

Inquests: more fundamental change on the horizon?

**Marcus Coates-Walker, Barrister,
St John's Chambers**

Published on Tuesday 7 November



Two wide scale reviews. Over 130 recommendations for improvement between them. Are we set to see another fundamental shift in how inquests are conducted? Whether you represent bereaved families, public institutions or both you should take notice.

In the last week we have seen two headline-worthy publications focusing on the fundamental principles that guide the inquest process.

On 30 October 2017, the Government published its response to the '*Independent Review of Deaths and Serious Incidents in Police Custody*' conducted by Dame Elish Angiolini QC earlier this year ('the Angiolini report').

Then, on 1 November 2017, The Right Reverend James Jones KBE published his report titled '*The patronising disposition of unaccountable power - A report to ensure the pain and suffering of the families involved in the Hillsborough inquests was not repeated*' ('the Hillsborough report').

They are two reports that go to the very heart of the principles that govern the inquest process. So what are the key points and what impact are they likely to have?

The Hillsborough report contains 25 points of learning across a range of subjects. Its author, Reverend Jones, believes each to be vitally important. However, three in particular are crucial:

First, he proposes the creation of a 'Charter for Families Bereaved through Public Tragedy'. This charter is inspired by the experience of the Hillsborough families which he states demonstrated the need for a substantial change in the culture of public bodies. He encourages leaders of all public bodies to make a commitment to cultural change by publicly signing up to the charter.

Second, he states that there is a pressing need for what he describes as ‘proper participation’ of bereaved families at inquests. He considers that there are four strands to ‘proper participation’ each of which is necessary:

- (i) **Publicly funded legal representation for bereaved families at inquests at which public bodies are legally represented.** He states that this could be achieved through amendments to the MOJ’s Exceptional Funding Guidance and should not need primary legislation. He recommends that the requirement for a means test and financial contribution from the family should also be waived in these cases. He states that, where necessary, funding for pathology or other expert evidence should also be made available. He holds the view that the cost of this change should be borne by those government departments whose agencies are frequently represented at inquests (including the Home Office, Department for Health, MOJ and MOD) based on the number of inquests which in an average year relate to each department’s area of responsibility.
- (ii) **An end to public bodies spending limitless sums providing themselves with representation which surpasses that available to families.** At the fresh Hillsborough inquests, the Home Office provided money to South Yorkshire Police to fund their legal expenditure. Importantly, however, Theresa May (when she was Home Secretary) placed conditions on the funding she provided to the police in order that it could not be used to fund legal representation more advantageous than that which was available to the families under the scheme established for them. Reverend Jones states that the government should learn the lesson of this approach and should identify a means by which public bodies can be reasonably and proportionately represented, but are not free to treat public money as if it were limitless in providing themselves with representation which surpasses that available to families.
- (iii) **A change to the way in which public bodies approach inquests, so that they treat them not as a reputational threat, but as an opportunity to learn and as part of their obligations to those who have died and to their family.** Reverend Jones believes that a cultural change is needed in order to tackle the increasingly adversarial nature of many inquests and to instead imbed a culture of openness and lesson learning. He makes a number of recommendations to relevant Secretaries of State in this regard, including: approaching the disclosure of relevant material in an open and timely manner, not arguing against coroners producing Prevention of Future Deaths reports and holding public bodies’ senior personnel accountable for the way in which their organisation acts at inquests. Further, he suggests that perhaps training is necessary for solicitors and barristers working in the inquest system to

ensure they understand the proper way to approach inquisitorial (as opposed to adversarial) proceedings.

- (iv) **Changes to inquest procedures and to the training of coroners, so that bereaved families are truly placed at the center of the process.** Reverend Jones makes a number of recommended changes to achieve this goal. These include: the use of pen portraits (tributes to the deceased), displaying photographs of the deceased during the inquest, using position statements, making further improvements to the recruitment training of coroners and widening the scope of disclosure to documents that are '*potentially* relevant to the inquest' rather than just 'relevant to the inquest'.

Third, Reverend Jones calls for the establishment of a 'duty of candour' for police officers similar to that which has already been introduced in the NHS following Sir Robert Francis' inquiry into Mid-Staffordshire NHS Foundation Trust. He believes that there is currently a gap in police accountability arrangements and proposes a duty of candour to address the (in his words) "*unacceptable behaviour of police officers - serving or retired - who fail to cooperate fully with investigations into alleged criminal offences or misconduct*".

Only days before Reverend Jones published his report, the government published its response to the review into deaths and serious incidents in police custody conducted by Dame Elish Angiolini QC. The review makes 110 recommendations which span a number of themes, including: the use of restraint, the custody environment, health and wellbeing, funding for families and family support, communications, investigations, coroners and inquests, accountability, training, learning, statistics and research.

The key highlights of the government's response include:

- (i) The government commits to review existing guidance so that the starting presumption is that legal aid should be awarded for representation of the bereaved families at an inquest following a suspicious death in police custody or in prison. In relation to this new presumption that legal aid should be awarded, the Lord Chancellor stated: "*We recognise that the route to legal aid in inquests relating to deaths in police custody and prison can be complex and intrusive for families. That is why I am taking immediate steps to make it the starting presumption that legal aid should be awarded in such cases. I want to prevent the distress for families of having to fill out complex forms on means testing, and to make sure the bereaved are fully aware of their rights.*" This work will be completed by the end of the year, alongside steps to ensure the bereaved are made fully aware of their rights under the guidance in every case.

- (ii) They also make it clear that (from December 2017) police cells will not be used as places of safety for those under the age of 18 detained under the Mental Health Act and that transparency and accountability in police use of force has been improved through better data collection.

- (iii) A cross-government ministerial council will consider further recommendations for healthcare, inquests and support for families.

The Hillsborough and Angiolini reports are very clearly focussed at putting bereaved families at the heart of the inquest process. Families and their respective legal representatives will take hope from the government's initial response (to the Angiolini report at least) that further fundamental change is on the horizon.

That said, it is not necessarily bad news for state bodies. On the one hand, increased focus on bereaved families and enhanced transparency and disclosure obligations may appear to increase the reputational risk for public institutions at inquests. However, if legal representatives use the inquest process as an opportunity for learning rather than an adversarial fight, state bodies are likely to find their practices improve as a whole and (hopefully) that will lead to an overall reduction in the number of deaths they see in their institutions.

Marcus Coates-Walker
St John's Chambers

7 November 2017