Judicial Review and Courts Bill

(Part 2 – Coroners)

House of Commons Committee Stage

Briefing

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For further information contact

Stephanie Needleman, Acting Legal Director
email: sneedleman@justice.org.uk

JUSTICE, 59 Carter Lane, London EC4V 5AQ tel: 020 7329 5100
fax: 020 7329 5055 email: admin@justice.org.uk website: www.justice.org.uk

Introduction

1. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.

2. In 2019, JUSTICE established a working party, chaired by Sir Robert Owen with a diverse and highly experienced membership, to consider the weaknesses in the current arrangements for inquests and public inquiries. The working party gave particular attention to the experiences of bereaved people, who, instead of finding answers through the inquest process, are often left feeling confused, betrayed, and re-traumatised. This briefing is informed by the working party's report *When Things Go Wrong: The response of the justice system* (the "JUSTICE WTGW Report").[1]

3. JUSTICE's main concerns with the provisions of the Judicial Review and Courts Bill (the "Bill") which relate to the Coroner Service are the following:

    a. Clauses 37, 38 and 39 risk key evidence not being tested at inquests, introduce greater discretion for coroners when inconsistency has been repeatedly highlighted,[2] and do not address the needs of bereaved families, who already often struggle to engage effectively with the inquest process:

        i. **Clause 37** would allow a senior coroner may choose to discontinue an investigation prior to an inquest beginning where the cause of death "*becomes clear."* Inquests have a crucial role in the justice system in providing a framework to understand what went wrong and to prevent recurrence. We are concerned that Clause 37 reduces, on a discretionary basis and without safeguards, the circumstances in which inquests will be held. JUSTICE therefore supports **amendment 69,** which introduces safeguards to mitigate the risk of investigations being

[1] JUSTICE, '*When Things Go Wrong: The response of the justice system'* (August 2020).

[2] This was recently highlighted by the Justice Committee who considered that "there is unacceptable variation in the standard of service between Coroner areas," Justice Committee, 'The Coroner Service' (May 2021), para. 157. The Government accepted in its response to the Justice Committee that this continues to be an issue:, The Coroner Service: Government Response to the Committee's First Report' (September 2021), p.12: there "*is still a need to address inconsistencies in the delivery of coroner services*".

terminated prematurely and ensures the wishes of bereaved families are respected.

ii. **Clause 38** would allow coroners to conduct non-contentious inquests without a jury fully in writing. However, we are concerned that this clause does not sufficiently consider the needs and wishes of bereaved families, who in many circumstances may want an inquest with a hearing. JUSTICE therefore supports **amendment 73,** which introduces stronger safeguards to recognise and respect bereaved families' wishes.

iii. **Clause 39** introduces the use of fully remote hearings in the inquest space, however we are that Clause 39 fails to adequately address the needs of bereaved family members; does not provide a guarantee that remote inquest hearings will continue to be in public; has been introduced with insufficient research and evaluation; and risks remote hearings being held which rely only on audio. JUSTICE therefore supports **amendments 74, and 76 to 79**.

b. The Bill misses the opportunity to introduce automatic, non-means tested publicly funded legal representation for bereaved families at inquests where the State is represented. Without this many inquests will continue to suffer from an inequality of arms against bereaved families and will remain fundamentally unfair. Clauses 37, 38 and 39 risk only worsening the situation for bereaved families. They will be faced with coroners making decisions which either prevent an inquest occurring or potentially limit the effectiveness of an inquest, with no legal advice to explain the decisions or representation to ensure that their views are heard.

c. The Bill fails to make any meaningful improvements to the Coroner Service, including failing to implement many of the much-needed recommendations form the Justice Committee's report on the Coroner Service that would help improve the consistency and quality of the coronial service across the UK. Instead Clauses 37, 38 and 39 risk further entrenching inconsistency across the coronial system, and make navigating and engaging with the system for bereaved families more difficult.

Clause 37 - discontinuance of investigation where cause of death becomes clear

4. Clause 37 amends s.4 of the Coroners and Justice Act 2009 (the "CJA") so that a senior coroner may choose to discontinue an investigation prior to an inquest beginning where the cause of death "*becomes clear in the course of the investigation*". An inquest can currently only be discontinued under s.4 CJA, once an investigation has commenced, if a post-mortem examination ("PME") reveals the cause of death prior to the inquest commencing.

