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Briefing on Coroners and Justice Bill 2009 - House of Commons Report and Third Reading

March 2009

INTRODUCTION

INQUEST is a charity that provides a specialist, comprehensive, free advice service on contentious deaths and their investigation to bereaved people, lawyers, other advice and support agencies, the media, parliamentarians and the wider public. In the last ten years it has worked on 2,300 cases advising over 7,000 family members.

INQUEST is proud to be associated with the process of coroner reform and we broadly welcome and support the proposals relating to that process in the Coroners and Justice Bill. However, there are a number of defects of principle and practice which, if not eliminated or amended, cause significant concern.

Of central concern are the proposals for 'secret' inquests in Clause 11. We urge Members of Parliament to **vote for Amendment 2** which deletes clause 11.

The government's stated objective was to put the bereaved at the heart of the process. We believe that the Bill makes progress in remedying what has historically been an unnecessarily distressing situation for the families of the deceased and urge Members of Parliament to **vote for the Bill as a whole**.

We believe it will be a proud achievement if society has a coronial service that makes an important contribution to death prevention as the majority of bereaved families we work with are motivated by the hope that there will be accountable learning. A recurring theme common to virtually every family with whom we journeyed through the coronial system is simple: an unswerving desire that other families should not have to suffer the often preventable ordeal which they have had to endure.

In our substantial briefing prepared for the Second Reading we addressed the Bill in detail and this briefing focuses a number of those matters of principle and practice that we feel warrant particular attention at this stage.

Clause 5: Matters to be ascertained

One of the purposes of any investigation into contentious deaths – in particular deaths in state detention and those raising questions of public health and safety - must be to learn any lessons that may arise out of a death so as to prevent similar cases occurring in the future. We think that clause 5(1) defines the scope of all inquests too narrowly. There are clearly important cases involving questions of public health and safety where the Human Rights Act does not apply and where there is a need for a broader inquiry. For example: deaths raising concerns about transport and workplace safety; the death of a vulnerable older person in a private nursing home; or a death in a private workplace.

We therefore **support Amendment 135**:

Page 4, line 4 [Clause 5], at end insert –

'(2A) The senior coroner may determine that the purpose of any investigation shall include ascertaining the circumstances the deceased came by his or her death where –

(a) the senior coroner is satisfied that there are reasonable grounds to determines that the continued or repeat occurrence of those circumstances would be prejudicial to the health and safety of members of the public or any section of it; or

(b) the senior coroner is satisfied that there are reasonable grounds to consider such circumstances in the public interest.'

Clause 7: Whether jury required

We consider that juries are fundamental to a democracy, as they are the only opportunity where ordinary people, independent of the state, can 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.

We note that clause 7, while being modelled on the current s.8(3) of the Coroners Act 1988, widens the circumstances in which a jury must be summonsed; gives coroners a wide residual discretion as to when they may summons a jury (if they consider that there is "*sufficient reason*" for doing so); and that there will be a right of appeal to the Chief Coroner against a coroner's decision with respect to the summonsing of a jury.

We would, however, argue that in addition to the general discretion provided for under the new clause 7(3), **the law should continue to require an inquest jury in those cases which would currently fall within section 8(3)(d).**

We recommend **support for Amendment 137:**

Page 4, line 31 [Clause 7], at end insert `or`

'(d) that the death occurred in circumstances the continuance or possible recurrence of which is prejudicial to the health or safety of the public or any section of the public.'

Clause 8: Assembling a jury

Clause 8 proposes reducing the number of jury members from between 7 and 11 to between 6 and 9. Explanatory Notes claim that "the nature of the inquisitorial task [inquest juries] are required to undertake means that they do not need to be of the same sizes as juries in the criminal courts."

On the contrary, inquest juries have enhanced responsibilities and therefore there is an even greater need to ensure that the quality of their decision-making remains of a high standard. We believe that it would be wholly wrong for issues as crucial to the public interest as, for example, the deliberate killing of a civilian by an agent of the state, to be determined by a jury consisting of as few as 6 members.

We recommend **support for Amendment 138:**

Page 4, line 41 [Clause 8],

leave out `six, seven, eight or nine` and insert `not less than seven nor more than eleven`.

Clause 11 – 13: `Secret' inquests

The arguments against these proposals have been well rehearsed and are detailed in our stand alone briefing and joint briefing prepared with Liberty and JUSTICE. Despite the amendments proposed by the Justice Secretary we remain unconvinced that such broad-ranging measures are necessary. Although the amendments are welcome and an indication that the government is listening to widespread criticism, they do not go far enough.

The question still remains: why do we need these measures at all? The new clause still specifies a broad swathe of criteria that would possibly lead to an inquest being held partly in secret. Certifying an inquest on the basis of "preventing or detecting crime" could be used in the any case where there is police surveillance or other covert operations, issues that can normally be addressed by other measures such as anonymity or protective screens as occurred in the inquest into the death of Jean Charles de Menezes.

