



Victims and Prisoners Bill

House of Lords

Committee Stage

Briefing

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Introduction

1. JUSTICE is a cross-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. This Briefing outlines JUSTICE's views concerning Part 2 of the Victims and Prisoners Bill (the "**Bill**"). Whilst JUSTICE is broadly supportive of measures to increase support for victims of major incidents, such as the Hillsborough disaster and Grenfell Tower fire, we are concerned that Part 2 as currently drafted does not go far enough to protect and elevate the voices of victims of major incidents. In addition, we consider that the Bill misses an opportunity to extend the relevant entitlements of the Code of Practice for Victims of Crime to victims of major incidents.

Operation of Part 2 – Victims of Major Incidents

3. Part 2 of the Bill contains provisions that would introduce advocates to act on behalf of victims of major incidents. A "*major incident*" is defined in the Bill as an incident which occurs in England or Wales, appears to the Secretary of State for Justice to have caused the death of, or serious harm to, a significant number of individuals, and is declared in writing by the Secretary of State to be a major incident.¹ "*Victims*" under this Part include both individuals who have been harmed by a major incident, as well as close family or friends of individuals who have died or suffered serious harm.²
4. The Bill would establish two types of advocate role: a "*standing advocate*"³ and an "*advocate appointed in respect of a major incident*."⁴
5. Under the Bill, the Secretary of State is required to appoint a standing advocate for victims of major incidents.⁵ The standing advocate would be a permanent position.⁶ The

¹ Clause 28(2).

² Clause 28(4).

³ Clause 29.

⁴ Clause 30.

⁵ Clause 29(1).

⁶ [Victim and Prisoners Bill Explanatory Notes](#), p. 46.

functions of the standing advocate would include advising the Secretary of State as to the interests of victims and their treatment by public authorities; advising other advocates; and making reports to the Secretary of State on how they have discharged their functions.⁷

6. In addition to this, the Bill gives the Secretary of State the power to appoint an advocate to act in respect of a particular major incident.⁸ The individual appointed may be the standing advocate, or another individual considered by the Secretary of State to be “*qualified*” and “*appropriate to appoint in respect of that incident*.”⁹ The role an advocate appointed in respect of a major incident would be to help victims of major incidents understand the actions of public authorities, direct victims to sources of support, communicate with public authorities on behalf of victims, and assist victims in accessing documents.¹⁰
7. Part 2 of the Bill would also amend the Coroners and Justice Act 2009 to make advocates an Interested Person at an inquest into a death following a major incident,¹¹ meaning that they would be able to ask questions of witnesses and receive copies of evidence relevant to the inquest. This includes advocates appointed in respect of the incident, and the standing advocate.¹²
8. According to the Government, the introduction of advocates for victims of major incidents reflects its recognition of the difficulties faced by those affected by the Hillsborough Disaster, and its commitment to ensuring that “*families and communities never again have to struggle in anguish against a system created to help them*”.¹³ The establishment of the standing advocate role, introduced by the government at Report Stage, is intended to increase independence, and ensure victims receive help and advice quickly, and have their views relayed directly to government.¹⁴

Concerns with the advocate provisions

⁷ Clause 29(2). Victim and Prisoners Bill Explanatory Notes, p. 46.

⁸ Clause 30.

⁹ Clause 30(2).

¹⁰ Clause 33(3).

¹¹ Clause 34.

¹² *ibid*.

¹³ [HC Deb 1 March 2023, vol 728](#), cols. 791-792.

¹⁴ Ministry of Justice, [‘Press release: Permanent Independent Public Advocate to better support disaster victims’](#) (2023).

9. JUSTICE is in favour of measures to increase support for and elevate the voices of survivors of major incidents. As we highlighted in our report *When Things Go Wrong: the response of the justice system* (2020), to avoid retraumatising those affected by catastrophic events, the inquest and inquiries processes must be responsive to their needs.¹⁵ This sentiment has been echoed by the Government, which has vowed to “*put victims and bereaved at the heart of [its] response to large-scale public disasters*”.¹⁶

10. However, it is our view that the provisions of Part 2 do not go far enough or live up to previous commitments made by bereaved families and survivors of major incidents. In particular, we are concerned that:

a) The definition of major incidents is too narrow.

11. JUSTICE considers that there may be incidents which, whilst not meeting the definition of major incidents in the Bill, it would be in the public interest to declare as major incident for the purpose of Part 2.