5. Under s.4(1)(b) CJA, which is not amended by Clause 37, the senior coroner who is responsible for conducting the investigation may only discontinue the investigation if the coroner also "*thinks that it is not necessary to continue the investigation."* Under s.4(2) CJA as it currently applies, an investigation cannot be discontinued *"if the coroner has reason to suspect that the deceased (a) died a violent or unnatural death, or (b) died while in custody or otherwise in state detention."*

6. JUSTICE supports the Government's stated aim of reducing distress for bereaved people from unnecessary PMEs and inquests.[3] However, inquests have a crucial role in the justice system in providing a framework to understand what went wrong and to prevent recurrence. We are concerned that Clause 37 reduces, on a discretionary basis and without safeguards, the circumstances in which inquests will be held.

7. There is a real risk that the Clause 37, without safeguards, could allow investigations to be terminated prematurely. Clause 37 allows investigations to be discontinued for an unlimited and undefined range of circumstances and evidence as long as the coroner thinks the cause of death is "*clear*". Unlike PME findings, it is very possible that evidence, or its relevance, which forms the basis of a coroner's decision that the cause of death is "clear" could change once properly tested in an inquest setting, or where further evidence emerges. This is especially since there is no clarity as to what evidence a coroner's decision that the cause of death has "*become clear*" could be based upon, or what "*becomes clear"* may mean when applied in practice.

8. Clause 37 precludes or reduces the possibility of evidence being properly tested or further evidence arising. Such evidence, and the accompanying investigations and inquests, can have a vital role in understanding the reasons for the death and in ensuring that where

[3] Explanatory Notes, para. 61; Fact Sheet (Courts), page 4.

there have been failures they do not reoccur.[4] This is particularly the case where the right to life, and the duty to safeguard the right to life, under Article 2 of the European Convention on Human Rights (ECHR) may be engaged. For instance, where there has been a death of a person who is detained, or because the state has breached its the positive duty to protect the deceased person (e.g. where there has been a death of an individual in the community who was receiving state support, such as someone who was under the care of social services). Where Article 2 ECHR is engaged the scope of the inquest is widened to consider the wider circumstances of the death – such as the potential failure of the state systems in place. However, for inquests where it is borderline whether a case is an Article 2 case, the engagement of Article 2 may only come to light once further evidence has emerged and evidence has been tested. For instance, individuals may appear to have died from natural causes, but on further investigation evidence may emerge that engages the State and the right to life (Article 2 ECHR).[5]

9. **Safeguards to mitigate the risk of investigations being terminated prematurely when there remains the possibility of further evidence to be considered, evidence that could change once tested, or for Article 2 to be engaged are vital.**

10. There must also be a mechanism for ensuring that the wishes of bereaved family members are properly considered. This will help ensure that any family members' concerns about the circumstances of the death are made available to the coroner prior to any decision to discontinue an investigation. Further, inquests in themselves have a vital role for bereaved family members in understanding the circumstances of their loved one's deaths. Clause 37, by not considering the wishes of the bereaved family, risks undermining this role. A bereaved family may struggle to make representations and arguments for why this is the case, not least because of the potential distressing and re-traumatising effect of this, and due to the likely lack of legal representation. **We therefore consider that the bereaved family must consent to the decision to discontinue an investigation.**

11. JUSTICE therefore supports the following amendment:

Amendment 69

Clause 37, page 49, line 33, after "and" insert—

"(4) After subsection (2), insert—

[4] See for INQUEST and INQUEST Lawyers Steering Group, 'Judicial Review and Courts Bill Briefing for Committee Stage: Part 2, Chapter 4, Clauses 37, 38 and 39' pages 4 and 5, for examples of the previous important inquests which may have been discontinued under Clause 37.

[5] INQUEST and INQUEST Lawyers Steering Group Briefing for Second Reading.