Similarly, given the ability to use alternative measures under the current law, there should be no need to certify the inquest simply because of the need "to protect the safety of a witness or other person". Also, what does "relations with another country" mean? Is this intended to ensure that inquests into the deaths of military personnel in cases that have raised tensions with the USA would in future be heard in secret? Political sensitivity or embarrassment cannot be a reason for a secret hearing in a democratic society.

Although the High Court judge appointed as a coroner to sit in these certified cases would determine whether or not to summons a jury and what other measures would deal with the sensitive material, the Bill remains silent on many important matters. Questions remain about who would be excluded from the inquest and for how long. Despite verbal assurances that these inquests would only be "partially secret", there is nothing in the legislation that specifies that to be the case. Described by officials as an enabling piece of legislation, we do not want the law to enable those with an interest in secrecy to be able in the future to lobby for inquests that currently take place without these measures.

We recommend **support for Amendment 2**

Page 6, line 2, leave out Clause 11

Clause 27 and Schedule 7: Chief Coroner and Deputy Chief Coroner

We **welcome the government's Amendment 114** which essentially fulfils our intention that the Chief Coroner must be a High Court judge and a Deputy Chief Coroner may be recruited from among Senior Coroners. This would give the appropriate balance of judicial coronial expertise.

We do not believe that the Chief Coroner should be recruited from among Circuit Court judges who we believe would lack the experience necessary for the role.

Clause 30(3): Appeals to the Chief Coroner

We welcome the proposals for a more simple appeals procedure which affords the opportunity to bereaved people to raise concerns in a more informal manner. However we are concerned that as the only further appeal is to the Court of Appeal on a point of law, it means that the possibility of any challenge by way of judicial review in respect of most if not all coronial decisions would no longer exist.

Clauses 32-34: Governance: guidance, regulations and rules

We suggest there should be a rules committee including at the minimum coroners and practitioners, similar to the rules committees operating in relation to the Civil Procedure Rules. We consider this would assist in maintaining confidence in the process as controversy may arise in relation to rules making provision for evidence, anonymity, disclosure, or exclusion of specified persons during the giving of evidence by a witness under the age of 18 or by reasons of national security.

Clause 36: Interested persons

This clause expands slightly the list of "interested persons" in rule 20(2) of the 1984 Rules and empowers the coroner to determine that any other person is an interested person.

An additional category should be added, for instance *"in circumstances, where an interested person willing to represent the interests of the deceased does not exist, a coroner may recognise as an interested person an organisation or person who would be otherwise recognised an interested party for the purposes of judicial review proceedings."*

New Clause 36

One of the most important roles of the coronial service is the prevention of similar fatalities and to seek improvements in public health and safety by ensuring that lessons are learned, matters which are addressed in clause 24 and schedule 4 para 6: Power to report if risk of future death.

A new clause 36 requires the Chief Coroner to report to the Lord Chancellor annually on matters relating to the coroner service. We suggest that this clause could be strengthened to require inclusion "*in this report of an analysis of jury findings, reports made by a senior coroner under Schedule 4, 6 (1) and responses.*"

It would also be made stronger if the "*Lord Chancellor were required to make a motion in both Houses in relation to each report given under this section, and take any other action he or she considers appropriate in response to the report.*"

We recommend qualified support for the government's new clause NC36 which makes worthwhile steps in this direction.

New Clause 39: Funding for Families' Legal Representation

The Bill is silent on the question of funding for legal representation for bereaved people at inquests. While we welcome the government's recognition of the rights of bereaved people in the inquest process, exercise of these rights is cruelly hampered without adequate legal funding.

An inquest that raises article 2 ECHR issues - a death in custody or otherwise in state detention or on military service - often involves an attempt by the authorities to engage in damage limitation, restrict the public inquiry and defend the status quo. This is carried out by large teams of specialist lawyers funded by the taxpayer.

In contrast, at present Legal Aid for families may be provided only in narrowly drawn "exceptional" circumstances and is means-tested. This involves intrusive investigation of the bereaved family, causes delay and inhibits effective representation.

To facilitate the assessment of the options **we recommend support for the new clause NC 39.**

Schedule 1, Part 1, Paragraph 2: Adjournments

We note that this clause largely replicates s.16 of the Coroners Act 1988, save that it dictates that a coroner can only refuse to adjourn an inquest when there are parallel criminal proceedings when there is "exceptional" reason to do so. At present the test is that there is "good" reason not to adjourn. We do not know what the rationale is for this change, and we would urge the government to leave the test as it currently is.

Schedule 4 (1): Disclosure of documentary evidence

We welcome the provisions under schedule 4(1) which gives power to the coroner to compel a person to give evidence and produce documents. At present there is no mandatory right to pre-inquest disclosure of documentary evidence and this is a serious omission in the Bill. Paragraph 25 of the revised draft Charter for Bereaved Families says "disclosure of all relevant documents to be used in an inquest will take place, on request, free of charge and in advance of an inquest to those family members, whom the coroner has determined have an interest in the investigation."

We hope that the government will ensure in the rules that the coroners will be required to ensure that there is full and timely disclosure of all evidence to all interested persons and to require the Secretary of State to make rules to implement this.

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