

**INQUEST** 

Working for truth, justice and accountability

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# Briefing for second reading of the Counter Terrorism Bill

April 2008

## 1. About INQUEST

- 1.1 INQUEST is the only charity in England and Wales that works directly with the families and friends of those who die in custody. This includes deaths at the hands of state agents and in all forms of custody: police, prison, young offender institutions, secure training centres, immigration detention centres and while detained under the Mental Health Act. We provide a free, confidential advice service to all families who go through an inquest process. In 2007 we worked on more than 250 cases advising over 1,000 family members about their rights in the coroner's courts.
- 1.2 Through our casework over the last 25 years, INQUEST has a unique overview of how the inquest system operates from the perspective of bereaved families and their advisers. We extract policy issues arising from contentious deaths and their investigation and campaign with and on behalf of bereaved families and their legal representatives for changes to be implemented which could prevent further deaths.
- 1.3 We are working closely with the family and legal team of Azelle Rodney, a 24 year old black man who was shot seven times in the head in a pre-planned police operation in April 2005. It appears that it was a legal challenge to the Regulation of Investigatory Powers Act 2000 (RIPA) bought by lawyers representing Susan Alexander (Azelle's mother) which prompted the proposals contained in the Counter Terrorism Bill regarding inquests.

We are grateful to Matthew Ryder, Matrix Chambers, and Daniel Machover, Hickman and Rose Solicitors for their assistance in preparing this briefing

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## 2. Executive Summary

- 2.1 INQUEST is strongly opposed to the measures contained in section 64 the Counter Terrorism Bill 2008 which give the Secretary of State power to intervene in inquests where sensitive information is involved. The proposals amount to a fundamental attack on the independence and transparency of the coronial system in England and Wales. They are fundamentally flawed; unsupported by evidence; disconnected from legal principles; and have been devised without any consultation with stakeholders.
- 2.2 The proposals could result in the inquests into highly contentious deaths in custody taking place without juries, in private, with government-appointed coroners and counsel overseeing the evidence. This would exclude bereaved families, their legal representatives and the public at large from the investigation process in breach of article 2 of the European Convention on Human Rights.
- 2.3 Deaths in custody raise important issues of state power and accountability. In a free and democratic society, deaths in state custody should be subject to particularly close public scrutiny. For this reason it is imperative the inquest system is open and transparent so that justice is seen to be done and public confidence in state bodies is upheld.
- 2.4 From our experience as practitioners working on deaths in custody and the inquest system for more than 25 years, we cannot envisage a situation where the proposed legislation is necessary. We have seen no arguments or evidence from the government to justify the imposition of such wide-ranging and draconian proposals.
- 2.5 The wording of the proposals is open to wide interpretation and gives the Secretary of State extensive discretion to intervene in the inquest process. We fear the wording of the proposals would give a green light for the closing down of inquests in a broad range of circumstances.
- 2.6 Changes are proposed in the Bill on the use of intercept material in inquests. However, the law on such material in criminal proceedings is currently under review. We believe decisions regarding the use of intercept material in inquests should be put on hold until a decision on the use of such evidence in criminal proceedings is finalised.
- 2.7 We have been working for wide scale reform of the coronial system for some time and are deeply disappointed that the government has twice dropped the Coroners Reform Bill from the legislative schedule. We are of the view that any discussions over reforms affecting the inquest system should take place in that context rather than forming part of the Counter Terrorism Bill.
- 2.8 We therefore propose that Part 6, clauses 64-67 of the Counter Terrorism Bill 2008 should be deleted.