12. This could include cases where a relatively small number of people have died or suffered serious harm in circumstances that suggest serious systemic failing on the part of a public body, or where there appears to be a serious risk that such circumstances may recur, or cause harm to a significant number of people in the future. Whilst not limited to terror related events, this could include incidents like the Fishmongers’ Hall terror attack, during which 3 people including the attacker died.

13. In such cases, effective investigations are crucial so that lessons can be learnt, and further harm can be avoided. Given this, and to the extent that advocates are intended to promote accountability and lesson learning, there may be a strong public interest in the standing advocate, or an advocate appointed in respect of an incident, exercising their functions in relation to such incidents.

14. We consider that, **in addition to the definition of major incidents provided by the Bill, the Secretary of State should have discretion to declare instances such as those**

¹⁵ JUSTICE, [When Things Go Wrong: The response of the justice system](#) (2020); see also INQUEST, ‘[Family reflections on Grenfell: No voice left unheard \(INQUEST report of the Grenfell Family Consultation Day\)](#)’ (May 2019) p. 6.

¹⁶ HC Deb, above n 21.

described above as major incidents, and to appoint an advocate in respect of them, where this would be in the public interest. We therefore urge peers to support amendment 120 in the name of Lord Ponsonby of Shulbrede.

Amendment 120

Clause 28, page 29, line 27, at end insert –

(2A) Where the “significant number” threshold in subsection (2) is not met, the Secretary of State may still declare a major incident where there is a significant public interest in doing so.

(2B) For the purposes of subsection (2A) there will be a significant public interest in declaring a major incident where -

(a) An incident has caused death or serious harm in circumstances that appear to the Secretary of State to indicate systemic failings on the part of a public body, and

(b) there appears to be a real risk that such circumstances may recur.

Member’s explanatory statement

This amendment would enable the Secretary of State to designate incidents causing serious harm or death to a small number of individuals major incidents where there is significant public interest in doing so.

b) Advocates are not sufficiently independent of government.

15. JUSTICE acknowledges that the introduction of a standing advocate, with powers to produce reports without a request from the Secretary of State, does increase the independence of the role. We are also pleased that following Report Stage, the Bill now requires reports by advocates to be laid before Parliament, and that the grounds under which a report can be redacted by the Secretary of State before being published have been narrowed.¹⁷ It is our view that this will go some way to increasing accountability and transparency.

16. However, the Secretary of State would still have broad discretion over when and who to appoint as an advocate in respect of a major incident, and how they would be resourced.

¹⁷ Clause 36 (3) and (4).

The Bill would also give the Secretary of State the power to issues guidance for advocates appointed in respect of a major incident in relation to the exercise of their functions.

17. We appreciate that there may be practical reasons for the power to appoint an advocate in respect of a major incident being vested in the Secretary of State, as opposed to the standing advocate – for instance, to ensure that an advocate can still be appointed in circumstances where the standing advocate role is vacant. However, there remains a risk that this could undermine the independence of advocates, as they are instructed by, and answerable to, the Secretary of State.

18. To guard against this, **we urge peers to support amendment 129 in the name of Lord Ponsonby of Shulbrede, which would make explicit that while advocates would sit within the Ministry of Justice for administrative purposes, they would be independent with respect to its functioning and decision making.**

19. In addition, **we urge peers to support amendment 132, also in the name of Lord Ponsonby of Shulbrede, which would remove the power of the Secretary of State to issue guidance to advocates appointed in respect of major incidents and give this power to the standing advocate. This would safeguard the independence of advocates, whilst ensure consistency in the exercise of their functions.**

Amendment 129

Clause 31, page 31, line 34, at end insert –

(4A) During their appointment an advocate must sit within the Ministry of Justice for administrative purposes, but must be independent with respect to its functioning and decision-making processes, and discharge of its statutory duties.

Member's explanatory statement

This amendment would clarify the functional and operational independence of the advocate.

Amendment 132

Clause 38, page 36, line 8, leave out subsection (1) and insert -

(1) The standing advocate may issue guidance as to the matters to which other advocates appointed in respect of a major incident must have regard to in exercising their functions.

Member's explanatory statement

This amendment would remove the power of the Secretary of State to issue guidance to advocates appointed in respect of major incident and give this power to the standing advocate.

c) The Bill does not provide for views of victims to be properly considered.

