

## Chief Coroner

The post of Chief Coroner was created as part of the Coroners and Justice Bill which was introduced into Parliament in January 2009, following extensive consultation. It became an Act on 12 November 2009. The Bill was designed to address problems in the inquest system such as delays, inconsistency of approach, lack of resources and oversight. These problems were recognised, for example, in the Luce Report which had previously highlighted the 'lack of any consistent training and appointment processes, the loose and inconsistent procedural framework, the absence of any dedicated higher court structure of the kind which in other areas of justice provides accountability and a means of rectifying mistakes, the emphasis on process rather than a more general investigative function in the legislation and rules, and the absence of clear objectives' (Luce, 2003, p.72). Similar concerns had also been raised by the Shipman Inquiry (2003) and the Deepcut Review (2006).

In introducing the Bill the Government stated:

'The Bill is intended to ensure that victims and witnesses are at the heart of the justice system. The coroners part of the Bill aims to improve significantly the service that bereaved families receive from a reformed coroner system—it has not been reformed for a very long time—and will introduce a related new death certification system, which I hope will provide people with the necessary reassurance that there is independent checking of the causes of death' (Prentice, 3<sup>rd</sup> February 2009).

The post of Chief Coroner was designed to set national standards in the coroner system, and develop a national framework within which coroners could operate, including rules and regulations, guidance and practice directions. The passage of the Bill was somewhat controversial with provisions for secret inquests remaining despite sustained campaigning by stakeholder organisations such as INQUEST (2009). In total the Act took three years of review and consultation before it became law.

In March 2010 the Ministry of Justice published a consultation paper entitled 'Reform of the Coroner System Next Stage: Preparing for Implementation' which asked for views on issues such as conduct of inquests, a new appeals system and training for coroners. The consultation closed on 1<sup>st</sup> July 2010.

On the 6<sup>th</sup> of May 2010, the day before the general election, the first chief coroner was appointed and was due to take up post in 2010. However, after the general election the appointment was reversed, a process Peter Thornton QC described as follows: 'The civil servants came to see me with gloomy faces and I was very politely told to keep up the day job at the Old Bailey. It is not often that you get an apology in person from the Lord Chief Justice and the Lord Chancellor two days running. They were really very nice about it' (21<sup>st</sup> September 2012). Stakeholders were told at the time by the Deputy Director responsible for Coroners, Burials and Legal Services Regulation and Redress that:

'We know that many of you are awaiting, with keen interest, the announcement of the appointment of the first Chief Coroner for England

and Wales. The new Lord Chancellor and Secretary of State for Justice has considered this and in the light of the financial challenges facing Government as a whole, has asked that no announcement be made at this time. He has also asked that my team review the scope and timing of the plans to implement the coroner measures contained in Part One of the Coroners and Justice Act 2009, and to provide further advice to him and to the Minister responsible for coroner reform, Jonathan Djanogly MP' (Inquest, 2010).

Subsequently the post of chief coroner was placed in schedule 1 of the Public Bodies Bill; a positioning which would see the role abolished. This decision was justified 'mainly on financial grounds' (Lord McNally, 3<sup>rd</sup> November 2010), as costs estimated at £10million for the initial creation and £6.3million annually were seen to be prohibitive given the austere climate of government.

The reaction to this decision was a coordinated campaign by stakeholders and members of both houses of Parliament. It marked the culmination of a number of ongoing relationships between Lords and MPs who had an interest and/or had been active on the Coroners and Justice Act, and stakeholder organisations such as the Royal British Legion (RBL) and Inquest. Their attention was focused on protecting the post of Chief Coroner as whilst there had been provision in the original Act for an appeals panel the Government were, as one interviewee described, 'fixated' that it should not be established. Accordingly a strategic decision was made by those involved to sacrifice the appeals procedures in order to secure the post itself – a decision which was based, as once interviewee commented, on the belief that the role could expand once in place. The RBL, Inquest and Lords led the campaign and were supported by a number of organisations such as CRY and SiD. Interested parties had no formal prior notification of the decision to abolish the role. No formal strategy was developed but activity was co-ordinated between 2010 and 2012 to ensure that maximum pressure was applied to government.

Within Parliament opposition to the changes came from both houses. Labour's Shadow Cabinet Office minister Michael Dugger MP argued in the commons that '[h]onouring the commitment to create the office of chief coroner is the first test of the new military covenant - that bond between the nation and our armed forces. To fail in their duty to meet that test, would make a mockery of the government's assurances of greater support for our military and their families' (Hansard, 25<sup>th</sup> October 2010). Opposition was not simply voiced by Labour as a Conservative MP, Andrew Percy, laid an amendment to the Public Bodies Bill in the Commons which would force ministers to appoint a chief coroner (The Telegraph, 23<sup>rd</sup> October 2011). In the House he said:

'I tabled the amendment with the full support of the Royal British Legion, Inquest and the British Medical Association, and I have recently found out that Liberty also supports it, which might divide opinion on this side of the House. All those organisations want to see a chief coroner appointed as soon as possible, and my amendment would achieve exactly what the British Legion and others are asking for' (Hansard, 25 Oct 2011: Column 246).

