Police, Crime, Sentencing and Courts Bill

Amendment 102

Duty to Establish a Statutory Inquiry into Lessons to be Learned from the Death of Sarah Everard

House of Lords

Briefing

December 2021

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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 inquiries and inquests, 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*.[1]

3. The Home Secretary announced in October 2021 that a non-statutory public inquiry would be launched following the conviction of Wayne Couzens for the abduction, rape and murder of Sarah Everard (the "**Sarah Everard Inquiry**"). At the time, Wayne Couzens was a police constable with the Metropolitan Police Service (the "**MPS**"). The Sarah Everard Inquiry is to be made up of two parts: the first examining the conduct leading up to Wayne Couzens' conviction and missed opportunities at early intervention, and the second looking at any wider issues arising from the first part of the inquiry.

4. Given numerous examples of severe and persistent obstruction by police services of past non-statutory inquiries (including by the MPS in particular and especially), JUSTICE is concerned that the Sarah Everard Inquiry will run into these same issues of institutional defensiveness. JUSTICE considers that for the Sarah Everard Inquiry to be successful and for lessons to be effectively learned, the Sarah Everard Inquiry must have the power to compel that evidence is disclosed by the MPS. This requires it to be a statutory inquiry held under the Inquiries Act 2005.

5. JUSTICE acknowledges the Home Office and Home Secretary's statements that the Sarah Everard Inquiry could be transferred to a statutory inquiry if deemed necessary by the chair, Rt Hon Dame Elish Angiolini QC. However, past examples have shown that transferring such an inquiry can lead to added complexities, delay and a legacy of failure

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

that hinders the investigation. An inquiry of the significance of the Sarah Everard Inquiry should have every tool necessary for detailed and proper scrutiny. As such, our view is that the Sarah Everard Inquiry should be placed on a statutory footing under the Inquiries Act 2005 from the outset.

6. Amendment 102 to the Police, Crime, Sentencing and Courts Bill, as proposed by Baroness Chakrabarti, Lord Rosser, Lord Carlile of Berriew and Baroness Newlove, would require that the Inquiry is held under the Inquiries Act 2005. **JUSTICE urges the House of Lords to vote in favour of Amendment 102, in the interests of ensuring that the context surrounding these appalling crimes is properly investigated and the highly concerning questions that they give rise to regarding the culture of the MPS are fully and honestly answered.**

Duty to establish statutory inquiry into lessons to be learned from the death of Sarah Everard – Amendment 102

7. As the Sarah Everard Inquiry is currently a non-statutory inquiry, it will have no formal legal powers and will therefore be unable to compel witnesses and key parties to supply testimony or documents. In light of the repeated examples of institutional obstruction and defensiveness examined below, we consider that it is essential that the Sarah Everard Inquiry is placed on a statutory footing where it is able to compel the disclosure of such evidence.

8. **JUSTICE urges peers to vote for Amendment 102 to place establish the Sarah Everard Inquiry under the Inquiries Act 2005:**

Amendment 102

Insert the following new Clause—

"Duty to establish statutory inquiry into lessons to be learned from the death of Sarah Everard

(1) The inquiry into matters arising from the death of Sarah Everard, announced by the Secretary of State for the Home Department on 22 November 2021, is to be held as an inquiry under the Inquiries Act 2005.

(2) The Secretary of State must ensure that the terms of reference of the inquiry include the wider lessons to be learned for the professional culture, funding, vetting and organisation of policing, the prevention of violence against women and the investigation and prosecution of misogynistic crimes.

(3) If on the commencement of any provision of this Act, the inquiry does not have a panel of members which includes at least one member with experience in the area of

violence against women, the Secretary of State must ensure that such a member is appointed."

Member's explanatory statement

This amendment converts the existing Home Office inquiry into the matters arising from the death of Sarah Everard into a statutory inquiry under the Inquiries Act 2005. It also ensures that the Inquiry panel includes at least one member with experience in the area of violence against women and girls.

Concerns

Institutional defensiveness

9. Police services have been subject to significant criticism in both non-statutory and statutory inquiries for their evasive and obstructive approach. The success of an inquiry in ensuring lessons are learnt is wholly dependent on the cooperation of those bodies being investigated. However, institutional defensiveness combined with a lack of means of compelling evidence and testimony risks undermining the effectiveness of the Sarah Everard Inquiry.