20. The press release introducing the standing advocate position states that the role will “give victims a voice when decisions are made about the type of review or inquiry to be held into a disaster”.¹⁸ However, there is no requirement for the standing advocate to directly consider the views of victims of a major incident when advising the Secretary of State. The Bill provides for an individual other than the standing advocate to be appointed as the advocate in respect of a major incident. In these circumstances in particular it is not clear from the Bill how and whether the views of the victims will be communicated to either the standing advocate, or the Secretary of State.

21. To rectify this, **we urge peers to support amendment 124 in the name of Lord Ponsonby of Shulbrede, which would require the standing advocate to communicate the views of victims in relation to the type of review or inquiry to be held into the incident, and their treatment by public authorities, directly to the Secretary of State.**

Amendment 124

Clause 29, page 30, line 16, at end insert –

(2A) When carrying out its functions under subsection 2(a) in relation to a specific major incident, the standing advocate must seek and relay to the Secretary of State the views of victims of that incident as to:

(a) The type of review or inquiry held into the incident.

(b) Their treatment by public authorities in response to the major incident.

Member's explanatory statement

This amendment would require the standing advocate to communicate the views of the victims of a major incident to the Secretary of State.

¹⁸ Ministry of Justice, [‘Press release: Permanent Independent Public Advocate to better support disaster victims’](#) (2023).; [Victim and Prisoners Bill Explanatory Notes](#), p. 46.

22. Moreover, whilst the Government has said that the appointment of advocates for individual major incidents will allow for expert insight from, for instance, community leaders who hold the confidence of victims,¹⁹ there is again no requirement to consider the views of the community affected by the incident when deciding whether and who to appoint as a specialist advocate in relation to a specific incident.

23. We appreciate that the need for rapid deployment of an advocate following a major incident may make it difficult to seek the views of victims before appointing an advocate in respect of that incident. However, **once an advocate has been appointed, the Secretary of State should seek the views of victims as to whether to appoint an additional “specialist” advocate, and who to appoint. We therefore urge peers to support amendment 125 in the name of Lord Ponsonby of Shulbrede.**

24. In addition, **we urge peers to support amendment 128 in the name of Lord Ponsonby of Shulbrede, which would require the Secretary of state to consider the views of the victims of an incident before making a decision to terminate the appointment of an advocate appointed in respect of that incident.**²⁰

Amendment 125

Clause 29, page 30, line 26, at end insert -

(4A) The Secretary of State must consider the views of victims of a major incident in relation to –

(a) whether to appoint more than one advocate in respect of that incident; and if so,

(b) whether an individual is appropriate to appoint as an additional advocate in respect of a major incident.

Member’s explanatory statement

This amendment would require the Secretary of State to consider the views of victims of a major incident as to whether to appoint an additional advocate, and who to appoint.

Amendment 128

¹⁹ Ministry of Justice, [‘Press release: Permanent Independent Public Advocate to better support disaster victims’](#) (2023).

²⁰ Under clause 31.

Clause 31, page 31, line 24, at end insert -

(2A) Before terminating the appointment of an advocate under subsection (2)(a), the Secretary of State must consider the views of the victims of the major incident to which the advocate was appointed.

Member's explanatory statement

This amendment would place a requirement on the Secretary of State to consider the views of the victims of a major incident before terminating the appointment of an advocate appointed in relation to that major incident.

(d) The advocate provisions of the Bill are not sufficient to promote transparency and accountability.

25. The Bill does not give either the standing advocate, or advocates appointed in respect of a major incident any powers to require the production of documentation, and there is no duty on public authorities to assist the advocate in any way. This lack of power to compel the provision of information calls into question to extent to which the advocate will be able to combat the institutional defensiveness that these provisions ostensibly seek to address.²¹

26. **To promote transparency and accountability, we urge peers to support amendment 133 in the names of Lord Ponsonby of Shulbrede, the Lord Bishop of Manchester and Baroness Brinton, which would introduce a statutory duty of candour.** This amendment would place a codified requirement on public authorities and public servants and officials to assist official inquiries or investigation into major incidents proactively and truthfully, at the earliest opportunity. This would include through the early provision of position statements and the disclosure of all relevant documentation.²²

27. As our 2020 report highlighted, a statutory duty of candour would significantly enhance the participation of bereaved people and survivors, by guarding against institutional defensiveness and fostering a 'cards on the table' approach.²³ Further, by directing the

²¹ HC Deb, above n 21.