Whilst the amendment received support it was ultimately defeated 287-235. An early day motion on this issue was also tabled in the House of Commons by Kate Green and gained 73 signatures.

Similar opposition was evident in the House of Lords where concerns were voiced by Lord Howe of Aberavon, Baroness O'Loan, Baroness Finlay of Llandaff and The Bishop of Lincoln. As one interviewee reported 'there was quite a strong body of people who were interested in the issue' because of experience relating to the topic or involvement in the Coroners and Justice Act 2009. Baroness Finlay laid an amendment in committee stage designed to remove the chief coroner from schedule 1 (14<sup>th</sup> December 2010: Column 529). This was widely supported and was passed by 277-165 votes, marking the largest government defeat to date (at that point in time). This victory had not been anticipated by the Lords involved, however, significant preparatory work had been done to maximise support.

A great deal of networking occurred to promote the importance of establishing the Chief Coroner. Meetings were obtained with Ministers to try and counter their arguments and persuade them to change position. Long briefings were also prepared for Ministers, Lords and Ministry of Justice officials. Additional meetings were held for peers at which individuals affected by the lack of a chief coroner spoke to underline the importance of the role. Particular attention was paid to trying to convince cross-benchers and Liberal Democrats, who had previously voiced support for the post of Chief Coroner in the 2009 debates, to either abstain or rebel against the government. As one interviewee reported:

'They'd all been convinced once, and I suspect that certainly the Lib Dem element I thought would abstain. I didn't think they would necessarily go as far, fairly early days in the coalition... to vote against, but I thought they would abstain.'

One of the central arguments deployed in the Lords debates over the Chief Coroner focused on the cost of the post. The following exchange between Baroness Finlay and Lord McNally via a written question was critical in obtaining the information which allowed this attack:

**Baroness Finlay:** 'To ask Her Majesty's Government when they reviewed the Ministry of Justice's 2008 impact assessment for the Office of the Chief Coroner; and whether they will place the findings of the review in the Library of the House' Lord McNally replied

**Lord McNally** (Minister of State, Justice; Liberal Democrat): In considering whether the new funding required to implement the office of Chief Coroner could be justified in the current economic circumstances, the Government examined the costings set out in the 2008 impact assessment. This assessment was carried out in June 2010 and a detailed breakdown of the costings was placed in the Library of the House in December 2010.

The information on costings obtained through this question allowed opponents of abolition to stress test the governments claims and to formulate alternative costings. The issue of cost became central, with opponents challenging the government both publically and in a series of

meetings with civil servants. In the House of Lords Baroness Finlay deployed this strand of argument, asserting:

‘Set-up costs were estimated to be almost £11 million, of which almost £4 million was for IT and £2.5 million for recruitment, publications, additional coroners and transition costs. Transition from what? There is a yawning gap at present. The Ministry of Justice team has four people working on coroners' issues; by transferring them to the chief coroner, their costs would be offset, as would the training spend by the Ministry of Justice at the moment. Indeed, training could be more cost-effective by using simpler venues and local resources. Having consulted widely, I estimate that the whole set-up cost and per-annum cost could come within a £500,000 envelope. The deputy chief coroner and medical advisers can be drawn from respected senior coroners and local medical advisers already in post, therefore not incurring the costs of new appointments. Further developments can come later; it does not all have to happen at once.

Similarly, the estimated running costs were astounding. They contained a 20 per cent contingency fund of almost £1 million-more than I have estimated it would cost to set up the proposed system. By contrast, no estimate has been taken into account of the cost to the NHS of the morbidity in these bereaved people. They often end up with complicated grief needing NHS support, and the majority have periods when they are unable to work. Consider, too, the cost of bereaved children, who live feeling that justice was never done. They have a high risk of suicide, drug addiction, teenage pregnancy and acquiring a criminal record. These are all costs that are mounting against this so-called efficiency.

I am grateful to the Ministers and officials who met me and in particular for the time that the noble Lord, Lord Taylor of Holbeach, has spent with me on this. But even officials were unable to explain some of these budget lines. For want of a chief coroner, we are stacking up costs and problems that will cost far more than a chief coroner and medical adviser, who could even be a part timer. We ignore the numerous reports at our peril’ (14<sup>th</sup> December 2010).

The Lords co-ordinated their action with members of the House of Commons to ensure that the Chief Coroner’s Office would not be re-inserted into the Bill. When the Bill returned to the Commons a ‘don’t be so daft’ campaign was run which made it clear that the Government would again be defeated if they pressed forward with their original plans.