"(2A) The coroner is not to decide that the investigation should be discontinued unless—

(a) the coroner is satisfied that no outstanding evidence that is relevant to the death is available,

(b) the coroner has considered whether Article 2 of the European Convention on Human Rights is engaged and is satisfied that it is not,

(c) there are no ongoing investigations by public bodies into the death,

(d) the coroner has invited and considered representations from any interested person known to the coroner named at section 47 (2)(a) or (b) of this Act, and

(e) all interested persons known to the coroner named at section 47 (2)(a) or (b) of this Act consent to discontinuation of the investigation.""

Member's explanatory statement

This amendment would ensure that certain safeguards are met before a coroner can discontinue an investigation into a death.

12. In addition, to ensure that bereaved families can make an informed decision as to whether to consent to an investigation being discontinued, it is important that they are provided with the reasons for why a coroner considers that the cause of death has become clear. JUSTICE therefore supports the following amendment to Clause 37:

Amendment 70

Clause 37, page 49, line 33, after "and" insert –

"(4) After subsection (2), insert—

"(2B) If a coroner is satisfied that subsection (1) applies and has complied with the provisions at subsection (2A)(a) to (d), prior to discontinuing the investigation, the coroner must –

(a) inform each interested person known to the coroner named at section 47(2)(a) or (b) of this Act of the coroner's intended decision and provide a written explanation as to the reasons for this intended decision,
(b) explain to each interested person known to the coroner named at section 47(2)(a) or (b) of this Act that the investigation may only be discontinued if all such interested persons consent, and
(c) invite each interested person known to the coroner named at section 47(2)(a) or (b) of this Act to consent to the discontinuation of the investigation.""

Members explanatory statement

This amendment would ensure that family members and personal representatives of the deceased are provided with the coroner's provisional reasons for why the coroner considers that the investigation should be discontinued, thus helping ensure that family members make an informed decision as to whether to consent to the discontinuation.

13. In the alternative, if the above amendments are not successful, we suggest that the CJA should be amended to ensure that that family members and personal representatives of the deceased are always informed of the reasons for a coroner's decision to discontinue an investigation. The JUSTICE WTGW report into inquests and inquiries, found that often bereaved families are not uniformly given reasons for why the decision has been taken to discontinue and investigation.[6] This can leave families confused and unsure of whether to challenge the decision. The CJA at s.4(4) currently only requires a senior coroner to provide an interested person reasons in writing for why an investigation was discontinued if requested to do so. Given that Clause 37 introduces a theoretically unlimited number of situations where an investigation could be discontinued and the difficulties that many bereaved families have in engaging with the inquest process, JUSTICE supports the following amendment:

Amendment 71

Clause 37, page 49, line 33, after "and"" insert –

"(4) Omit subsection (4) and insert—

"(4) A senior coroner who discontinues an investigation into a death under this section must –

(a) as soon as practicable, notify each interested person known to the coroner named at section 47(2)(a) or (b) of this Act of the discontinuation of the investigation and provide a written explanation as to why the investigation was discontinued, and
(b) if requested to do so in writing by an interested person, give to that person as soon as practicable a written explanation as to why the investigation was discontinued.""

Members explanatory statement
This amendment would ensure that family members are informed in writing for the reasons for a discontinuation of an investigation, without being required to request this information.

Clause 38 - power to conduct non-contentious inquests in writing

14. Clause 38 introduces a new s.9C to the CJA, which would allow coroners to conduct non-contentious inquests without a jury fully in writing, where the "*senior coroner decides that a hearing is unnecessary*" (new s.9C(1)(b)).[7]

[6] JUSTICE, '*When Things Go Wrong: The response of the justice system'* (August 2020), para. 3.30.

[7] Currently Rule 23 of The Coroners (Inquests) Rules 2013 allows for documentary inquests to take place where there are no witnesses required to take place, but a limited hearing must still take place.

15. While JUSTICE recognises the Government's stated aim of the benefits of flexibility for non-contentious inquests,[8] JUSTICE is concerned that Clause 38 insufficiently considers the needs and wishes of bereaved families, who in many circumstances may want an inquest with a hearing.

