House of Commons

Justice Committee

Coroners and Justice Bill: Government Response to the Committee's Second Report of Session 2008–09

First Special Report of Session 2008–09

Ordered by the House of Commons
to be printed 3 March 2009

HC 322
Published on 6 March 2009
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

The Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

Current membership

Rt Hon Sir Alan Beith MP (*Liberal Democrat, Berwick-upon-Tweed*) (Chairman)
David Heath MP (*Liberal Democrat, Somerton and Frome*)
Siân James MP (*Labour, Swansea East*)
Daniel Kawczynski MP (*Conservative, Shrewsbury and Atcham*)
Jessica Morden MP (*Labour, Newport East*)
Julie Morgan MP (*Labour, Cardiff North*)
Rt Hon Alun Michael MP (*Labour and Co-operative, Cardiff South and Penarth*)
Robert Neill MP (*Conservative, Bromley and Chislehurst*)
Dr Nick Palmer MP (*Labour, Broxtowe*)
Linda Riordan MP (*Labour and Co-operative, Halifax*)
Virendra Sharma MP (*Labour, Ealing Southall*)
Andrew Turner MP (*Conservative, Isle of Wight*)
Andrew Tyrie MP (*Conservative, Chichester*)
Dr Alan Whitehead MP (*Labour, Southampton Test*)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House.

All publications of the Committee (including press notices) are on the internet at www.parliament.uk/justicecom

Committee staff

The current staff of the Committee are Fergus Reid (Clerk), Dr Rebecca Davies (Second Clerk), Ruth Friskney (Adviser (Sentencing Guidelines)), Ian Thomson (Group Manager, Senior Committee Assistant), Hannah Stewart (Committee Legal Specialist), Sonia Draper (Committee Assistant), Henry Ayi-Hyde (Committee Support Assistant), Gemma Buckland (Public Policy Specialist, Scrutiny Unit) and Jessica Bridges-Palmer (Committee Media Officer).

Contacts

Correspondence should be addressed to the Clerk of the Justice Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 8196 and the email address is justicecom@parliament.uk

First Special Report

The Justice Committee published its Second Report of Session 2008–09 on the Coroners and Justice Bill on Friday 23 January 2009, as HC 185. The Government response was received on 2 March 2009 in the form of a letter from the Rt Hon Jack Straw MP, Secretary of State for Justice and Lord Chancellor, to the Chairman of the Committee which is appended below.

Appendix: Government Response

I am grateful to the Justice Select Committee for their report on the Coroners and Justice Bill published on 23 January 2009. I attach our response to the conclusions and recommendations set out in the report.

This is an important Bill which will contribute to our objectives of providing a more effective, responsive and transparent justice system for victims, witnesses and the wider public. The Bill will also ensure that the needs of bereaved families are at the heart of the reformed coroners service.

I am conscious that while many provisions in the Bill have been widely welcomed, there are a number, including those addressed in your report, which have given rise to concerns. As the response indicates, I remain ready to consider constructive suggestions for improving the provisions in the Bill.

Government Response to the conclusions and recommendations of the Justice Committee Report on the Coroners and Justice Bill:

Coroners

1. Localised provision with national guidelines remains the Government's approach to the coroners service as set out in the Coroners and Justice Bill. We remain concerned that expectations raised by the Government's reforms may not be met by the proposed arrangements, particularly in the light of the diversity of funding and availability of facilities which exists across different areas. (Paragraph 6)

The reformed system will have the best features of a national structure, headed by a Chief Coroner, alongside and complimenting the best features of local service delivery. There will be a very much less fragmented system, by having a majority of full-time coroners as well as central leadership, guidance and performance monitoring. Local authorities will retain funding responsibility for the local coroner service and, as such, will need to continue to provide the funding for that service. As now, they will continue to provide accommodation and staff—in conjunction with Police Authorities where relevant in respect of staff—and this responsibility is strengthened in the Bill. If a senior coroner believes that he or she is being under-funded, the Chief Coroner will be in a position to support their case to the relevant local authority.

The reforms will not add to coroners' workloads but are intended to focus them more precisely. Specific proposals will:

a) List the characteristics of cases which doctors should report to coroners; and

b) Allow independent medical examiners to scrutinise the death certificates of those cases not reported, and to provide or procure specialist medical advice on some cases which are reported to coroners.

