

Criminal Justice Bill 2023

Briefing for Second Reading

House of Commons

November 2023

1. 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 such as the Hillsborough disaster or Grenfell Tower fire.
2. The Hillsborough Law Now Campaign (HLNC) is a broad coalition of families, activists, leaders, and everyday people who want justice. The campaign calls for the establishment of Hillsborough Law, also known as the Public Authority (Accountability) Bill, which would create a new legal duty of candour on public authorities and officials to tell the truth and proactively cooperate with official investigations and inquiries, bringing to an end the depressingly familiar pattern of cover ups and concealment.¹
3. 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. JUSTICE's 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.
4. This briefing relates to clause 73 of the Criminal Justice Bill: Ethical policing (including duty of candour).

Key concerns:

Clause 73 of the Criminal Justice Bill does not go far enough to meet the demands of bereaved families. It:

- falls short of the proposals put forward in Hillsborough Law
- does not extend to all public authorities
- is not sufficiently enforceable

¹ <https://hillsboroughlawnow.org/what-we-do>

5. We are extremely concerned that the provisions for a duty of candour in this Bill fall short of the duty as outlined in Hillsborough Law. Hillsborough Law, when first introduced to Parliament in 2017, was supported by all the represented Hillsborough families and sponsored by a group of cross-party MPs.
6. Hillsborough Law creates a codified requirement on *all* public servants, public authorities and corporations to act in the public interest and proactively and truthfully assist investigations, inquests and inquiries of all official kinds at the earliest possible point, including by the disclosure of all relevant documentation and position statements in which they must set out their narrative of what happened and what went wrong.
7. In contrast, the duty of candour proposed in the Criminal Justice Bill would only apply to the police. A duty of candour needs to apply to all public authorities to ensure an effective end to evasive and obstructive practices following contentious deaths. State-related deaths, particularly major incidents such as the Hillsborough tragedy or Grenfell Tower Fire, commonly involve many different public agencies from local authorities to health services. Without ensuring a duty of candour that applies to all involved in relevant investigations, institutional defensiveness and delays will continue, and the fundamental purpose of such investigations – to prevent future deaths – will continue to be undermined.²
8. Further, clause 73 does not establish a legal duty of candour. Instead, it places a requirement on the College of Policing to issue a code of practice setting out actions that should be taken by a chief officer of police to ensure police under their control act ethically. It does not set out what candour requires, and instead leaves it to the College of Policing to determine what acting ‘in an open and transparent way’ entails, and how this is to be achieved. Moreover, it does not establish any requirement on individuals officers to act openly or transparently. This stands in contrast to the duty of candour as contained in Hillsborough Law, which would place a specific duty on officials to assist court proceedings, inquiries and investigations relating to their conduct with transparency, candour and frankness.
9. Additionally, it is not clear from the Bill how the purported duty of candour would be enforced. There is no suggestion in the Bill of consequences for either chief officers or their subordinates if they fail to act in an open and transparent way. We are concerned that this Bill would make the police themselves enforcers of any ‘requirement’ to act openly and transparently. Hillsborough Law ensures a higher level of independence to enforce the duty, by making it enforceable through the courts against senior officers and executives if there is wilful misleading and corruption, as was faced by the Hillsborough families.

² JUSTICE, INQUEST, Police, Crime, Sentencing and Courts Bill Amendment 71 - Accountability of public authorities: duties on police workforce, <https://www.inquest.org.uk/Handlers/Download.ashx?IDMF=2652a013-001b-49ab-a1d5-6af7b8076589>, February 2022