



Ministry of Justice – Establishing an Independent Public Advocate consultation

JUSTICE consultation response

December 2018

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Introduction

1. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system – administrative, civil and criminal – in the United Kingdom. It is the UK section of the International Commission of Jurists.
2. JUSTICE submits this response to the Ministry of Justice's ("MoJ") open consultation on Establishing an Independent Public Advocate ("IPA").
3. JUSTICE is currently in the early stages of scoping for a major project, provisionally titled "*When Things Go Wrong*". This proposed Working Party of JUSTICE will consider the way in which the justice system responds to major disasters; what a person affected by the disaster truly needs from the justice system; and ways in which our legal fora might be reformed to better accommodate these needs – ultimately aiming to formulate practical recommendations for change.
4. Our interest in the MoJ's consultation is in the context of this work, which is still at an embryonic stage. Our thoughts below reflect our early engagement on these issues, and are based on the principles of access to justice, procedural rights and user-focus that run throughout our work.
5. JUSTICE is heartened that Government is already considering reform in this area and we are not opposed in principle to the establishment of a new office or role such as the IPA. However, we feel that the consultation paper provides insufficient reassurances on i.) ensuring the role does not duplicate, or indeed encroach on, the role of legal representatives, and ii.) how independence from Government can be safeguarded.
6. We would welcome ongoing dialogue with the MoJ on the topic of an IPA as the proposals develop following the consultation phase.

Question one: Do you agree with us about the need for the Independent Public Advocate? Please give your reasons

7. JUSTICE agrees with the following proposition in the consultation paper:

there are times when the scale and complexity of a disaster can make it challenging to provide the support the bereaved need. There have been occasions when bereaved people have felt that they have been marginalised and have been

*unable to engage effectively. Occasionally too [...] investigations have not fully established what happened and further investigations have been required.*¹

Indeed, a steady stream of anecdotal evidence suggests that victims of, or those bereaved by, tragic events experience our current fact-finding mechanisms – inquests and public inquiries being the chief examples – as re-traumatising, alienating and highly adversarial experiences.²

8. Further problems arise in respect of securing timely justice and accountability. There is no guarantee that the conclusions of a public inquiry that has taken several years to come to its conclusions – as is invariably the case –³ will be followed by a tribunal empowered to award compensation. Equally, there is no mechanism to ensure that the findings of a fact-finding body will automatically kick-start criminal prosecution; indeed, concurrently running police investigations tend to have the effect of hampering the progress of inquiries (and vice versa).
9. JUSTICE therefore welcomes establishing an IPA if such an office is geared to address these issues. However, we would also stress from the outset that the introduction of such an office must not dissuade users from seeking independent, impartial legal representation, nor government from providing legal aid to victims/bereaved families in inquests and public inquiries as of right.
10. Further, the IPA (in line with our proposals for the new online court) must come with an “independent look and feel”;⁴ the position is valueless if it comes to be perceived as Government merely extending its control over the investigatory landscape.
11. Beyond an “independent look and feel”, it will be critical to ensure the IPA is located in such a way that will promote its uptake by those who need its assistance.

¹ Ministry of Justice, ‘Consultation on establishing an Independent Public Advocate’ (September 2018), Executive summary p. 5.

² See for example: Seraphima Kennedy, ‘A year into the Grenfell inquiry, the families have been failed again’ (*The Guardian*, September 2018); Alison, ‘Undercover police abused female activists. But the inquiry is a farce’ (*The Guardian*, February 2018); Dr Sara Ryan, *Justice for Laughing Boy: Connor Sparrowhawk – a Death by Indifference* (London, 2018).

³ See Institute for Government, ‘How public inquiries can lead to change’, p. 21. The Bloody Sunday inquiry (1998) took over 12 years to publish its conclusions.