This will help because:

a) At present, coroners have reported to them some 45% of deaths each year (approximately 235,000 in 2007).

b) They commissioned about 110,000 post-mortems in 2007.

c) There were 31,000 inquests.

There are therefore about 120,000 cases where there is no post-mortem and no inquest (there will be a few cases which go to inquest which have not had a post-mortem). A few thousand of these will be difficult cases—for example, deaths abroad, or cases where the family are insistent on a coroner's investigation—but many of them should not be reported to the coroner in the first place.

These combined proposals—a list of cases which should be reported and the role of medical examiners—will therefore have the effect of a) significantly reducing the number of deaths reported to coroners and b) reducing the number of post-mortems.

This will make a considerable impact on the resourcing of the coroners' system. On the one hand, it will remove cases which can at worst bog down, and at best, distract the coroner system from its core work of investigating unnatural deaths and on the other begin the process of reducing the number of costly post-mortems—the rate is about double what it is in jurisdictions in New Zealand and Australia.

Additionally, the national minimum standards which the Chief Coroner will set, based mostly on current good practice, will ensure more consistency of approach between coroners. This in itself is likely to lead to resource savings.

Finally, the new independent inspection will provide feedback on how individual coroners operate administratively, and examine and comment on the use of resources.

2. The Government must make clear during the passage of the Coroners and Justice Bill what arrangements it intends to put in place to secure adequate and appropriate coroners' services and facilities in rural areas with scattered communities. (Paragraph 7)

Coroners will be appointed by local authorities, with the approval of the Lord Chancellor and the Chief Coroner. They will remain responsible, as now, for a specific geographical area, although these areas may be altered to create, as far as possible, whole time caseloads. The Lord Chancellor will also determine, in consultation with the Chief Coroner and the local authority, how many support coroners—known as area coroners and assistant coroners—are required for a particular area. The creation of larger coroner jurisdictions would not mean reduced access locally: as well as support coroners, inquests could, as now, be held in a number of different locations within the jurisdiction. If necessary, part-time

coroners may be retained in some rural areas, or in support of full-time coroners in other areas. Local authorities will be consulted—and the Welsh Ministers, as appropriate—before any changes are made to area boundaries.

3. The Coroners and Justice Bill contains provisions designed to implement aspects of the Government's "Improving the process of death certification programme", which aims to establish: unified arrangements for burial and cremation; robust scrutiny of cause of death certificates; more efficient, transparent and convenient processes for the bereaved and for funeral directors; and better information for local clinical governance and public health surveillance. (Paragraph 9)

4. Our view, supported by some medical practitioner bodies, is that the role envisaged for the new medical examiners contained in the Coroners and Justice Bill—independent scrutiny of death certification—implies a need for a line of accountability between examiners and the new national medical advisor to the new chief coroner, at the very least, if not complete independence from the NHS. If the need for more direct access to medical expertise by coroners is accepted, there is a clear case for medical examiners to be employed by the Ministry of Justice, or directly by the coroners service, rather than undertaking this work as NHS employees. (Paragraph 11)

Medical examiners will be attached to Primary Care Trusts and Local Health Boards so that they can work with clinical governance teams to establish whether patterns or clusters of deaths give any cause for concern and to improve medical provision in the area. They will, however, work closely with coroners, not least because an ancillary part of their role will be to provide general medical advice to coroners. The close working relationship between the medical examiner and the coroner will be strengthened by the Government's proposal that coroners should be involved locally in the process for appointing medical examiners. Clearly, it is vital that the public are confident that medical examiners will carry out an independent scrutiny. The Bill ensures this independence in two ways. First, by specifying that Primary Care Trusts in England and Local Health Boards in Wales can have no role in relation to the way in which medical examiners exercise their professional judgement as medical practitioners (clause 18(5)). Second, by enabling regulations to be made (under clause 18(4)(d)) specifying the procedure to be followed by medical examiners in carrying out their functions; such regulations will reinforce medical examiners' responsibility to carry out independent scrutiny of medical certificates of the cause of death.