16. Although the new s.9C(2)(a) requires the coroner to have first invited representations from each interested person known to the coroner, the new S.9C gives no guarantee that any weight will be given to bereaved families' wishes.[9] This is particularly relevant to any wishes that the bereaved family may have in favour of a hearing other than arguments raising concerns about the potential for disagreement about the inquests finding or the wider public interest. The new s.9C(2)(b) provides that the coroner should not decide that a hearing is unnecessary if any "*interested person has represented on reasonable grounds that a hearing should take place."* However, JUSTICE is concerned that this does not specify whether the simple fact of the bereaved families' wish for there to be a hearing would count as "*reasonable grounds*". It is also unclear if "*reasonable grounds"* could extend to the range of personal reasons why many bereaved families may much prefer an oral hearing, such as finding a hearing easier to follow and engage with, and a hearing providing the recognition that bereaved families require.

17. In addition, holding an inquest in writing risks limiting the scrutiny provided by the inquest, for instance, in limiting the ability of bereaved families to hear oral evidence or for all evidence to be fully aired and questioned. This is compounded by the fact that the full picture will also not be available at the stage where the decision is being made to hold the inquest without a hearing.

18. Further, it is unrealistic to expect that bereaved families at such an early stage in the process without the full picture will be able to put forward arguments in favour of a hearing, especially if faced by opposing arguments by other interested persons who are likely to have the benefit of legal teams. This is compounded by the lack of automatic publicly funded legal representation for bereaved families in inquests, and those who do qualify for funded representation are highly unlikely to have any representation at the early stages of the inquest process. Clause 37 places an additional burden on bereaved families to make arguments, most likely without legal representation, to convince a coroner that there

[8] Explanatory notes, para. 299.

[9] The explanatory notes to the Bill explain that "the Chief Coroner will provide further guidance to coroners accompanying any law change, ensuring that 'paper' inquests are conducted fairly and cases which require a full public hearing continue as required" (para. 63). This does not make any mention however of the need to ensure that the wishes and needs of bereaved families are considered.

should be a hearing. The inquest process can be incredibly destressing, retraumatising and alienating for bereaved families. The aim should be to reduce the pressure on bereaved families; not increase it.

19. **Stronger safeguards should therefore be introduced into Clause 38 to recognise bereaved people's wishes.** JUSTICE therefore supports the following amendment, which would ensure that the senior coroner in making their decision directly considers the wishes of bereaved family members, and that bereaved family members first consent before a fully paper hearing is ordered:

> **Amendment 73**
>
> Clause 38, page 50, line 18, after "hearing" insert—
>
> "(e) the coroner has considered the views of any of the interested persons named at section 47(2)(a) or (b) of this Act who are known to the coroner,
>
> (f) all of the interested persons named at section 47(2)(a) or (b) of this Act who are known to the coroner consent to a hearing in writing."
>
> ***Member's explanatory statement***
> This amendment will ensure that inquests are not held without a hearing if that is against the wishes of the deceased's family

Clause 39 - use of audio or video links at inquests

20. Clause 39 amends s.45 CJA to allow Coroners rules, secondary legislation made pursuant to powers conferred by S.45 CJA, to make provisions for pre-inquest reviews (PIRs) and inquest hearings to be conducted wholly or partially remotely, with all parties, including the coroner and jury, participating remotely (with the jury present in the same place). Currently the coroner, and the jury if there is one, must be physically present in the courtroom, and the law does not allow "fully" remote juries.[10] JUSTICE is concerned that Clause 39 fails to adequately address the needs of bereaved family members; does not provide a guarantee that remote inquest hearings will continue to be in public; has been introduced with insufficient research and evaluation; and risks remote hearings being held which rely only on audio.

[10] Chief Coroner's Guidance No. 38; Chief Coroner's Guidance No. 35.