10. Most relevantly, the recent report by the Daniel Morgan Independent Panel examined the investigations and operations of the MPS in relation to the murder of Daniel Morgan. This was a non-statutory inquiry and became the longest running inquiry (statutory or non-statutory) in the 21st century: the chair, Baroness Nuala O'Loan, was highly critical of the uncooperative approach of the MPS and the enormous delay and cost this caused the inquiry, noting that she "*believe*[d] *the Metropolitan Police's first objective was to protect itself. …*[They] *were not honest in their dealings with Daniel Morgan's family, or the public*".[2]

11. Indeed, Baroness Nuala O'Loan stated specifically that:

> "[the Panel's] *work was made more difficult by the fact that the Panel was not established under the Inquiries Act 2005 and therefore did not have the statutory powers available to such an inquiry. We could not compel witnesses to testify, nor could we compel the Metropolitan Police to disclose documents in a timely manner.*"[3]

[2] Baroness Nuala O'Loan, *Statement by the Daniel Morgan Independent Panel* (2021), p.3.

[3] *Ibid,* p.4.

12. This institutional defensiveness of police services has been a feature of a number of other inquiries. A further recent example includes the Independent Review into Deaths and Serious Incidents in Police Custody in which the chair, Dame Elish (who, as noted above, is also the chair of the Sarah Everard Inquiry), noted that "*it is clear that the default position whenever there is a death or serious incident involving the police, tends to be one of defensiveness on the part of state bodies.*"[4]

13. This was echoed less than two months ago by Her Majesty's Chief Inspector, HM Inspectorate of Constabulary and Fire and Rescue Services, Sir Thomas Windsor, who noted in oral evidence to the Home Affair Committee that there is "*a culture of colleague protection*" in the police and that there "*does tend to be a circling of the wagons*" when there is external criticism.[5]

14. Going back further, a briefing within the Prime Minister's office on the Interim Taylor Report into the 1989 Hillsborough disaster noted that "*senior officers involved sought to duck all responsibility when giving evidence to the Inquiry*", that the "*defensive – and at times close to deceitful – behaviour by the senior officers in South Yorkshire sounds depressingly familiar*" and that "[t]*oo many senior policemen seem to lack the capacity or character to perceive and admit faults in their organisation"*.[6] The Right Reverend James Jones KBE recently described the repeated failure of South Yorkshire Police to accept the findings of the inquiries as "*examples of what might be described as 'institutional defensiveness'*",[7] indicating that this strong uncooperative instinct persists within the South Yorkshire Police.

15. These problems are not specific to non-statutory inquiries: the chair of the statutory Anthony Grainger inquiry, HHJ Teague QC, concluded that "*it* [was his] *firm view that an unduly reticent, at times secretive attitude prevailed within* [Greater Manchester Police]*'s* [Tactical Firearms Unit] *throughout the period covered by this Inquiry.*"[8] However, the

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[4] The Rt Hon Dame Elish Angiolini DBE QC, *Report of the Independent Review of Deaths and Serious Incidents in Police Custody* (2017), para 17.2.

[5] Home Affairs Committee, *Oral evidence: The state of policing and the fire and rescue services* (HC 806, 27 October 2021).

[6] Hillsborough Independent Panel, *The Report of the Hillsborough Independent Panel*" (2012), para 2.6.128 - 2.6.130.

[7] The Rt Rev Bishop James Jones KBE, 'The patronising disposition of unaccountable power': A report to ensure the pain and suffering of the Hillsborough families is not repeated (HC 511, 2017), para 3.31.

[8] HHJ Teague QC, *Report into the Death of Anthony Grainger* (HC 2354, 2017-19), para 10.8.

inquiry's statutory nature enabled these issues to be uncovered and overcome as it was able to compel disclosure of evidence.

16. Moreover, JUSTICE's report *When Things Go Wrong* found that in "*inquests and inquiries, lack of candour and institutional defensiveness on the part of State and corporate interested persons and core participants are invariably cited as a cause of further suffering and a barrier to accountability.*"[9] We are concerned about the use of a non-statutory inquiry for a case as sensitive as that of Sarah Everard, where the past non-cooperation of the police in such inquiries indicates that this is likely to cause significant additional pain and suffering to those involved.

17. The Sarah Everard Inquiry must be able to set out clear recommendations for how the actions and culture of the police force can be changed. Lessons must be learnt so that any failures that contributed to Sarah Everard's murder not being prevented never happen again. JUSTICE considers that this requires that the Sarah Everard Inquiry is as open as possible, so that there is clear public accountability where needed and thus also public confidence in the inquiry and any recommendations it makes. This is best served through a public statutory inquiry.