The National Medical Adviser to the Chief Coroner will be the interface between the Chief Coroner's Office and the Medical Examiner Service. He or she will agree, on behalf of the Chief Coroner's interests and with particular focus on how the medical examiners will work with coroners, the national protocols setting out the minimum level of scrutiny that medical examiners must complete, agree a national job description for medical examiners, have input in their curriculum and training and resolve disputes between medical examiners and coroners. This element of the role will be defined more exactly in regulations. Other key parts of the role will be:

- advising the Chief Coroner on policy and practice in relation to post-mortems, including non invasive techniques, and maintaining a database of experts qualified other than medically to carry out specialist examinations;

- advising the Chief Coroner on issues relating to the prompt release of bodies for funerals, and related issues about the retention of organs and tissue, including liaison with faith groups and others with an interest;
- developing training for coroners and coroner's officers on medical issues; and
- advising the Chief Coroner on medical aspects of appeals by interested persons.

Given these functions and that the jurisdiction of the Chief Coroner's Office is to deal with matters relating to violent, unnatural deaths or those of unknown cause, we do not believe it would be appropriate or practical for the National Medical Adviser to be responsible for up to 1,000 part-time medical examiners spread across England and Wales.

5. The Government withdrew the clauses providing for inquests without juries from the Counter-Terrorism Bill in 2008 but has re-introduced similar provisions in the Coroners and Justice Bill. However, we are not aware of any consultation on these provisions having taken place in the intervening period despite reservations having been expressed by the two most relevant select committees of the House. These clauses, and the changes made to them since their first appearance in the Counter-Terrorism Bill, will therefore merit close and careful scrutiny as the Coroners and Justice Bill passes through Parliament. The Government should be prepared to withdraw them once again if it cannot justify these provisions as proportionate and fully compatible with Article 2 of the ECHR. (Paragraph 14)

Unfortunately it was not possible to conduct a consultation given our commitments to resolve this problem quickly for the sake of the two inquests thought to be halted on these grounds, as well as to ensure the provisions were ready at the time of the Bill's introduction. There was extensive Parliamentary debate on the relevant provisions during passage of the Counter-Terrorism Bill, as well as comment from a variety of stakeholders on those proposals, so views on them were already well known. Since then Bridget Prentice has met with key stakeholders including INQUEST, Liberty, Justice and Amnesty International and two of these organisations gave oral evidence to the Public Bill Committee.

We have made significant changes to the provisions in the Counter-Terrorism Bill in response to concerns over the proposals—including by specifically limiting the issue of a certificate to those cases where no other measures would be adequate to prevent the matter being made public (for example, redaction of material, allowing witnesses to give evidence anonymously) and tightening the grounds in respect of which an inquest may be certified. In addition, any such inquests would have to be conducted by a High Court judge appointed by the Lord Chief Justice. The Government is firmly of the view that the proposed changes are necessary in order to ensure that we are able to comply with our Article 2 obligations, when required—that is, when the state is implicated in the death, for a broad inquiry into the facts of the death while protecting the integrity of the material in question (paragraphs 798 to 810 of the Explanatory Notes to the Bill set out our reasons for arriving at this view).

We recognise that the provisions in clause 11 of the Bill continue to cause disquiet. As the Justice Secretary made clear at Second Reading on 26 January 2009, the Government

remains open to considering other constructive suggestions for addressing this difficult issue.

6. We welcome the Government's latest proposals for a charter for bereaved people in contact with the coroner system. However, we have already expressed our concern about the risk that not all coroner areas will be able to fulfil the expectations raised by the Government's overall plans for reform. We are especially concerned that bereaved people in particular may be disappointed in circumstances where variable standards in service are likely to persist, despite a charter, as a result of continuing reliance on localised arrangements leading to diverse levels of funding and facilities in different areas. (Paragraph 17)

The Charter for Bereaved People will describe the services that bereaved people can expect to receive from a reformed coroner service, and sets out the rights of redress if those services are not delivered. It will not, however purport to direct coroners as to the decisions they should take in individual cases. Bereaved people will be able to complain to the Chief Coroner if they are unhappy either with the standard of service they have received from the coroner, or a failure to deliver a service outlined in the Charter—for example if they were not given information at each stage of the coroner's process. The Chief Coroner will decide what action should be taken. Any cases of misconduct which might require investigation will be referred to the Office for Judicial Complaints.

We will work with coroners, in advance of implementation, to assess fully the impact on resources that might arise out of the Charter's introduction. As indicated above, the reforms to the death certification procedure are expected to lead to a significant reduction in the number of deaths reported to coroners and in the number of post mortem examinations commissioned by coroners which will free up resources to be re-deployed elsewhere within the service. In addition, we expect that over time the dissemination of best practice and national standards through the office of the Chief Coroner will identify opportunities for further efficiencies and this too will allow resources, if required, to be re-directed to new requirements set out in the Charter, such as greater advance disclosure.

