PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

JUDICIAL REVIEW AND COURTS BILL

Ninth Sitting

Thursday 18 November 2021

(Morning)

CONTENTS

Clause 32 agreed to.
Schedule 5 agreed to.
Clauses 33 to 37 agreed to.
Clause 38 under consideration when the Committee adjourned till this day at Two o'clock.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 22 November 2021

The Committee consisted of the following Members:

Chairs: † Sir Mark Hendrick, Andrew Rosindell

† Barker, Paula *(Liverpool, Wavertree)* (Lab)
† Cartlidge, James *(Parliamentary Under-Secretary of State for Justice)*
Crawley, Angela *(Lanark and Hamilton East)* (SNP)
† Cunningham, Alex *(Stockton North)* (Lab)
† Daby, Janet *(Lewisham East)* (Lab)
Fletcher, Nick *(Don Valley)* (Con)
Hayes, Sir John *(South Holland and The Deepings)* (Con)
† Higginbotham, Antony *(Burnley)* (Con)
† Hunt, Tom *(Ipswich)* (Con)
† Johnson, Dr Caroline *(Sleaford and North Hykeham)* (Con)
Longhi, Marco *(Dudley North)* (Con)
McLaughlin, Anne *(Glasgow North East)* (SNP)
† Mann, Scott *(Lord Commissioner of Her Majesty's Treasury)*
† Marson, Julie *(Hertford and Stortford)* (Con)
† Moore, Damien *(Southport)* (Con)
† Slaughter, Andy *(Hammersmith)* (Lab)
† Twist, Liz *(Blaydon)* (Lab)

Huw Yardley, Seb Newman, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 18 November 2021

(Morning)

[Sir Mark Hendrick *in the Chair*]

Judicial Review and Courts Bill

11.30 am

The Chair: Before we begin, I have a few reminders for the Committee. Please switch any electronic devices to silent. No food or drinks are permitted during sittings of the Committee, except the water provided. Members are expected to wear masks when they are not speaking, in line with current Government guidance and that of the House of Commons Commission. I remind Members that they are asked by the House to have covid lateral flow tests twice a week before coming to the parliamentary estate. That can be done at home, or if you want to come into the House, you can have it done here. Please also give each other and members of staff space when seated and when entering and leaving the room. *Hansard* colleagues would be grateful if Members could email their speaking notes to hansardnotes@parliament.uk.

Clause 32

Employment Tribunal Procedure Rules

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to consider that schedule 5 be the Fifth schedule to the Bill.

The Parliamentary Under-Secretary of State for Justice (James Cartlidge): The employment dispute resolution system has responded impressively to the challenges presented by the pandemic. Despite the enormous challenges they faced, employment tribunals have now succeeded in returning to pre-covid levels of hearings. I should stress, because we have had a wide-ranging debate about technology and the role of digitisation in the courts, that a key reason for that is that employment tribunals have been among the greatest users of technology in enabling hearings to go forward. However, they still face significant challenges from a growing backlog. The pandemic has highlighted the need for a speedy and efficient process for making and amending rules for the employment tribunals.

Since the establishment of employment tribunals in 1996 under the remit of the now Department for Business, Energy and Industrial Strategy, responsibility for the rules and governance of employment tribunals has rested with Ministers in BEIS, as the Department responsible for employment law. This is the only area of the tribunal system where responsibility rests with a Minister in another Department; all other matters heard in the justice system have procedural rules that are the responsibility of independent judicial-led committees or of the Lord Chief Justice.

Clause 32 transfers the powers to make rules for the employment tribunals from the Secretary of State for BEIS to the tribunal procedure committee. It also makes the same committee responsible for rules in the employment appeal tribunal. Being judiciary-led, the TPC is better placed to make these rules. The transfer will allow for the development of a more closely aligned tribunal system. It means that we can respond more quickly when we need to amend procedure rules, for example to help to address the backlog in claims or in circumstances such as the pandemic. Schedule 5, introduced by clause 32, gives the TPC the same powers to make rules for the employment tribunals and the employment appeal tribunal as for the first-tier and upper-tier tribunals, and aligns the rule-making process.

