

## *Victims and Prisoners Bill 2023*

### **Briefing for Second Reading**

#### **House of Commons**

**May 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. HLNC have previously worked to incorporate the proposal for an independent public advocate with the Public Authority Accountability Bill 2017 into a combined Bill, referred to in this briefing as the Public Advocate and Accountability Bill, which is available to read alongside the original Bill on the HLNC website.<sup>1</sup>
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 Part 2 of the Victims and Prisoners Bill, which is concerned with victims of major disasters, such as the Hillsborough disaster or Grenfell Tower fire.
5. **While INQUEST, HLNC and JUSTICE are supportive of measures to increase support for bereaved families – support which those bereaved by the Hillsborough tragedy were denied – we have serious concerns about Part 2 of the Bill as currently drafted. We believe this Bill falls well short of the commitments owed to Hillsborough families: to put Hillsborough Law in**

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

**statute. Further, we consider this Bill a missed opportunity to extend the entitlements of the Victims Code to victims of major incidents and bereaved families in inquests.**

### *Independent Public Advocate*

6. The Victims and Prisoners Bill would establish an independent public advocate to provide support to the bereaved or injured following a major incident. A major incident is defined as one which occurs in England and Wales and is on a similar scale to the Hillsborough disaster or Grenfell Tower Fire.<sup>2</sup> The Bill would amend the Coroners and Justice Act 2009 to make the independent public advocate an Interested Person at an inquest. We note that these provisions have been added to the Bill after the Justice Committee's pre-legislative scrutiny of the Victims Bill, meaning that civil society organisations working with bereaved families who may be impacted by an independent public advocate have not been consulted on the draft legislation, nor have we been given the opportunity to suggest improvements or amendments.
7. INQUEST have previously raised concerns regarding the establishment of an independent public advocate during the Government consultation in 2018.<sup>3</sup> Most notably, we raised concerns that the advocate, instructed by the Secretary of State, may encroach on the role of legal representatives acting for bereaved people during investigations, inquests and inquiries. We are therefore pleased to see that the Bill expressly prohibits the advocate from providing the functions of a legal representative, including providing legal advice to bereaved people.<sup>4</sup> However, the importance of families being given information about their rights and signposted to independent specialist legal advice cannot be overstated.
8. Concerningly, clause 24 does not require the Secretary of State to appoint an advocate. Rather, the Secretary of State "may" do this.<sup>5</sup> Without a duty on the Secretary of State to always appoint an advocate, some bereaved families may receive additional support which other families are not entitled to, worsening the inconsistencies which already exist in the post-death investigation system.<sup>6</sup> For the advocate post to be effective, it should be a mandatory appointment with the duties and functions of the advocate arising in the event of a major disaster, rather than at

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<sup>2</sup> Victims and Prisoners Bill, Explanatory Notes, Section 561, <https://publications.parliament.uk/pa/bills/cbill/58-03/0286/en/220286en.pdf>

<sup>3</sup> INQUEST response to the Ministry of Justice Consultation on establishing an Independent Public Advocate, December 2018, <https://www.inquest.org.uk/Handlers/Download.ashx?IDMF=e6b5711b-a3d2-4734-a737-799bc46a784d>. We note that while the Government's consultation on the Independent Public Advocate was held from September to December 2018, its response to the consultation was only published on 1 March 2023, less than a month before the Victims and Prisoners Bill was published.

<sup>4</sup> Victims and Prisoners Bill, Clause 27 (6) (a), (b) and (8)

<sup>5</sup> Victims and Prisoners Bill, Clause 24, (1)

<sup>6</sup> See Justice Select Committee report on The Coroner Service, <https://committees.parliament.uk/publications/6079/documents/75085/default/>, May 2021

the discretion of the Secretary of State. In the draft of the Public Advocate and Accountability Bill, the Lord Chancellor would be required to appoint an advocate.<sup>7</sup>

