



 **INQUEST**

**Police, Crime, Sentencing and Courts Bill**

**Amendment 71 - Accountability of public authorities:  
duties on police workforce**

**House of Commons**

**Ping Pong**

**Briefing**

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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. INQUEST is the only charity providing expertise on state related deaths and their investigation. For four decades, INQUEST has provided expertise to bereaved people, lawyers, advice and support agencies, the media and parliamentarians. Our specialist casework includes deaths in prison and police custody, immigration detention, mental health settings and deaths involving multi-agency failings or where wider issues of state and corporate accountability are in question. INQUEST's Executive Director, Deborah Coles, was an advisor to the 2017 Angiolini Review into deaths and serious incidents in police custody, sits on the cross-government Ministerial Board on Deaths in Custody and is a member of the Independent Advisory Panel on Deaths in Custody.
3. JUSTICE has produced a series of briefings to the House of Commons on the Police, Crime, Sentencing and Courts Bill.<sup>1</sup> This briefing addresses Amendment 71, which would establish a statutory duty of candour on members of the police workforce.
4. This briefing is informed by JUSTICE's 2020 working party report, *When Things Go Wrong: The response of the justice system*.<sup>2</sup> Chaired by Sir Robert Owen with a diverse and highly experienced membership, the working party considered 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 inquests and inquiries, are often left confused, betrayed and re-traumatised.
5. The working party found that 'institutional defensiveness' was a pervasive issue in inquests and inquiries. In addition to furthering the pain and suffering of bereaved people, such a stance also contributes to lengthy delays in proceedings,<sup>3</sup> at cost to

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<sup>1</sup> <https://justice.org.uk/police-crime-sentencing-and-courts-bill/>

<sup>2</sup> JUSTICE, '[When Things Go Wrong: The response of the justice system](#)' (August 2020).

<sup>3</sup> 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 2.106.

public funds. INQUEST recently submitted evidence on the culture of denial, delay and defensives following police related deaths to the Home Affairs Select Committee<sup>4</sup> and Office of the United Nations High Commissioner for Human Rights for their report on systemic racism, violations of international human rights law against Africans and people of African descent by law enforcement agencies.<sup>5</sup>

6. **JUSTICE and INQUEST urge Members of Parliament to agree to Lords' Amendment 71 which would establish a statutory duty of candour on the police. This would go some way to addressing JUSTICE and INQUEST's concerns about the delay and pain to bereaved persons caused by institutional defensiveness of public bodies in inquests and inquiries.**

### **Accountability of public authorities: duties on police workforce – Amendment 71**

7. Currently, the police have a duty of co-operation during court proceedings, inquiries and investigations.<sup>6</sup> Failure to comply with this duty is an internal misconduct matter, leaving the decision whether to investigate or initiate disciplinary proceedings in the hands of the police themselves.<sup>7</sup> In light of the repeated examples of institutional defensiveness and obstruction by the police, as detailed below, and the additional suffering for bereaved families and the undue delay this causes, JUSTICE and INQUEST consider that a statutory duty of candour on members of the police workforce is essential.
8. **JUSTICE and INQUEST urge MPs to agree to Lords' Amendment 71 to establish a statutory duty of candour on members of the police workforce:**

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<sup>4</sup> INQUEST, [INQUEST and PALG evidence to Home Affairs Select Committee inquiry on Police Conduct and complaints](#) (January 2021).

<sup>5</sup> INQUEST, [INQUEST evidence to OHCHR](#), (December 2020).