### 3. Introduction

- 3.1 The proposals in Part 6 of the Bill would enable some inquests to be conducted in private, without juries and with government-vetted coroners and counsel. Bereaved families and their legal representatives - as well as the public at large and the media - could be excluded from the process. We believe the public will find it difficult to have confidence that these coroner-only inquests, with key evidence being suppressed from the public domain, could investigate contentious deaths involving state agents independently.
- 3.2 INQUEST is particularly alarmed that the proposals are contained in Counter Terrorism legislation as this implies that there have been real issues that have arisen in relation to inquests that have involved questions of 'counter terrorism'. We are at a loss to identify any such circumstances.
- 3.3 The proposals contained in clauses 64-67 of the Bill arose from legal challenges brought on behalf of the family of Azelle Rodney over admissibility of intelligence evidence. Azelle Rodney died in April 2005 after a police operation in north London in which he was shot seven times – the circumstances surrounding his shooting had nothing to do with counter terrorism. Azelle was shot after the car he was in was ordered to 'hard stop' after being under police surveillance for more than three hours. In July 2006 the Crown Prosecution Service (CPS) announced that there was insufficient evidence for a successful prosecution. After the CPS decision, the family was told by the coroner that the full inquest could not be held because large portions of the police officers' statements had been crossed out under the Regulation of Investigatory Powers Act (RIPA) 2000, which covers information obtained from covert surveillance devices such as telephone taps or bugs. Lawyers acting for the family of Azelle Rodney threatened to take the government to court to show that RIPA was in breach of the Human Rights Act 1998. His family have already been told that their case will be subject to the new measures, despite the fact they are still proposals in a Bill that has not even had its second reading in parliament.
- 3.4 The government's proposals appear to be a knee-jerk reaction to the problem of how to deal with sensitive information at inquests. Yet the proposals are so wide-reaching that they create more problems than the issue which they are attempting to resolve.

## **4. Briefing on Part 6 of the Bill**

### **4.1 Clause 64**

Clause 64 gives the Secretary of State the power to issue certificates which would remove juries from inquests if he or she believes evidence will be heard which should not be made public:

- a) in the interests of national security;
- b) in the interests of the relationship between the UK and another country; or
- c) otherwise in the public interest.

### **4.2 Political interference in the inquest system**

INQUEST believes this is a disproportionate and draconian measure. It falsely equates the existence of material which "should not be made public", with the need to remove a jury and gives the Secretary of State unprecedented and wide-reaching powers to intervene in the investigation of contentious deaths. The catch-all phrase of "otherwise in the public interest" would make any potential challenge of a decision by the Secretary of State virtually impossible. Clause 64 would give the Secretary of State a key decision making role in the very inquests where the state's actions require most scrutiny and amounts to excessive political interference in the inquest system.

### **4.3 Article 2 and inquests**

The standard by which any investigation of a death in custody must be measured against is the obligation laid down by article 2 of the European Convention on Human Rights (ECHR) which protects the right to life. Article 2 requires the government to have in place a proper procedure for ensuring the accountability of agents of the state so as to maintain public confidence and allay the legitimate concerns that arise from the use of lethal force. It places a positive duty on the state to investigate a death in custody with an inquiry that is:

- on the state's own initiative (e.g. not as a result of civil proceedings);
- independent, both institutionally and in practice;
- capable of leading to a determination of responsibility and the punishment of those responsible;
- prompt;
- allows for sufficient public scrutiny to ensure accountability;
- enables the next of kin to participate<sup>1</sup>.

From a meeting with Bridget Prentice MP on 17 March 2008, INQUEST is aware that the government's proposals will mean bereaved families will be excluded from seeing the sensitive information which could be crucial to ascertaining how and why their loved one came to die in state custody. INQUEST fears that several of the other

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<sup>1</sup> *Jordan v UK* (2001) 37 EHRR 52, also approved by the House of Lords in the case of *ex parte Amin* (the Zahid Mubarek case)

criteria under article 2 such as sufficient public scrutiny and independence of investigations are also contravened by this legislation, which will certainly face legal challenges as soon as it is first used.

#### 4.4 The importance of juries

The removal of juries from proceedings is highly flawed. Juries have a central role in ensuring maximum public scrutiny and this is particularly important where officers of the state may be involved in the circumstances of a death. Juries are the only opportunity for ordinary people, independent of the state, to participate in the judicial system. They have the effect of diffusing power into the community and in cases of contentious deaths are often seen by families as the key safeguard in terms of public accountability.

#### 4.5 Sufficiency of current procedures

Current inquest procedures are suitably sufficient for dealing with issues of sensitive material. Rule 17 of the Coroners Rules 1984 (as enacted by SI 1984 No 552) enables coroners to "direct that the public be excluded from an inquest or any part of an inquest if he considers that it would be in the interest of national security so to do". Public Interest Immunity certificates can also be issued if necessary.