9. Further, clauses 24 to 26 of the Bill provide unfettered discretion on the Secretary of State not only on whether to appoint an advocate following a major disaster but also on who the advocate is and how they would be resourced. This removes any semblance of independence of the advocate who is instructed by, and answers to, the Secretary of State and not those most affected. The issue of independence is a central concern for many of the families INQUEST works with. It is crucial that support provided to families is operationally and functionally independent of Government to allay families' concerns of coverups, collusion and evasive practices. The Public Advocate and Accountability Bill provides that while the advocate would sit within the Ministry of Justice for administrative purposes, it would be independent with respect to its functioning and decision making.<sup>8</sup>
10. We believe the provisions relating to the advocate to be weak. Clause 27 sets out the functions of the advocate, which include providing information, communicating with authorities, signposting victims to other sources of support and assisting in the access of documentation. However, the Bill does not give the advocate any powers, in particular the power to require the production of documentation, and there is no duty on public authorities, public servants or others to assist the advocate in any way. There is therefore nothing in the Bill which would provide the advocate with powers to compel disclosure or prevent cover-ups, which were significant failures in the Hillsborough investigations which these provisions ostensibly seek to address.
11. Given the weak set of functions the Bill provides an advocate may perform, we are unconvinced by the need, as set out in clause 28, for the advocate to be made an Interested Person at an inquest through amendment to the Coroners and Justice Act 2009. An inquest is a legal process which takes place in a court. Bereaved people should be represented by specialist lawyers, not a legally untrained person who is expressly prohibited by statute from providing legal services. It is unclear what added value an advocate would bring to inquests as an Interested Person given that legal representatives already have powers to facilitate engagement with the legal process by, for example, requesting documentation and asking questions of witnesses. There is also a concern that granting an advocate Interested Person status may prevent a coroner or inquiry chair from granting the same status to bereaved families if it is believed they are already represented. To avoid duplication and further confusion, there must be greater clarification on the exact role of the advocate, particularly on what role they would add as another Interested Person at an inquest that a legal representative couldn't perform.

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<sup>7</sup> HLNC, Public Advocate and Accountability Bill, Part 1, (1), <https://hillsboroughlawnow.org/what-we-do>

<sup>8</sup> HLNC, Public Advocate and Accountability Bill, <https://hillsboroughlawnow.org/what-we-do>

12. We are concerned by clause 29 on the reporting process for the advocate.<sup>9</sup> This clause states that the Secretary of State can require the advocate to produce a report on the investigation processes, but that the report can be redacted by the Secretary of State on public interest grounds. Again, this provision undermines the independence and transparency of the advocate's role. Further, INQUEST noted in its response to the 2018 consultation that the advocate could have an important role in monitoring and accumulating learning from families' experiences at inquiries, with a view to reporting best practice to the Government and improving the inquiry process. This is not a stated function of the advocate as per the Bill which we believe is a missed opportunity. In the draft Public Advocate and Accountability Bill, the advocate is required to provide periodic reports to the Lord Chancellor which are then laid before Parliament.<sup>10</sup>

### *Hillsborough Law*

13. More broadly, this Bill is a missed opportunity to introduce the provisions in Hillsborough Law, also known as the Public Authority Accountability Bill, into legislation and fulfil the legacy project of Hillsborough families.<sup>11</sup>

14. 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. Hillsborough Law would establish a duty of candour: a codified requirement on 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. Duty of candour obligations would be the most effective way to end evasive and obstructive practices following contentious deaths.

15. Hillsborough Law contains a legal 'toolbox' by which families and citizens can enforce the duty of candour, enable whistle blowers and junior staff to be protected from directions to hide evidence or explanations (or worse, destroy evidence), and senior managers are made legally responsible if wilfully misleading information is provided or information withheld. Hillsborough Law also establishes that there should be public funding for legal representation to put victims on a level playing field with state and corporate bodies. Such provisions seek to empower and engage bereaved families rather than simply provide them with paternalistic assistance.