21. In the criminal justice context, JUSTICE has piloted fully virtual jury trials.[11] Independent academic analysis concluded that with careful consideration and adaptation, these can be fair and may have some benefits over short and straightforward, traditional jury trials, such as improved sightlines for jury members. However, whilst we support the principle of increased use of technology in the form of remote proceedings for certain situations in the justice system, this cannot apply without restriction across the justice system and must be implemented with caution and with appropriate safeguards.[12]

Safeguards

22. The Government's rationale for Clause 39 that it would bring inquests to "*the same position as civil courts*"[13] fails to recognise the specific nature of inquests. Inquests often differ from "*mainstream courts and tribunals*,"[14] because of the highly sensitive and distressing nature of the issues addressed and their potential complexity, especially for state-related deaths. Whether remote inquests are appropriate will be dependent on a case's circumstances: its facts, complexity, attendees and their ability to participate electronically in the proceedings.

23. JUSTICE is concerned about the introduction of remote inquest hearings without considering the needs and wishes of bereaved families, who already face many barriers to effective participation in the inquest process. As with any remote hearing, a myriad of issues, including health conditions and disabilities, may make it difficult for individuals to follow or engage with a virtual hearing and those same issues may make it difficult for them to explain to the coroner why they would prefer to attend in person.

24. Inquests can be highly distressing and re-traumatising for bereaved family members. The Government states that remote hearings will reduce the "*additional distress*" of the inquest process for bereaved families.[15] However it is unclear what evidence there is for this statement. It is possible that some families may welcome a remote hearing, including the practical benefits that this can provide for some participants. However, it is very possible

[11] JUSTICE, 'JUSTICE COVID-19 response', 2020.

[12] We note that Clause 39(3) would ensure that even for a remote hearing the jury members, if applicable, must all be present "at the same place." This accords with the findings of JUSTICE's research into mock jury trials in the criminal context, which recommended the use of a "physical justice hub" whereby jury members were brought together in a physical hub to then access the trial remotely. Professor Linda Mulcahy, Dr Emma Rowden and Ms Wend Teeder, 'Testing the case for a virtual courtroom with a physical jury hub Second evaluation of a virtual trial pilot study conducted by JUSTICE' (June 2020).

[13] Explanatory Notes, para. 306.

[14] Explanatory Notes, para. 66.

[15] Judicial Review & Courts Bill, Impact Assessment, (July 2021).

that requiring bereaved families to attend inquests remotely from their own home, which may make it more difficult to detach the inquest from their personal lives, will risk unnecessarily increasing the distress for bereaved families.[16]

25. In addition, bereaved families who attend from home risk not having the same level of support, including the vital in-person support from charities such as the Coroner's Court Support Service. They will also be required to navigate the additional technological issues and challenges that remote hearings can pose. Further, inquests play an important role in allowing bereaved families to understand the circumstances around their family member's death. However, if family members have difficulty engaging with the inquest remotely this may, as INQUEST explains, "*disconnect families and key witnesses from this important process*."[17].

26. Given the highly personal and distressing nature of inquests, it may be difficult for family members to put forward arguments and explanations to a coroner for why they do not want a remote hearing -- especially since many bereaved family members do not have access to legal advice and representation, and may be faced by competing arguments from other interested persons. JUSTICE considers that a remote inquest hearing should only occur if family members have consented to it.

27. To help mitigate these risks, we support the following amendment to Clause 39:

> **Amendment 76**
> Clause 39, page 51, line 10, after "place" insert –
>
> "(2D) Coroners rules that provide for the conduct of hearings wholly or partly by way of electronic transmission of sounds or images must specify that, other than for any pre-inquest hearing, such a hearing, may only be held if –
>
> (a) all interested persons known to the coroner named at section 47(2)(a) or (b) of this Act 2009 consent to such a hearing,
>
> (b) the coroner is satisfied, and continues to be satisfied until the conclusion of any such hearing, that such a hearing is in the interests of justice, considering all the circumstances of the case,
>
> (c) the coroner has considered the likely complexity of the inquest, and

[16] INQUEST has pointed out how most of the families they support "*would prefer to attend an inquest in person, and for some the experience of attending remotely from home has added to rather than diminished their distress*." 'INQUEST and INQUEST Lawyers Steering Group Briefing for Second Reading, para. 13.

[17] INQUEST and INQUEST Lawyers Steering Group. 'Judicial Review and Courts Bill Briefing for Committee Stage: Part 2, Chapter 4, Clauses 37, 38 and 39,' (November 2021), para. 27.