Information Commissioner

7. We believe that it would be most helpful if the details of the resources to be available to the Information Commissioner via graduated data protection notification fees were to be published before the second reading of the Coroners and Justice Bill and we recommend that this information be made available at the latest before the relevant provisions in the bill are reached in public bill committee. (Paragraph 20)

As outlined in Michael Wills' letter of 26 January 2009 to the Committee, the proposal to change the notification fee structure from a flat to a tiered one stemmed from the Data Sharing Review, conducted by Sir Mark Walport of the Wellcome Trust and the Information Commissioner, Richard Thomas.

The Ministry of Justice consulted on this and other related matters in the consultation on the Information Commissioner's inspection powers and funding arrangements in 2008. As a result of this, the Government committed to adopt a tiered notification fee structure which will more accurately reflect the actual costs of regulating different sized data controllers. This would also provide an opportunity to increase the annual revenue of the

Information Commissioner's Office (ICO) to ensure it has the appropriate resources to carry out its functions.

The two-tiered notification fee structure will be taken forward in an amendment to the Data Protection (Notification and Notification Fees) Regulations 2000. Work is still underway on the details of these amendments. The Ministry of Justice is working closely with the ICO to ensure that the proposed fee structure reflects the level of work involved in regulating data controllers and provides the required additional funding to the ICO.

The additional funds collected through the proposed tiered notification fee structure will cover the Information Commissioner's existing and new workload as a result of the Coroners and Justice Bill. The Information Commissioner has advised that the cost of fulfilling his data protection regulatory and advisory responsibilities is £16 million per year. This amount is to be funded in full through the revised fee structure, which is expected to be in place later this year.

We will ensure that the Committee is informed of any further information about the proposed fee structure once it has been determined.

8. Given the significance of the proposed data-sharing code of practice in governing the practical application of policy in this area, we recommend that the Government bring forward amendments to the Coroners and Justice Bill to provide for Parliamentary scrutiny of any draft data-sharing code of practice, or amendments thereto, under affirmative resolution procedure, thus ensuring the opportunity for debate and a vote in both Houses. (Paragraph 22)

We accept that it is appropriate that the Code be subject to Parliamentary scrutiny in order to provide oversight of how guidance on the important area of data sharing is developing. However, we do not agree that the affirmative resolution procedure is appropriate in this case. The negative resolution procedure has been selected because it is considered that whilst Parliament should have sight of the Code and the opportunity to consider its content, it does not warrant a more rigorous procedure. The negative resolution procedure already goes beyond what is provided for in relation to codes of practice that the Information Commissioner produces under section 51 of the Data Protection Act 1998. If the Secretary of State directs the Commissioner to produce a code of practice under that section it must be laid before Parliament, whilst other codes are not laid before Parliament at all.

The Secretary of State must be satisfied that the code is compatible with any community obligations, for example, Directive 95/46/EC, or any international obligations of the UK. Parliament is given the opportunity to review the code and may resolve not to approve it. In this case, the Information Commissioner may take into consideration any comments raised throughout the process and must resubmit another code for approval by the Secretary of State and Parliament.

9. In scrutinising the provisions of the Coroners and Justice Bill relating to data-sharing, we recommend that the House pays particular attention to:

- **the scope of the data-sharing order-making powers granted to Ministers and the potential for safeguards in relation to such scope to be included on the face of the bill;**

- **the likely practical effects of a data-sharing code which will not be legally binding but may be taken into account by a court, tribunal or the Commissioner, in determining a relevant matter; and**

- **the likely capacity of the Information Commissioner, within the resources available, to undertake effective investigations, analyses and consultations, as well as the production of reports, within the 21 days notice set out on the face of the bill in relation to individual draft orders. (Paragraph 24)**

Under the provisions in clause 152, an information sharing order can only be proposed if the designated authority is satisfied that the effect of the order is proportionate to the policy objective to be secured and that it strikes a fair balance between the public interest and the interests of persons affected by it. Furthermore, the designated authority must invite representations from as large a class of affected persons as is reasonable, and must take account of any representations made.