16. The explanatory notes to this Bill state that the proposed changes on the independent public advocate arise from the "lessons learned" from Hillsborough.<sup>12</sup>

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<sup>9</sup> We note that a clear majority of respondents to the Government's consultation on the Independent Public Advocate were in favour of the Advocate having a reporting function, see page four of Ministry of Justice, Establishing an Independent Public Advocate Summary of Consultation Responses, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1139506/public-advocate-feedback.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1139506/public-advocate-feedback.pdf)

<sup>10</sup> HLNC, Public Advocate and Accountability Bill, Part 1, (5), <https://hillsboroughlawnow.org/what-we-do>

<sup>11</sup> Read the entire Bill here, <https://hillsboroughlawnow.org/what-we-do>

<sup>12</sup> Section 389, <https://publications.parliament.uk/pa/bills/cbill/58-03/0286/en/220286en.pdf>

Yet none of the failings identified following Hillsborough would be addressed by the public advocate provisions. In his Government-commissioned Hillsborough review – *The Patronising Disposition of Unaccountable Power* – Bishop James Jones was clear that there is “a current gap in police accountability arrangements” and that a duty of candour “should address the unacceptable behaviour of police officers – serving or retired – who fail to cooperate fully with investigations into alleged criminal offences or misconduct.”<sup>13</sup> INQUEST’s work with families after state related deaths documents how institutional defensiveness and preventing reputational damage is front and central to the strategy of not just police forces, but many public authorities and corporations responsible for public safety.<sup>14</sup>

17. Hillsborough Law would hugely enhance the position of those caught up in tragedy, embolden junior staff to refuse to take part in cover-ups and promote whistleblowing, and concentrate the minds of those in charge of public services and corporations that they stand to lose personally if their organisations and managers choose to protect reputation and blame others for their own shortcomings and failures. The application of this new law would greatly speed up the processes of investigation, in turn saving substantial amounts of public funds.

18. Hillsborough Law has been widely endorsed<sup>15</sup> and the need for a statutory duty of candour has broad support, including from:

- a) Robert Francis KC in the report of the Mid Staffordshire NHS Foundation Trust Public Inquiry<sup>16</sup>
- b) Dr Bill Kirkup CBE in the report of the Morecambe Bay investigation<sup>17</sup>
- c) Right Reverend James Jones KBE, the former adviser to Home Secretary on Hillsborough, in his Government-commissioned report on the Hillsborough families’ experiences<sup>18</sup>

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<sup>13</sup> Section 12,

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/655892/6\\_3860\\_HO\\_Hillsborough\\_Report\\_2017\\_FINAL\\_WEB\\_updated.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655892/6_3860_HO_Hillsborough_Report_2017_FINAL_WEB_updated.pdf)

<sup>14</sup> INQUEST, INQUEST report of the Family Listening Day held to support the Rt. Rev Bishop James Jones’ Review of the Hillsborough Families’ Experiences, <https://www.inquest.org.uk/Handlers/Download.ashx?IDMF=cfef2529-cebb-4620-8694-b9b8cbf0a804>, April 2017

<sup>15</sup> See supporters and organisations working with the Hillsborough Law Now campaign here <https://hillsboroughlawnow.org/partners>

<sup>16</sup> Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry, Executive summary, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/279124/0947.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/279124/0947.pdf), February 2013

<sup>17</sup> Dr Bill Kirkup, The Report of the Morecambe Bay Investigation, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/408480/47487\\_MBI\\_Accessible\\_v0.1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/408480/47487_MBI_Accessible_v0.1.pdf), March 2015

<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.67, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/656130/6\\_3860\\_HO\\_Hillsborough\\_Report\\_2017\\_FINAL\\_updated.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/656130/6_3860_HO_Hillsborough_Report_2017_FINAL_updated.pdf)

- d) Dame Angiolini in her Review of Deaths and Serious Incidents in Police Custody<sup>19</sup>
- e) JUSTICE's 'When Things Go Wrong' Working Party report, chaired by Sir Robert Owen (Chair of the Litvinenko Inquiry), Sir John Goldring (Hillsborough coroner), and former Chief Coroner Sir Peter Thornton QC<sup>20</sup>
- f) the Daniel Morgan Independent Panel<sup>21</sup>
- g) Dr Bill Kirkup CBE in his report on the independent investigation into Maternity and neonatal services in East Kent.<sup>22</sup>