⁴ See JUSTICE, ‘Preventing Digital Exclusion from Online Justice’ (April 2018), para 3.38, available at <https://2bqk8cdew6192tsu41lay8t-wpengine.netdna-ssl.com/wp-content/uploads/2018/06/Preventing-Digital-Exclusion-from-Online-Justice.pdf>.

Question four: Should the Independent Public Advocate only be involved where there are fatalities? Please explain your answer.

12. JUSTICE's initial evidence gathering suggests that the problems mentioned above – delays in timely justice, user alienation and perceptions of whitewashing – pertain to the justice system's response to all types of tragedies. Indeed, these issues may be keenly felt where victims remain alive; the Independent Inquiry into Child Sexual Abuse and Undercover Policing Inquiries provide compelling examples. JUSTICE would suggest that any reforming measures are not limited to cases where there are fatalities.

Question ten: Do you agree that the Independent Public Advocate should potentially be involved across the range of investigation types, or do you think their involvement should be limited to inquests and public inquiries? Please give your reasons.

13. Determining the scope of the Independent Public Advocate's role is clearly a highly complex exercise. At this juncture, we would merely suggest that the problems identified above – whilst exemplified in the inquest and inquiry context – can indeed materialise in the “range of investigation types”.

14. We are particularly concerned that Independent Office of Police Complaints (IOPC) investigations are closely monitored – the Sean Rigg inquest (which prepared the ground for the suspension of officers who had originally been exonerated by the IPCC)⁵ demonstrated the consequences of insufficiently rigorous internal investigations.

15. JUSTICE is still determining the scope of its own work in this space and may choose not to look at investigatory bodies such as the IOPC, Health and Safety Executive and Care Quality Commission. With regard to establishing an Independent Public Advocate, we would recommend that oversight of “the range of investigation types” is at the very least evaluated.

Question twelve: Do you think the Independent Public Advocate should be required to report on their work? If yes, when and to whom should the Independent Public Advocate report?

⁵ See IOPC [formerly IPCC], ‘Statement following judgment regarding suspension of Metropolitan Police officer’ (13 April 2018), available at <https://policeconduct.gov.uk/news/statement-following-judgment-regarding-suspension-metropolitan-police-officer>.

16. An instructive analogue may be the reporting obligations of the Independent Reviewer of Counter-Terrorism Legislation.
17. Reporting to Parliament, at the very least, may encourage a feedback loop such that Government conduct through the fact-finding process and in its aftermath can be properly scrutinised by the legislature, and more generally by the public

Question fourteen: Do you think the Independent Public Advocate should have a role in working with the bereaved where concerns are raised about the outcome of a past inquiry? If so, what should that role be?

AND

Question fifteen: Do you think the Independent Public Advocate should have a role in advising ministers where there is ongoing concern about the outcome of an inquiry?

17. JUSTICE feels that review of previous fact-finding processes is a fruitful area for further consultation and research. In our own evidence gathering sessions, one consultee was explicit about the need for follow-up and review of the Grenfell Inquiry, telling us: “we’ll need another project to assess the impact of all of this”. The ability to perform this function could be the value-add of an office or role such as the IPA.
18. JUSTICE has highlighted consultation questions fourteen and fifteen in tandem as they point to discrete roles that an IPA might play, clearly distinct from that of a legal representative. As in paragraph 9, above, the notion that establishing an IPA might in some way serve to supplant independent legal representatives remains JUSTICE’s primary anxiety about the proposals.

19. Further discrete roles that an IPA might assume include:

- i.) A watchdog to:
 - a. ensure the inquest/inquiry process and system maintains impartiality/legitimacy; and/or
 - b. monitor the quality of evidence gathering, (akin to HMIP);

with institutional independence guaranteed by statute and reflected by institutional behaviour reflecting impartiality from government;

ii.) A guide to the network of other public services that need to respond in times of disaster; explaining to users how to navigate local councils, the NHS etc.

20. As in paragraph 6, above, JUSTICE would welcome ongoing dialogue with the MoJ as the scope and functions of the potential office are fleshed out.

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