(d) the coroner has considered the ability of interested persons known to the coroner to engage effectively with the hearing by way of electronic transmission of sounds or images."

Members explanatory statement
This amendment would ensure that certain safeguards are met before a remote inquest hearing is held.

28. This amendment would help ensure that a remote hearing does not take place if it is against the wishes of the bereaved family; it risks hindering the participation of the bereaved family, or increasing their distress or trauma induced by the inquest; the complexity of the inquest is such that an in-person hearing would be preferable; and that a remote hearing is only held, and only continues to be held, if it is in the interests of justice.

Reasons

29. It is also important that Interested Persons, including bereaved family members. are provided with the reasons for why an inquest hearing is to be held remotely. This helps ensure that, if necessary, they have a basis on which to contest a decision to hold an inquest remotely. Further, it is crucial that bereaved family members are engaged with throughout the inquest process and are provided regular updates on what decisions are being made by the coroner and why. Without this communication, bereaved families, who often already find the inquest process complex and alienating, risk experiencing further alienation, confusion, and distress.[18]

30. The Chief Coroner's Guidance No. 38 on remote participation in coronial proceedings also recognises this need, specifying that where coroners order a partially remote hearing, "*coroners should set out their reasons to IPs at the conclusion of any PIR or in writing by letter or email*."[19] It is important that this important step is not misplaced by Clause 39. JUSTICE therefore supports the following amendment to Clause 39:

Amendment 77

Clause 39, page 51, line 10, after "place" insert –

"(2E) Coroners rules that provide for the conduct of hearings wholly or partly by way of electronic transmission of sounds or images must require coroners to set out to all interested persons the reasons for why such a hearing, other than for any pre-inquest hearing, is to be held—

[18] JUSTICE, '*When Things Go Wrong: The response of the justice system'* (August 2020), para. 3.2.

[19] Chief Coroner's Guidance No. 38, para. 23.

(a) at the conclusion of any pre-inquest hearing where any such hearing is ordered, if applicable, and

(b) in writing as soon as practicable after a decision has been taken for such a hearing to be held and prior to the commencement of the hearing."

Members explanatory statement
This amendment would ensure that interested persons are provided with the reasons for any remote inquest hearings.

Public nature of inquest hearings

31. Public hearings are a fundamental element of the coronial system[20] in ensuring that there is public accountability, investigation, and explanation where an individual has died. As the Chief Coroner has said "*open justice, meaning public access to justice, is the fundamental principle underpinning the way in which all courts deal with any remote hearing*" and there must be public access to hearings.[21] Although we recognise that in some circumstances a remote hearing can increase the ability for members of the public and media to access the inquests, we are concerned that the Bill does not provide any assurance that continued public access to inquests will not be limited in a remote setting.

32. Remote hearings can have a negative impact on access of the wider public and media. For instance, a recent survey of journalist's experiences of remote coroners' courts during the Covid-19 pandemic has highlighted the difficulties journalists experienced in gaining access to remote inquest hearings and the technical difficulties faced.[22] As the Chief Coroner Guidance no.9 noted: *"[i]n public means not just open to the public but arranged in such a way that a member of the public can drop in to see how an opening is conducted."*[23] It is vital that this is not undermined.

33. JUSTICE supports the following amendment to Clause 39, which would help ensure that remote inquests hearings, including PIRs, continue to comply with Rule 11 of the Coroners (Inquests) Rules 2013 which requires hearings to be held in public:

Amendment 78

Clause 39, page 51, line 10, after "place" insert –

"(2F) Coroners rules that provide for the conduct of hearings wholly or partly by way of electronic transmission of sounds or images must provide for such hearings to

[20] Coroners (Inquests) Rules 2013, r.11(1) provides that "A coroner must open an inquest in public," subject to r.11(4) and r.11(5).

[21] Chief Coroner's Guidance No. 38, para 4.

[22] George Julian, 'Open Justice Coroners' Courts Survey – 2021', (2021).

[23] Chief Coroner Guidance No. 9, para. 12.

comply with, and be subject to, Rule 11 of The Coroners (Inquests) Rules 2013 (*Inquest hearings to be held in public*)."

