

I support these carefully drafted amendments for all the reasons given by the noble Baroness, Lady Miller, in her powerful speech and for one additional reason. That reason is that new subsections (8B) and (8C) inserted by Amendment 31 contain powerful safeguards to protect intercept evidence from disclosure save where that is necessary in order to ensure an effective investigation of the death. There is also the additional safeguard of the power for the redaction of material disclosing the method or the means by which the information was obtained. If the Minister considers that these safeguards are inadequate, can he explain why and what other safeguards he considers are needed in this context?

The late Lord Kingsland reiterated that the Conservative Front Bench favoured the approach taken in the suggested amendments:

As a matter of principle, the Opposition would much prefer a solution in the coronial context to one in the context of the Inquiries Act. I entirely agree with the reasons for the question of the noble Lord, Lord Pannick, to the Minister at the end of his remarks. I submit that if the Minister does not accept the amendment of the noble Baroness, Lady Miller, he ought to tell us why it does not provide sufficient safeguards in relation to intercept evidence... If what is in Amendment 30 does not satisfy the Minister's concerns about the admission of such evidence, what additional ingredients should the amendment have to pass the Minister's test?

¹⁹ Official Report, 24/11/08; col. 1298

17. The Government's response was disappointing. In debate the Government Minister, Lord Bach, overlooked the safeguards inherent in the amendments and effectively urged peers to elevate 'the ring of secrecy' above the UK's Article 2 obligations:

While these amendments would, in principle, allow the finder of fact to have access to all the relevant material and thereby conduct an Article 2 ECHR-compliant inquest, they do so by sacrificing what we call the ring of secrecy

In responding to the Minister the late Lord Kingsland made two propositions:

The first, with which I am sure [the Minister] would agree, is that judges are very good at making the kind of decisions to which he referred. I would say to the noble Lord: "Trust the judge".

The late Lord Kingsland also suggested a twin-track compromise:

Secondly, as a fallback position – and I am not suggesting that this is one we would advance on Report – there may be room for both these solutions to the problem. There may be room for an amendment that advances the possibility that, in certain circumstances, intercept evidence could be used in a traditional coronial context, with appropriate safeguards. However if it is considered that the security nature of that evidence is such that relevant matters should be withdrawn from the jury, the Government could go to the second stage and initiate an inquiry – as long as the amendments that we tabled to the inquiry system were accepted by the Government.

As a result of the current legislative framework (and an inquest that we know has already been stalled for over four years as a result) the Government is most likely already in breach of Article 2. In our view the 'secret inquiries' proposal would definitely put the UK in breach. Despite this and despite the attempt by the late Lord Kingsland (above) to meet the Government half-way on this issue the Government has since come back with an unambiguous refusal to reconsider, compromise or do the right thing. We hope that this response will strengthen parliamentarians resolve to reject the wrong-headed proposals.

18. At Committee Stage some peers expressed concern that the suggested amendments appeared to be pre-judging the Chilcot review.²⁰ That is not our intention and indeed we do not believe that the suggested amendments fall into that trap. While the Chilcot review takes within its ambit the admissibility of intercept in civil proceedings it is principally concerned with the admissibility of intercept in criminal proceedings. As we have outlined at paragraph 10 above, intercept is already partially admissible in a host of civil proceedings – one-sided exceptions to the general bar on admissibility in court are now being made on a regular basis. Far from pre-judging Chilcot, the suggested amendments are in line with the piecemeal exceptions to the general bar on admissibility in civil proceedings, albeit through a much better mechanism that shows due regard to the requirements of process and the rule of law. Moreover disclosure of RIPA material in inquest proceedings is necessary now, to allow at least one long delayed inquest to proceed. However, if peers remain concerned about endorsing the suggested amendments while the Chilcot process is ongoing these concerns could easily be allayed by incorporating some sort of sunset mechanism to the suggested amendments. It would not be difficult to ensure that the suggested amendments act as an interim measure to deal with a pressing problem at least until the Chilcot findings are completed.²¹ It is also worth noting that if (as has already been recommended by the Chilcot review) intercept is to be made admissible in criminal proceedings, under the governments current proposals intercept would be admissible in criminal proceedings and a significant number of civil proceedings but would not be admissible in coronial proceedings. This would be bizarre. The principal point of the coronial process is to provide information and some degree of comfort and closure to the relatives of the bereaved. It is (for all the reasons outlined above) right to allow intercept in criminal proceedings but to create a dual system whereby defendants are granted access to information to fulfil their due process rights while bereaved victims are left out in the dark would be hugely unfair to all those who seek justice for their loved ones after death.