<sup>6</sup> [The Police \(Conduct\) Regulations 2020, Schedule 2.](#)

<sup>7</sup> [Explanatory Notes, The Police \(Conduct\) Regulations 2020.](#)

## **Amendment 71**

Insert the following new Clause—

### **“Accountability of public authorities: duties on police workforce**

- (1) Members of the police workforce have a duty at all times to act within their powers—
  - (a) in the public interest, and
  - (b) with transparency, candour and frankness.
- (2) Members of the police workforce have a duty to assist court proceedings, official inquiries and investigations—
  - (a) relating to their own activities, or
  - (b) where their acts or omissions are or may be relevant.
- (3) In discharging the duty under subsection (2), members of the police workforce must—
  - (a) act with proper expedition,
  - (b) act with transparency, candour and frankness,
  - (c) act without favour to their own position,
  - (d) make full disclosure of relevant documents, material and facts,
  - (e) set out their position on the relevant matters at the outset of the proceedings, inquiry or investigation, and
  - (f) provide further information and clarification as ordered by a court or inquiry.
- (4) In discharging their duty under subsection (2), members of the police workforce must have regard to the pleadings, allegations, terms of reference and parameters of the relevant proceedings, inquiry or investigation, but are not limited by them, in particular where they hold information which might change the ambit of the proceedings, inquiry or investigation.
- (5) The duties in subsections (1) and (2) are subject to existing laws relating to privacy, data protection and national security.
- (6) The duties in subsections (1) and (2) are enforceable—
  - (a) by application to the relevant court or inquiry chairperson by any person affected by the alleged breach, or
  - (b) by the court or inquiry of its own motion, or
  - (c) where there are no extant court or inquiry proceedings, by judicial review proceedings in the High Court.”

### ***Member’s explanatory statement:***

*This would establish a duty of candour on members of the police workforce.*

## Institutional defensiveness

9. Public bodies have been subject to significant criticism in proceedings, inquiries, and investigations for their evasive and obstructive approach when their conduct or culture are under consideration. This stretches back many years.

- a) The South Yorkshire Police have been repeatedly criticised for their institutional defensiveness in respect of the 1989 Hillsborough disaster. A 1989 briefing within the Prime Minister's office on the Interim Taylor Report into the 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".<sup>8</sup> 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'*".<sup>9</sup>
- b) In her 2017 review of deaths and serious incidents in custody, Dame Elish Angiolini concluded: "*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*".<sup>10</sup>
- c) 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.*"<sup>11</sup>
- d) The Daniel Morgan Independent Panel, which examined the investigations and operations of the Metropolitan Police Service (MPS) in relation to the murder of Daniel Morgan was highly critical of the obstruction to its work by the MPS and the enormous delay and cost this caused. It concluded that the MPS "*did not approach the Panel's scrutiny with candour, in an open, honest and*

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<sup>8</sup> Hillsborough Independent Panel, ['The Report of the Hillsborough Independent Panel'](#) (2012), para 2.6.128 - 2.6.130.

<sup>9</sup> 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), p.105.

<sup>10</sup> 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.

<sup>11</sup> HHJ Teague QC, [Report into the Death of Anthony Grainger](#) (HC 2354, 2017-19), para 10.8.

*transparent way*".<sup>12</sup> The Panel also concluded that the MPS' lack of candour was driven by the MPS' primary objective "*to protect itself*".<sup>13</sup>

e) Only a few months ago, Sir Thomas Winsor, Chief Inspector, HM Inspectorate of Constabulary and Fire and Rescue Services, noted 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.<sup>14</sup>

10. This institutional defensiveness continues despite reforms to The Police (Conduct) Regulations in 2020 to include an express duty on police officers to give appropriate co-operation during investigations, inquiries and formal proceedings.<sup>15</sup>
11. Non-compliance with The Police (Conduct) Regulations is an internal misconduct matter, enforced through police disciplinary processes. But despite the reforms in 2020, no members of the police workforce have faced disciplinary action since the publication of the Report of the Daniel Morgan Independent Panel in June 2021.<sup>16</sup>
12. JUSTICE and INQUEST are therefore concerned that institutional defensiveness will continue whilst the enforcement of these Regulations is in the hands of the police. An independently enforceable statutory duty of candour is needed to ensure police co-operation.

### Why institutional defensiveness matters

13. This institutional defensiveness matters for the following reasons:
  - a) it causes additional suffering to bereaved persons;
  - b) it creates undue delay to inquests and inquiries;
  - c) it undermines public trust and confidence in the police; and
  - d) it undermines a fundamental purpose of inquests and inquiries – to understand what happened and to prevent recurrence.