Members explanatory statement
This amendment would ensure that remote inquest hearings and pre-inquest hearings are still held in a manner accessible to the public.

Review and evaluation

34. JUSTICE is concerned that there has been insufficient research into the impact of remote hearings in inquests. JUSTICE's pilot study of remote juries did not look at inquests and the Government has not provided evidence to justify the introduction of remote inquests. We therefore consider that prior to any commencement of Clause 39, there must first be an independent review of the potential implications, both positive and negative, of remote hearings in inquests (both fully and partially remote). This review must also include a consultation with bereaved families, which would help ensure that the concerns raised above are fully considered and, if necessary, addressed. Such a review would also help highlight any gaps in the technology required for a remote hearing and ensure that there is first the necessary investment. JUSTICE therefore supports the following amendment to Clause 39:

Amendment 79
Clause 39, page 51, line 10, after "place" insert –

"(4) Before this Clause may be commenced, the Lord Chancellor must –

(a) commission an independent review, including a consultation, of the potential impact of the conduct of inquest hearings wholly or partly by way of electronic transmission of sounds or images, considering in particular the impact on the participation of interested persons, and open justice,

(b) lay before Parliament the report and findings of such independent review, and

(c) provide a response explaining whether and how such issues which have been identified would be mitigated."

Members explanatory statement
This amendment would require a review, including a consultation, of the potential impact of remote inquest hearings before Clause 39 comes into effect.

Inquests by video and sound only

35. JUSTICE is concerned that Clause 39 does not specify that any remote hearing must use videoconferencing and not just telephone (or any other means which are audio only). Given the concerns highlighted above, including the difficulties remote inquest hearings may pose for bereaved families and the complexity of some inquest hearings, an audio

only inquest hearing risks being incredibly confusion, disjointed and difficult to follow for all participants, and risk increasing the distress for bereaved families. The JUSTICE pilot of virtual jury trials used video conferencing software and did not compare the use of video and audio, to audio only trials. However, a key finding was the value of participants being able to see each other. Any remote inquest hearing should seek to replicate the in-person hearing format to the extent possible, and this will be undermined by a remote hearing which does not use video.

36. JUSTICE therefore supports the following amendment:

Amendment 74
Clause 39, page 51, line 10, at end insert—

"(2B) Coroner rules that provide for the conduct of hearings wholly or partly by way of electronic transmission of sounds or images must not allow the conduct of hearings wholly or partly by sound only."

Member's explanatory statement
The purpose of this amendment is to prevent an inquest from being conducted by telephone or other means which are audio only.

Inconsistency in the coronial system

37. The proposed reforms at Clauses 37 to 39 bring in further individual discretion for coroners. However, inconsistency in service is a significant longstanding problem in the coronial jurisdiction, where local authority control with little centralisation means that standards and practices can vary considerably. This lack of coherence not only undermines the inquest process but also results in a lack of transparency and an unnecessary waste of time and resources.[24] This was recently highlighted by the Justice Committee who considered that "*there is unacceptable variation in the standard of service between Coroner areas,*"[25] with the Government accepting that there continues to be an issue.[26]

38. The Justice Committee made several recommendations which would bring about real quality improvement, oversight and coherence to the coronial system,[27] including a national coroner service, an independent office to report on emerging issues raised by

[24] JUSTICE WTGW Report, paras. 2.30 – 2.31.

[25] Justice Committee, 'The Coroner Service' (May 2021), para. 157.

[26] The Coroner Service: Government Response to the Committee's First Report' (September 2021), p.12: there "*is still a need to address inconsistencies in the delivery of coroner services*".

[27] See further, Westminster Hall debate: That this House has considered the First Report of the Justice Committee, The Coroner Service, HC 68, and the Government response, HC 675, 28 October 2021.

coroners and juries and a Coroner Service Inspectorate.[28] Rather than bringing these recommendations forward, the Bill increases coronial discretion in areas that have the potential to undermine the value of inquests, without sufficient safeguards for bereaved families. These measures, as currently enacted, risk increasing inconsistency, reducing transparency and restricting accessibility of the inquest system, when it is in dire need of the opposite.