²⁰ Concern was expressed in Committee by Baroness Ramsay of Cartvale and Lord Hart of Chilton.

²¹ Indeed the idea of a caveat to the suggested amendments along these lines was suggested by Baroness Finlay of Llandaff at Committee Stage: *“I ask the Minister in particular to clarify when the completion of the Chilcot review is expected and whether it would be possible, if this is a concern of the Government, to put in some caveat that these amendments would be reviewed when the Chilcot review reports, so that they could be time-limited, but that those inquests that are currently on hold could proceed, even if it was decided eventually to reverse the decision that we might make with these amendments”*.

19. In addition to the powerful safeguards provided for by these amendments we urge parliamentarians to remember that the amendments will be combined with a robust and sophisticated inquest system that has for centuries provided justice for the bereaved as well as protecting national security interests. Inquests (and jury inquests especially) invariably deal with material that is sensitive for one reason or another. The de Menezes inquest was a case in point and involved the consideration of evidence that was highly sensitive, such as the details of the Metropolitan Police's operational response to the threat posed by suicide bombers (including Operation Kratos), the assistance they had had from countries such as Israel and the USA in developing this, and other aspects of undercover and surveillance operations. The widespread concern that the Metropolitan Police had been operating a 'shoot to kill' policy without any parliamentary approval or oversight made it particularly sensitive. A large number of witnesses also sought anonymity before giving their evidence. In fact, the de Menezes inquest managed to deal effectively with highly sensitive evidence and the protection of witnesses whilst remaining largely open and accessible to all, showing that it is perfectly possible to for safeguards to be appropriately applied on a case by case basis. This was done in several ways:

- A High Court judge was appointed as coroner and was able to consider PII applications by the police in respect of highly confidential policies and documents. National security issues were clearly central to the subject matter of the inquest, most importantly the Metropolitan Police strategy for dealing with suicide bombers. Where needed, the coroner granted full PII in relation to certain documents. However, he ruled that many of the documents could be provided to the legal teams, on strict undertakings as to confidentiality, not making copies, keeping the material secure, etc. On that basis the family's lawyers were permitted to see highly sensitive documents, and to question witnesses based on that material. In relation to the most sensitive material, a summary was prepared of the material that could be shared with the family and their lawyers were provided with the material underlying the summary (again on strict undertakings).
- Where discussion in open court touched upon the contents of any such protected documents, agreements were reached in the absence of the jury and the public as to what could be explored and, although some aspects were regarded as too sensitive to be investigated publicly, overall a reasonably fair exploration of the issues was allowed whilst national security and other policing concerns were protected.

- Suitable arrangements were made for the protection of witnesses without the need for certification. There were over 40 police officers who worked in highly sensitive anti-terrorist operations or covert surveillance whose witness evidence was required at the inquest. They were all granted anonymity by the coroner as a result. They gave evidence from behind a screen in court, and careful provision was made at the venue for their arrival and departure to protect their identities. The inquest was nevertheless able to hear evidence from those witnesses.
- The jury, the family, one of their supporters and the lawyers were all permitted to see the witnesses giving evidence so as to assess their demeanour (the police having carried out police checks on the family members and their chosen supporter beforehand). This was done without any risk or compromise to the identity of any of those witnesses whose anonymity has been maintained despite the huge attention from media organisations.

Conclusion

20. As Baroness Miller of Chilthorne Damer explained when she introduced the suggested amendments at Committee Stage: *“these amendments are a practical way forward without destroying the tradition of inquests and going for the parallel system of inquiries for such sensitive cases”*. The amendments represent an approach which respects the independence of the inquest process from government while ensuring that vital national security interests will also be protected. Suffice to say that without these amendments, any inquiry held into a person’s death in situations where the state is implicated is likely to breach the requirements of Article 2 (right to life).

21. As noted above, the government’s proposals on this issue have a long and difficult parliamentary lineage. Misconceived, adapted, dropped and misconceived again; on this issue the government has shown itself to be confused and contradictory. In light of the history of these proposals and in light of the noble, and so far successful, parliamentary battle that has been waged in opposition we urge parliamentarians to remain resolute in their defence of British justice and bereaved victims by rejecting the governments proposals and supporting the amendments suggested here.