**19. In order to fulfil its aim of ensuring the learning from the Hillsborough disaster is enacted and enhancing the post-death investigatory system for victims of major disasters, this Bill should be amended to include the provisions in Hillsborough Law.**

### *Victims Code*

20. Bereaved people and survivors in inquests and inquiries will have suffered serious harm, often at the hands of State or corporate bodies. However, they do not receive the same recognition from Government as victims of crime and so are not entitled to the minimum level of support and services. Instead, they are often expected to navigate complex legal processes with little recognition of the harm they have suffered or the trauma they have faced.<sup>23</sup>

21. Under clause 2 of the Bill the Victims Code in the criminal justice context would reflect the principles that victims should:

- a) be provided with information;
- b) be able to access support services;
- c) have the opportunity to make their view heard and;
- d) be able to challenge decisions which have a direct impact on them.

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<sup>19</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, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/655401/Report\\_of\\_Angiolini\\_Review\\_ISBN\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf)

<sup>20</sup> JUSTICE, 'When Things Go Wrong: The response of the justice system' (August 2020), para 4.43, <https://files.justice.org.uk/wp-content/uploads/2020/08/06165913/When-Things-Go-Wrong.pdf>

<sup>21</sup> The Report of the Daniel Morgan Independent Panel (June 2021), p.1116, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/993985/HC\\_11-III\\_-\\_The\\_Report\\_of\\_the\\_Daniel\\_Morgan\\_Independent\\_Panel\\_Volume\\_3\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/993985/HC_11-III_-_The_Report_of_the_Daniel_Morgan_Independent_Panel_Volume_3_.pdf)

<sup>22</sup> Dr Bill Kirkup CBE, Reading the signals: Maternity and neonatal services in East Kent – the Report of the Independent Investigation, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/111992/reading-the-signals-maternity-and-neonatal-services-in-east-kent\\_the-report-of-the-independent-investigation\\_print-ready.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/111992/reading-the-signals-maternity-and-neonatal-services-in-east-kent_the-report-of-the-independent-investigation_print-ready.pdf), October 2022

<sup>23</sup> JUSTICE, When Things Go Wrong: The response of the justice system, <https://files.justice.org.uk/wp-content/uploads/2020/08/06165913/When-Things-Go-Wrong.pdf>, 2020.

22. Applying these principles to victims of major incidents and interested persons in inquests would have significant practical and symbolic benefits, consistent with the Governments' pledge to place victims at the "heart of its response" to public tragedies.<sup>24</sup>
23. Extending the provisions in the Victims Code could be achieved by introducing a requirement in the Bill for the Secretary of State to issue a separate Victims Code relating specifically to victims in the inquest and inquiries context. Such a code would be guided by the same principles and have the same weight and legal status as its criminal justice counterpart. Before issuing a draft of the code, the Secretary of State should be required to consult with survivors of major incidents and the bereaved. Further consultation should be required before any changes to a Victims Code, or provisions of a Victims Code relating to victims in the inquests and inquiries context, are made.
- 24. Affording victims of major incidents and bereaved interested persons entitlements under the Victims Code would represent a recognition of their status as victims of significant, and often wrongful, harm who should be treated in a manner that is dignified and promotes participation. We urge the Government to use the opportunity of this Bill to extend the entitlements of the Victims Code to victims of major incidents and bereaved people who are Interested Persons at inquests.**

## *Contact*

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## *Further resources*

[JUSTICE & INQUEST joint briefing on amendment on a statutory duty of candour to the Police, Crime, Sentencing and Courts Bill](#)

[JUSTICE report, When Things Go Wrong: The response of the justice system](#)

[Public Authority \(Accountability\) Bill 2017](#)

[Public Advocate and Accountability Bill](#)

[INQUEST report of the Family Listening Day held to support the Rt. Rev Bishop James Jones' Review of the Hillsborough Families' Experiences](#)

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<sup>24</sup> [HC Deb 1 March 2023, vol 728](#), cols 791-792.