Publicly funded legal representation

39. The Bill misses the opportunity to introduce much-needed automatic non-means tested publicly funded legal representation for bereaved families where the State is involved. Public funding for legal representation in inquests is heavily circumscribed and only available in certain circumstances through Exceptional Case Funding (ECF).[29] Many families are forced to pay large sums to legal costs, resort to crowd funding or represent themselves.[30]

40. The JUSTICE WTGW Report called for non-means tested public funding for legal representation for families where the State has agreed to provide separate representation for one or more interested persons.[31] This has been repeatedly called for, including by Rt Hon Dame Elish Angiolini DBE QC, Rt Rev Bishop James Jones, Lord Bach, HHJ Peter Thronton QC as Chief Coroner, the Joint Committee on Human Rights and, most recently, the Justice Committee and Westminster Commission on Legal Aid.[32] These reports have repeatedly recognised that for complex inquests specialist legal representation is

[28] The JUSTICE WTGW Report recommended the establishment of a small Coroner Service Inspectorate, which as well as improving oversight and transparency, would help ensure that the Coroner Service was suited for the needs of the public. See JUSTICE WTGW Report, paras. 2.36 – 2.38.

This builds upon several other calls for an inspectorate, including by Tom Luce CB in his 2003 review of the coroner system, '*Death Certification and Investigation in England, Wales and Northern Ireland: The Report of a Fundamental Review*' chaired by Tom Luce (Cm 5831, 2003), p. 4.

[29] ECF may be granted only where it is required by Article 2 ECHR or where representation is in the "wider public interest" Legal Aid Agency, 'Inquests – Exceptional Cases Funding – Provider Pack', 15 May 2020, p. 3.

[30] The Government has recently announced that it will be taking forward to remove the means test for applications for ECF in relation to legal representation at inquests and will provide non-means tested legal help for inquests where ECF has been granted for representation. This is a welcome development. However, it does not address the many inquests which do not qualify for ECF and legal representation at inquests will continue to remain out of reach for the vast majority of bereaved people.

This has been recently recognised by the Westminster Commission on Legal Aid who conclude that "there is further work to be done" on access to legal aid for bereaved families for inquests. 'Inquiry into the sustainability and recovery of the legal aid sector' p. 28.

[31] JUSTICE WTGW Report, paras. 5.16 – 5.23.

[32] For full timeline of support for funding for bereaved families at inquests see INQUEST and INQUEST Lawyers Steering Group, 'Judicial Review and Courts Bill Briefing for Committee Stage: Crucial and overdue opportunity to end the inequality of arms at inquests by introducing public funding for bereaved families'; INQUEST and INQUEST Lawyers Steering Group Briefing for Second Reading, Annex 1

essential. Inquests into contested deaths involve complex legal issues and the State and corporate interested persons are typically able to deploy ranks of solicitors and counsel, unrestricted in funding. To claim that families' effective participation can be guaranteed by the coroner and the inquisitorial nature of the process is to ignore the reality. Rather, all too often, bereaved families find that their hopes of identifying faults and learnings to prevent future deaths through inquests are frustrated by an inequality of arms and a culture of institutional defensiveness, with no way of effectively participating. The situation is even more deplorable since, as taxpayers, these families are likely to be contributing to funding the public bodies' legal representation, yet they are denied funding themselves. Where the state is using public funds to provide representation for one or more interested persons, it is fundamentally unfair for bereaved families to be left without access to funding for legal advice and representation.

41. Clauses 37 to 39 risk only worsening the situation for bereaved families. They will be faced with coroners making decisions on discontinuing investigations, going to a paper-only inquest and/or having a remote inquest with no legal advice to explain the decisions or representation to ensure that their views are heard. Until the lack of publicly funded legal representation is addressed, the inquest process will remain fundamentally unfair. **We echo INQUEST's call for the Bill to address this issue[33] and provide that where the state is funding one or more of the other parties at an inquest, it should also provide automatic non-means tested publicly funded legal representation of the family of the deceased.[34]**

JUSTICE

15 November 2021

[33] Ibid, paras. 4 – 7.

[34] As has most recently been called for by the Westminster Commission on Legal Aid.