Amongst stakeholders the RBL and Inquest co-ordinated activity, primarily in the form of a letter writing campaign. For example, INQUEST, Victim Support, Cruse Bereavement Care, Disaster Action, Samaritans, Childhood Bereavement Network: National Children’s Bureau, Child Bereavement Charity, Mencap, Sands, Survivors of Bereavement by Suicide, The Compassionate Friends, Action against Medical Accidents (AvMA), CO-Gas Safety, RoadPeace,

Cardiac Risk in the Young (CRY), National Victims' Association, Support After Murder & Manslaughter Abroad all wrote to Andrew Percy MP supporting his amendment to keep the chief coroner. Similarly, a number of these organisations published briefings on the need for the chief coroner.

The RBL itself ran a high profile campaign under the heading 'Leave it out Ken' which co-ordinated lobbying. They also visited Number 10 Downing Street to publicise the issue. CRY's chief executive Alison Cox MBE did numerous media interviews and co-ordinated stories in local press (for example; Politics Home, 12<sup>th</sup> July). However, there was only limited media coverage of this decision and the campaign did not make an overt attempt to stir media interest. Accordingly there was a small amount of initial coverage (for example by the Telegraph (24<sup>th</sup> October 2011)) and then further coverage of Ken Clark's u-turn (Daily Mirror, 23<sup>rd</sup> November 2011; Telegraph, 15<sup>th</sup> December 2010). Little campaigning activity occurred through the mainstream media, yet specialist organisations did outline opposition (such as British Forces News, 26<sup>th</sup> October 2011).

Between January and May 2011 the Government engaged with stakeholders in an attempt to find a way forward. This culminated, in May 2011, in a ministerial statement which announced a consultation on a draft Charter for the Coroners Service.

In June 2011 a further announcement was made in a written ministerial statement that the Chief Coroner's Office was to be inserted into schedule 5 of the Public Bodies Bill, allowing the government to dismantle the post and transfer its functions to the Lord Chancellor and Lord Chief Justice. In addition plans were presented to create a Ministerial Board and Bereavement Organisations Committee. The committee would provide a forum for stakeholders to voice concerns to government, highlighting issues which would then be addressed by the Board. These proposals were not favourably received by stakeholders who questioned the independence of the arrangements and a potential lack of leadership. In this period stakeholders continued to meet with ministers but also maintained their campaign to remove the Chief Coroner from the Public Bodies Bill.

A consultation by the Ministry of Justice was launched on the 12<sup>th</sup> of July 2011 and closed on the 11<sup>th</sup> of October 2011 to collectively examine the department's proposals for public bodies reform. The consultation received a total of 2,646 responses, 2,607 of which were identical responses from members of the public received via the Royal British Legion campaign website. Nearly all respondents reinforced the need for reform but a number, for example the submission from the Royal College of Pathologists, argued in 'the strongest terms' against the proposal to transfer the functions of the chief coroner to the lord chief justice and lord chancellor' (Royal College of Pathologists, 2011, p.2).

On 22 November 2011, the Lord Chancellor and Secretary of State for Justice, Kenneth Clarke, announced that, having listened to concerns, he had decided to implement the Office of the Chief Coroner. In his statement he said: 'Over recent months I have listened to and reflected on the concerns raised across Parliament, by families and by other groups, including the Royal British Legion, that a single figure needs to be responsible for the coroner system' (Fairbairn, 2011, p.5). On 23 November 2011, during consideration in the House of Lords of Commons amendments to the Public Bodies Bill Government amendments were agreed, without division, which would give effect to Kenneth Clarke's announcement. Lord McNally, Government

Spokesperson for the Ministry of Justice, said that the appointment of the Chief Coroner would 'go ahead with all due speed' (ibid., p.6). In response to this decision Lord Griffiths of Bury Port, a campaigner against abolition, asserted 'I know that Ministers have gone to an exceptional level of trouble, culminating in decisions this week to give us, in effect, the substance of what we want. It is perhaps difficult to score but as a percentage of the overall objective [success] is in the high 90s' (23<sup>rd</sup> November 2011).

The first chief coroner of England and Wales, Judge Peter Thornton QC, was (re)appointed on the 22<sup>nd</sup> of May 2012 and took up his post on the 17<sup>th</sup> of September 2012. The appeals system which accompanied the post of Chief Coroner in the original Act was not implemented – an intention which was communicated to peers via letter. In this communication the Lord Chancellor reported that 'the appeals system was by far the most expensive element of the original Chief Coroner role proposal', using this justification to explain the decision.

In a recent speech Peter Thornton has outlined his plans to address 10 areas in the next twelve months. These are: (1) The Coroners and Justice Act 2009, (2) Rules and Regulations, (3) Training, (4) The law, (5) Practical guidance, (6) Special groups, (7) Notifications to the Lord Advocate, (8) Rule 43 Reports, (9) Complaints procedure, (10) The Coroners' Courts Support Service.

### **Key Documents**

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