²² JUSTICE, [When Things Go Wrong: The response of the justice system](#) (2020).

²³ *ibid*, p.2.

investigation to the most important matters at the outset, a statutory duty of candour would facilitate earlier findings and, in turn, reduce costs.²⁴

Amendment 133

After Clause 38, insert the following new Clause—

Major incidents: duty of candour

(1) In discharging their duties in relation to a major incident, public authorities and public servants and officials must at all times act within their powers—

- (a) in the public interest, and
- (b) with transparency, candour and frankness.

(2) If a major incident results in a court proceeding, official inquiry or investigation, public authorities and public servants and officials have a duty to assist—

- (a) relating to their own activities, or
- (b) where their acts or omissions may be relevant.

(3) In discharging the duty under subsection (2), public authorities and public servants and officials 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), public authorities and public servants and officials must have regard to the pleadings, allegations, terms of reference and parameters of the relevant proceedings, inquiry or investigation but may not be limited by them, in

²⁴ *ibid*, para. 4.49.

particular where they hold information which might change the ambit of the said proceedings, inquiry or investigation.

(5) The duties in subsections (1) and (2) must—

(a) be read subject to existing laws relating to privacy, data protection and national security, and

(b) apply in a qualified way with respect to private law and non-public functions as set out in subsection (6), and

(c) not be limited by any issue of insurance indemnity.

(6) The duties in subsections (1) and (2) will be enforceable by application to the relevant court or inquiry chairperson by any person affected by the alleged breach, or the court or inquiry may act of its own motion.

(7) Where there are no extant court or inquiry proceedings, the duties may be enforced by judicial review proceedings in the High Court.

Member's explanatory statement

This new clause would require public authorities, public servants and officials to act in the public interest and with transparency, candour and frankness when carrying out their duties in relation to major incidents.

Extending the Victims Code to Victims of Major Incidents

28. We consider that the Bill represents a missed opportunity to extend entitlements of the Victims Code to victims of major incidents. Victims of major incidents 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 same 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.²⁵

29. Whilst the position of victims in the criminal justice system is far from perfect, as outlined above, organisations working with bereaved families have flagged a distinct lack of support for victims in the context of inquests and inquiries. In written submissions to the Angiolini Review, INQUEST noted that:

²⁵ JUSTICE, [When Things Go Wrong: The response of the justice system](#) (2020).

“as soon as police officers were charged with criminal offences the families of Azelle Rodney and Thomas Orchard were assisted by Victim Support with transportation and accommodation around the trial. This is in sharp contrast to how families in death in custody cases are generally treated.”²⁶

30. A further example cited by INQUEST concerned a suicide in custody. In the week before the death, the mother of the bereaved had had her car stolen; within 24 hours she had received a telephone call and been provided with a leaflet from Victim Support. She received no such support the following week from the coronial system.²⁷

31. As recognised by the Government and underscored in relation to Part 1, the criminal justice system has a long way to go in providing proper support to victims of criminal conduct. However, what the above examples show is that the inquests and inquiries system has, in certain respects, even further to go. There is no principled reason to focus on improving the experience of victims in one context, whilst failing properly to recognise the needs and experiences of victims in another.

32. It is also worth recalling that inquests and inquiries, particularly those relating to the major incidents as defined by the Bill, often run concurrently with or prior to criminal investigations. Allowing certain minimum entitlements in one process and not the other risks undermining the confidence of victims in both. There is little use in trying to ensure that individuals are supported through and engaged with the criminal process, when they are at risk of being, or have already been, let down by a separate legal process addressing the same events. This provides an additional justification for affording victims in the inquests and inquiries context similar minimum entitlements to those in a criminal justice setting. Failing to do so is not only unfair, but also runs counter to the Government’s stated aim of ensuring victims have confidence that they will be treated “*in the way they should rightly expect*”.²⁸

²⁶ The Rt Hon Dame Elish Angiolini DBE KC, [Report of the Independent Review of Deaths and Serious Incidents in Police Custody](#) (2017), para 15.5 as quoted in JUSTICE, [When Things Go Wrong: The response of the justice system](#) (2020), para. 3.3.

²⁷ *ibid.*

²⁸ Ministry of Justice, [Victims and Prisoners Bill Policy Paper](#) (April 2023).