Delay

18. The Home Office stated in October that "[g]*iven the need to provide assurance as swiftly as possible,* [the Sarah Everard Inquiry] *will be established as a non-statutory inquiry, but can be converted to a statutory inquiry if required.*"[10] This presentation of statutory inquiries as slow and non-statutory inquiries as fast is an oversimplification and a false dichotomy: as noted above, the (non-statutory) Daniel Morgan Inquiry is the longest running inquiry in the 21st century, whereas the (statutory) Macpherson Inquiry into the killing of Stephen Lawrence took under 20 months to complete.[11] As the Daniel Morgan Inquiry made clear, non-statutory inquiries will be beholden to the individuals and organisations that they are investigating; often having to navigate unwillingness to cooperate or disclose evidence quickly, or at all. Not only do these debates that the inquiry is forced to engage in take

[9] JUSTICE, *When Things Go Wrong: The response of the justice system* (2020), para 4.4.

[10] Home Office, *Inquiry launched into issues raised by Couzens conviction* (5 October 2021).

[11] Marcus Shepheard, 'The Everard inquiry should learn from the Macpherson report into policing culture', *Institute for Government* (8 October 2021).

time, undermine the effectiveness of the inquiry and prolong distress of bereaved people and victims, they also cause "*major cost to the public purse.*"[12]

19. As noted by Adam Wagner, the 'off-the-shelf' procedure of statutory inquiries can save time that non-statutory inquiries would spend determining their bespoke procedure rules.[13] More obviously, holding inquiries as non-statutory inquiries saves no time where they miss evidence that subsequently requires further investigation and an additional statutory inquiry. This occurred in the 2020 Post Office Horizon IT Inquiry. As noted by the chair, Sir Wyn Williams, civil litigation "*generated important lines of enquiry some of which were previously undisclosed. Against this background, the powers available to a statutory public inquiry are necessary to support a proper assessment of all the relevant facts.*"[14]

20. We acknowledge that both the Home Office[15] and the Home Secretary[16] have stated that the Sarah Everard Inquiry may be converted to a statutory inquiry if recommended by the chair, Dame Elish. However, this seems at odds with the aim (with which we certainly agree) "*to quickly understand what went wrong and prevent something like this ever happening again*"[17]. Where a non-statutory inquiry restructures itself under the Inquiries Act 2005, there will be wasted effort and unnecessary delay. When the Independent Inquiry in Child Sexual Abuse was reorganised in this way, its chair, Hon. Dame Lowell Goddard, resigned and noted that:

> "[t]*he conduct of any public inquiry is not an easy task, let alone one of the magnitude of this. Compounding the many difficulties was its legacy of failure which has been very hard to shake off and with hindsight it would have been better to have started completely afresh.*"[18]

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[12] The Report of the Daniel Morgan Independent Panel (June 2021)

[13] Adam Wagner, *Twitter*, 5 October 2021.

[14] Sir Wyn Williams, FLSW, *Post Office IT inquiry 2020 Independent Report – Statement from the Chair* (19 May 2021).

[15] Home Office, *Inquiry launched into issues raised by Couzens conviction* (5 October 2021).

[16] Fiona Hamilton, 'QC to study police errors over Sarah Everard murder, says Priti Patel', *The Times* (23 November 2021).

[17] The Rt Hon Priti Patel MP, 'Home Secretary appoints chair to Sarah Everard inquiry' (22 November 2021).

[18] Hon. Dame Lowell Goddard DNZM, *A statement from the former chair of the Inquiry* (5 August 2016).

Conclusion

21. The history of police non-cooperation with inquiries into their conduct and culture is compelling evidence that the Sarah Everard Inquiry should be held as a statutory inquiry. In particular, the severe criticism of the MPS and specific forewarning of the limitations of non-statutory inquiries in the Daniel Morgan Inquiry, coming as recently as June this year, should be sufficient reason to hold the Sarah Everard Inquiry as a statutory inquiry.

22. An inquiry of such public interest into such deep-seated and serious issues must be given all the tools available to ensure that questions are answered as fully as possible and that lessons are learnt for the future. Previous inquiries indicate that this would also reduce delay, wasted costs and further suffering to core participants.

23. For the reasons set out in this briefing, JUSTICE strongly urges Peers to vote in favour of Amendment 102.

JUSTICE

14th December 2021