The Bill also specifies a range of additional safeguards, which balance any concerns about the scope of the order making powers granted to Ministers. These additional safeguards include:

- the appropriate Minister is entitled to make an information sharing order only with the consent of the Secretary of State with primary responsibility for government policy in relation to the protection of data;

- the Information Commissioner may review and report on the order and whether he is satisfied that its effect is proportionate and strikes a fair balance between the public interest and the interests of persons affected by it;

- a Privacy Impact Assessment must be completed for any order;

- the order is subject to the affirmative resolution procedure.

The Bill explicitly sets out that the provisions of the data-sharing code of practice must be taken into account by any court, or tribunal and by the Information Commissioner in carrying out his regulatory functions if they are relevant to a matter under consideration. While the code is not legally binding, this will ensure that the data sharing code is taken into account in any relevant legal proceedings relating to the sharing of personal data under an information sharing order. Oversight by the Information Commissioner of the making of an information sharing order is provided for separately under the procedure for making such an order.

The Information Commissioner has advised that his estimate of the costs of fulfilling his regulatory and advisory duties, including existing and new duties, is £16 million. As noted above, this amount is to be funded in full through the revised notification fee structure, which is expected to be in place later this year.

The Commissioner will have 21 days to issue a report stating whether he is satisfied that the effect of the proposal is proportionate to the policy objective to be secured and strikes a fair balance between the public interest and the interest of affected individuals. This provides him with the opportunity to raise any concerns he may have in relation to the proposed sharing. If the Commissioner submits a report, this must be laid before Parliament with the draft order. Parliament therefore is given the benefit of the Information Commissioner's view when considering the order. These measures ensure that any potential data protection issues and risks are identified and examined. We consider that 21 days is an appropriate period of time to provide for the Information Commissioner to submit a report on individual draft orders.

In his written submission to the Public Bill Committee (CJ 02), the Information Commissioner commented that he was pleased that the Bill provides an opportunity for his Office to produce a report to Parliament when an information-sharing order is introduced. The Commissioner also noted that the provision will allow his Office to ensure that safeguards are in place and that individuals' rights are respected.

Whilst the Bill already contains a number of significant safeguards around the use of this order-making power, the Government is aware that there is continuing widespread concern about the scope of the power. The Government is ready to consider proposals for additional safeguards from the Justice Select Committee and others as the Bill continues to make its parliamentary passage.

10. In addition, it is unclear whether the bill deals with the situation where it may be in the public interest for the personal data in question to be shared, but the body holding that data makes no application to do so. (Paragraph 25)

The order making power in the Bill is an enabling power, as distinct from a compulsory power. The process to create an order is intended to be collaborative between the bodies proposing to share information and nothing in the Bill requires a data controller to release its information to another person or body.

11. We recommend that the Government bring forward amendments to the Coroners and Justice Bill to allow for consideration of the case for making the Information Commissioner directly responsible to, and funded by, Parliament. (Paragraph 27)

This recommendation represents a significant reform of the UK data protection framework and would require further consideration and analysis. Given the time restraints on the parliamentary schedule, such reform would be best considered separate to the Coroners and Justice Bill.

Sentencing

12. We recommend the most careful consideration of those provisions of the Coroners and Justice Bill relating to the remit of the new Sentencing Council for England and Wales. (Paragraph 32)

We welcome careful consideration of the clauses relating to the Sentencing Council. We have already indicated a willingness to consider changes that improve these clauses. We do not agree however with the suggestion that the work of Lord Justice Gage's working group

was undermined by the time taken to conduct their review. The Working Group's Report is a thorough examination of the issues. The Working Group did not think they were rushed, as their report states (at paragraph 1.7) "we believe the conclusions we have reached have not been adversely affected by the short time in which we have been required to carry out our work".

13. By convention this Committee has been consulted by the Sentencing Guidelines Council in advance of the issue of new definitive guidelines; and has taken evidence in specific instances when appropriate and practical to do so. It is not clear from the face of the bill what role is envisaged for Parliamentary scrutiny of draft guidelines in the future. In our view it is essential for Parliament to continue to be involved in the process whatever new structures are put in place. (Paragraph 34)

We agree. Bridget Prentice has tabled amendments to clauses 102 and 104 for Commons Committee stage which will place a duty on the Sentencing Council to consult the Justice Select Committee about draft guidelines.

Rt Hon Jack Straw MP
Secretary of State for Justice and Lord Chancellor
Ministry of Justice
28 February 2009