33. Some secondary legislation and guidance does exist which sets out, to an extent, the entitlements of bereaved people and survivors in inquests and inquiries. However, as the examples above demonstrate, these provisions are insufficient to secure effective participation, and do little to ensure survivors and the bereaved are properly supported. Indeed, many of those that JUSTICE consulted for our 2020 report expressed feeling alienated and retraumatised by the inquest and/or inquiry process, and found that little was done to address their needs.²⁹ It is our view that extending the provisions of the Victims' Code to victims of major incidents and bereaved interested persons at inquests would go some way to mitigating this.
34. Under clause 2 of the Bill, the Victims' Code as applicable to 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 views heard; and
 - d. be able to challenge decisions which have a direct impact on them.
35. Applying these principles to victims of major incidents and interested persons in inquests would have significant practical and symbolic benefits, consistently with the Government's pledge to place victims at the "*heart of its response*" to public tragedies.³⁰
36. From a practical perspective, the introduction of a statutory code guided by the above principles would require investigators, coroners and inquiry teams to reconsider their protocols in line with certain minimum entitlements. This could include making provisions to conduct needs assessments to identify what support is required; interviewing without unjustified delay and limiting the number of interviews to those that are strictly necessary; arranging court familiarisation visits; providing expenses for travel to inquests, subsistence and counselling; and affording a route for administrative complaints, with a full response to any complaints made.³¹

²⁹ JUSTICE, [When Things Go Wrong: The response of the justice system](#) (2020); see also INQUEST, '[Family reflections on Grenfell: No voice left unheard \(INQUEST report of the Grenfell Family Consultation Day\)](#)' (May 2019) p. 6.

³⁰ HC Deb, above n 20.

³¹ JUSTICE, [When Things Go Wrong: The response of the justice system](#) (2020), para. 3.5.

37. Beyond these substantive benefits, extending the Victims' Code to the inquiries and inquests context would also raise the status of victims within these processes. Affording victims of major incidents and 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.

38. We therefore **urge peers to support amendments 122 and 123, which provide for the introduction of a code for victims of major incidents. This code would be guided by the same principles and have the same weight and legal status as its criminal justice counterpart.** In preparing a draft of the code, the Secretary of State would be required to consult the standing advocate and consider representations on the draft.

Amendment 122

After Clause 28, insert the following new clause—

Code for victims of major incidents

(1) The Secretary of State must issue a code of practice as to the services to be provided to victims of major incidents by persons having functions relating to -

(a) victims of major incidents, or

(b) official inquiries and investigations following a major incident.

(2) In this Part, the “code for victims of major incidents” means the code of practice issued under this section.

(3) The code for victim of major incidents must make provisions for services which reflect the principles that victims should -

(a) be provided with information to help them understand the investigatory process following the major incident of which they are a victim.

(b) be able to access services which support them (including, where appropriate, specialist services)

(c) have the opportunity to make their views heard in the investigatory process following the major incident of which they are a victim.

(d) be able to challenge decisions which have a direct impact on them.

(7) The code for victims of major incidents may make different provision for different purposes, including different provision for—

(a) victims of different descriptions;

(b) persons who have different functions of a kind mentioned in subsection (1).

Amendment 123

After Clause 28, insert the following new Clause—

Preparing and issuing the code for victims of major incidents

(1) The Secretary of State must prepare a draft of the code for victims of major incidents (“the draft code”).

(2) In preparing the draft code the Secretary of State must consult the standing advocate appointed under section 29 (appointment of standing advocate).

(3) After preparing the draft code, the Secretary of State must—

(a) publish the draft, and

(b) specify a period during which representations about the draft code may be made to the Secretary of State.

(4) The Secretary of State must—

(a) consider, in consultation with the standing advocate, any representations about the draft code made to the Secretary of State before the end of the period specified in accordance with subsection (3)(b);

(b) if the Secretary of State thinks it appropriate, modify the draft code in the light of any such representations.

(5) After carrying out the duties under subsection (4), the Secretary of State must lay the draft code before Parliament.

(6) When the draft code has been laid before Parliament in accordance with subsection (5), the Secretary of State must bring it into operation on such day as the Secretary of State appoints by regulations.

Member's explanatory statement

This amendment would require the Secretary of State to produce, in consultation with the standing advocate, a statutory code for victims of major incidents, modelled on the victims' code.

JUSTICE
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