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<sup>12</sup> [The Report of the Daniel Morgan Independent Panel](#) (June 2021), p.1114.

<sup>13</sup> *Ibid*, p.1222.

<sup>14</sup> Home Affairs Committee, [Oral evidence: The state of policing and the fire and rescue services](#) (HC 806, October 2021).

<sup>15</sup> [The Police \(Conduct\) Regulations 2020, Schedule 2.](#)

<sup>16</sup> *Hansard*, HL Deb 3 November 2021 vol 815, col 1249.

## Suffering

14. Institutional defensiveness of the police and other public bodies causes further pain and suffering to bereaved persons and survivors. JUSTICE's report *When Things Go Wrong* found that in both 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*".<sup>17</sup> In his Government-commissioned report on the experiences of the Hillsborough families, the Right Reverend James Jones KBE concluded that South Yorkshire Police's "*repeated failure to fully and unequivocally accept the findings of independent inquiries and reviews has undoubtedly caused pain to the bereaved families*".<sup>18</sup>

## Delay

15. Failure by the police to make full disclosure and act with transparency can lead to lengthy delays as the investigation or inquiry grapples with identifying and resolving the issues in dispute, at cost to public funds and public safety.
16. A relevant recent example is the Daniel Morgan Independent Panel, which was refused proper access to the Home Office Large Major Enquiry System (HOLMES) by the MPS over seven years. The Panel needed access to HOLMES to review the MPS' investigations into Daniel Morgan's murder, but the lengthy negotiations with the MPS about the Panel's access led to "*major delays to the Panel's work*".<sup>19</sup> These delays added to the Panel's costs and furthered unnecessary distress to the family of Daniel Morgan. The Panel concluded that the MPS were "*determined not to permit access to the HOLMES system*".<sup>20</sup>
17. As well as consuming public money, delays can cause further anguish to bereaved people and survivors. This can act as a barrier to their effective participation in an inquiry or investigation.<sup>21</sup> A statutory duty of candour would significantly enhance the participation of bereaved people and survivors by ensuring that the police's position was

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<sup>17</sup> JUSTICE, '[When Things Go Wrong: The response of the justice system](#)' (August 2020), para 4.4.

<sup>18</sup> 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), p.81.

<sup>19</sup> [The Report of the Daniel Morgan Independent Panel](#) (June 2021), p.1132.

<sup>20</sup> *Ibid.*

<sup>21</sup> JUSTICE, '[When Things Go Wrong: The response of the justice system](#)' (August 2020).

clear from the outset, limiting the possibility of evasiveness. The duty would also direct the investigation to the most important matters at an early stage. This would strengthen the ability of the inquiry or investigation to reach the truth, and to do so without undue delay.

#### *Public trust and confidence*

18. By requiring openness and transparency, a statutory duty of candour would assist in creating a culture change in policing. It would give confidence to individual members of the police workforce, who want to fully assist proceedings, inquiries and investigations, but may experience pressure from their colleagues not to do so. As Lord Pannick noted in the House of Lords:

*“The statutory duty of candour is vital not just to affect the culture of the police and enhance public confidence in policing but to give confidence to those police officers who face enormous internal pressures from their colleagues not to be candid. They need support; they need a statutory regime they can point to in order to justify to their colleagues what is required.”<sup>22</sup>*

19. The need for such a culture change is particularly pertinent in light of the recent report by the Independent Office for Police Conduct following Operation Hotton.<sup>23</sup> The Independent Office for Police Conduct found that members of the police did not report bullying, discrimination and sexual harassment by their colleagues, as the culture of the MPS “*made it difficult to challenge oppressive comments and behaviour*”.<sup>24</sup>
20. A statutory duty of candour would compel police co-operation with proceedings, inquiries and investigations, dismantling the culture of “*colleague protection*”<sup>25</sup> in the police service. The independent enforceability of a statutory duty would also remove the consequences of non-compliance from within the remit of internal misconduct processes. This external monitoring and enforcement would strengthen compliance with the duty.