#### 4.6 The purpose of an inquest

These proposals undermine the very purpose of an inquest into a death in custody. In *R (Amin) v Home Secretary* [2003] UKHL 51 (the case of Zahid Mubarek) Lord Bingham summarised the purposes of an inquest under article 2:

*"The purposes of such an investigation are clear: to ensure as far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others."*

If inquests take place behind closed doors it will be hard for bereaved families and the public at large to allay any suspicions of wrong doing. Indeed, the secrecy may fuel fears that the state is attempting to deliberately prevent information reaching the public domain.

#### 4.7 Clause 65

Clause 65 creates a new category of "specially appointed coroners" chosen by the Secretary of State to oversee these non-jury inquests, with coroner-appointed counsel to represent bereaved families. There is no evidence of which we are aware that this new category of coroner is necessary. In exceptional cases involving sensitive matters of public interest or in complex cases, it may be appropriate for a High Court judge to

sit as a coroner as is current practice. It has not been necessary to create a new category of criminal judge to hear the cases where sensitive material engaging public interest is involved. This leads us to question why such a provision is necessary for coroners.

- 4.8 It is critical that any investigation into the circumstances of death is seen as independent from the government. The fundamental appearance of fairness is undermined if the Secretary of State is given the power to determine which person hears a particular inquest.

#### 4.9 Clause 67

Clause 67 places the treatment of intercept evidence in inquests on a similar footing as that which *currently* exists in criminal proceedings. This is not appropriate, not least because the government has recently announced it intends to change the existing law on the treatment of intercept evidence in criminal proceedings. Any change to inquest procedure with regard to intercept evidence should await the coming amendments to Part I of RIPA.

- 4.10 Many inquests and criminal trials involve the consideration of material that should not be made public. This ranges from personal details about witnesses to operational matters concerning police conduct or matters of national security. The existence of such material does not mean that a jury cannot or should not hear the case. It may mean that part of the proceedings should be held in camera so that the jury and the interested parties may hear the evidence, but the public may be excluded from that part of the hearing or it may simply not be reported by the press.
- 4.11 On 4 February 2008 the Privy Council Review of Intercept as Evidence recommended the abolition of the absolute prohibition contained in section 17 of RIPA. The Prime Minister subsequently announced government support for that conclusion. The final proposals have not yet been revealed. It is premature to seek to bring inquests within the framework of section 18 of RIPA when both section 17 and 18 of RIPA are to be fundamentally amended.

## 5. Conclusion

- 5.1 Concern about the proposals has been expressed by the chairs of the parliamentary Joint Committee on Human Rights (JCHR) and the Justice Committee. The Justice Committee has called for the proposals to be "withdrawn pending more detailed scrutiny and the introduction of the Coroners Bill"<sup>2</sup> The JCHR expressed concern that the proposals could compromise the independence of controversial inquests into the deaths of terrorism suspects in police operations or the deaths of service personnel in Iraq. Chair of the Committee, Andrew Dismore MP, said:

*"We are seriously alarmed at the prospect that under these provisions inquests into deaths occurring in circumstances like that of Jean Charles de Menezes, or British servicemen killed by US forces in Iraq, could be held by*

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<sup>2</sup> House of Commons Justice Committee, *Counter Terrorism Bill: Third Report of Session 2007-08*, 4/3/08

*a coroner appointed by the Secretary of State sitting without a jury. Inquests must be, and be seen to be, totally independent, and in public to secure accountability, with involvement of the next of kin to protect their legitimate interests. When someone dies in distressing, high profile circumstances their family need to see and feel that justice is being done, and where state authorities are involved there is a national interest in accountability as well."*<sup>3</sup>

- 5.2 It is clear that the proposals contained in Part 6, clauses 64-67 of the Counter Terrorism Bill are ill-advised; inappropriate, unnecessary and amount to a breach of fundamental rights. For this reason, this section of the Bill should be withdrawn.

Yasmin Khan, INQUEST

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<sup>3</sup> House of Commons Joint Committee on Human Rights press release 6/2/2008 accessed from [http://www.parliament.uk/parliamentary\\_committees/joint\\_committee\\_on\\_human\\_rights/joint\\_committee\\_on\\_human\\_rights\\_press\\_notices.cfm](http://www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights/joint_committee_on_human_rights_press_notices.cfm)