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<sup>22</sup> *Hansard*, HL Deb 3 November 2021 vol 815, col 1253.

<sup>23</sup> Independent Office for Police Conduct, '[Operation Hotton Learning Report](#)' (27 January 2022).

<sup>24</sup> *Ibid*, p.10.

<sup>25</sup> Home Affairs Committee, '[Oral evidence: The state of policing and the fire and rescue services](#)' (HC 806, October 2021).



### *The fundamental purpose of inquests and inquiries*

21. Lack of candour frustrates the fundamental purpose of inquests and inquiries: to reach the truth and learn from mistakes so that similar tragedies do not occur in the future. From the instances of institutional defensiveness detailed above, it is clear that the police have consistently approached inquests and inquiries as if they were litigation, failing to make admissions and often failing to fully disclose the extent of their knowledge surrounding fatal events.
22. Inquests and inquiries have a unique function: they “*offer to victims of suspected human rights abuse the promise of civil, criminal and broader social justice, which could not otherwise be readily achievable through ordinary litigation*”.<sup>26</sup> Unlike ordinary litigation, inquests and inquiries can make recommendations directed at ensuring that a similar event will never happen again. By compelling police co-operation, a statutory duty of candour would enable inquests and inquiries to fulfil this function and make pertinent recommendations which address what went wrong and identify learning for the future.

### *Support for a statutory duty*

23. A statutory duty of candour has broad support, including from:
  - a) Right Reverend James Jones KBE, the former adviser to Home Secretary on Hillsborough, in his Government-commissioned report on the Hillsborough families’ experiences;<sup>27</sup>
  - b) Dame Angiolini in her Review of Deaths and Serious Incidents in Police Custody;<sup>28</sup>
  - c) JUSTICE’s When Things Go Wrong working party, chaired by Sir Robert Owen and including former Chief Coroner Sir Peter Thornton QC;<sup>29</sup>
  - d) the Daniel Morgan Independent Panel.<sup>30</sup>

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<sup>26</sup> Danny Friedman QC, ‘Inquests & Inquiries’ (JUSTICE Annual Human Rights Conference, October 2019), para 2.

<sup>27</sup> 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), p.67.

<sup>28</sup> Rt. Hon. Dame Elish Angiolini DBE QC, [‘Report of the Independent Review of Deaths and Serious Incidents in Police Custody’](#) (2017), para 14.27.

<sup>29</sup> JUSTICE, [‘When Things Go Wrong: The response of the justice system’](#) (August 2020), para 4.43.

<sup>30</sup> [The Report of the Daniel Morgan Independent Panel](#) (June 2021), p.1116.

24. In addition, the Public Authority (Accountability) Bill, which would have introduced a statutory duty of candour, attracted cross-party sponsorship from Labour, Conservative, Green, SNP, Liberal Democrat and the SDLP.<sup>31</sup> It was scheduled for a Second Reading in May 2017 but fell after the 2017 General Election.
25. JUSTICE and INQUEST support a statutory duty of candour on all public authorities, not just the police, however given the ongoing issues with police non-cooperation in proceedings outlined above, it is our view that the institutional defensiveness of the police must be addressed as swiftly as possible.

## Conclusion

26. The history of police non-cooperation with court proceedings, inquiries and investigations where their conduct and culture are under consideration is compelling evidence of the need for a statutory duty of candour which is independently enforceable. Such a duty on the police would reduce the suffering of bereaved people and survivors, reduce delays, increase public confidence in the police and ensure that the proceedings are able to reach the truth so that crucial lessons can be learnt for the future. For the reasons set out in this briefing, **JUSTICE and INQUEST urge MPs to agree to Lords' Amendment 71.**

**JUSTICE and INQUEST**  
**24 February 2022**

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<sup>31</sup> *Hansard*, HC Deb 29 March 2017 vol 624.