It is important that the TPC has the right knowledge and experience when considering making or amending rules. Schedule 5 provides for two additional members to sit on the TPC. One will be appointed by the Lord Chancellor and will have experience of practice or advising in the employment tribunals and the employment appeal tribunal. The second will be appointed by the Lord Chief Justice and will have experience of sitting in employment tribunals. This will ensure that the TPC can call on the right level of expertise when making decisions.

Andy Slaughter (Hammersmith) (Lab): It is a pleasure to be here again under your chairmanship, Sir Mark. Let me say first that we are not opposed to what the Government are proposing in this clause and, indeed, this part of the Bill, which is largely administrative. There are a few issues that we wish to raise. I think that I can do that logically under this clause and then be very brief—or even silent—on some of the other clauses.

The Minister is right that employment tribunals—industrial tribunals, as they were—go back some years and have a distinct history. In some ways, they were the forerunners of the tribunal system, which has effectively overtaken them in terms of procedure and organisation. Employment tribunals have a broad jurisdiction for employment matters, save in important respects such as their very limited role in breach of contract cases and no role in relation to personal injury. They are administered by Her Majesty's Courts and Tribunals Service, but are outside the tribunal structure.

As the Minister said, employment tribunals are under either the joint supervision of the Ministry of Justice and the Department for Business, Energy and Industrial Strategy, or the Secretary of State for BEIS. That is anomalous. There have been many attempts over the years to correct and address the issue. Such proposals were made back in the 2001 Leggatt review, so we are catching up after 20 years. There have been various other measures in the interim. The 2004 White Paper proposed a tribunal process that should be separate from both the civil courts and the rest of the tribunal structure. The 2015 Briggs review preferred to put employment tribunals in with the civil courts. A case can be made for either of those options, although the drawback of placing tribunals in the civil court ambit is the lack of provision for lay members. Lay members are an important part of how employment tribunals work, and we would be loth to lose them.

There can also be conflicts of interest. BEIS is quite a substantial employer, and there could be something of a conflict by placing this part of the tribunal system within a non-judicial Department. For all those reasons, and the fact that we have a working TPC, what the

Government have proposed seems to have a certain logic. The "but" is—and this is a feature of the Bill generally—that opportunities are being missed.

The Law Commission recommended last year that the Government look at time limits for bringing claims, look again at the issue of breach of contract, which I have already mentioned, and look at the key element of enforcement. Many employees—despite the difficulty of bringing claims, particularly if they have been dismissed or the claims deal with complex issues of law—win their cases and then cannot enforce against the employer. There is nothing to deal with those points. The Minister began by saying he thought the tribunal law system is doing a good job, and the people who work within the employment tribunal system do a very good job. However, they work under a great deal of pressure, and the Government have contributed to that pressure.

We have the debacle over charging for bringing claims, which the Government introduced in 2012-13. Unsurprisingly, to anyone except perhaps the Government, the number of claims fell by two thirds after that. Consequently, they felt able to shut down large parts of the network. The Supreme Court ruled that unlawful and claims began to climb again, although a lot of the damage that was done has not been unpicked. The latest figures I have show that, of the £32 million that was supposed to be repaid to claimants, only £18.5 million has been repaid. That is shocking. It shows that people have been unlawfully deprived of what should rightfully be theirs and that they paid fees that were deemed to be unlawful.

The point here is that, the Government having depressed the level of claims in a dramatic and significant way, and then seeing them rise again, there has been no sufficient response to that. The backlog was down at 22,698 in March 2018, but according to figures from March this year—the Minister may have more recent ones—it is now at 50,287. That has more than doubled in two years. Part of the reason is that there has been no strategic effort to restore the employment tribunal system to what it was before earlier cuts were made. We are not short of suggestions. Last summer, the Employment Lawyers Association produced a long list of what the Government could do: through ACAS; reviewing of the administrative capacity of each tribunal; using standard case management procedures; dealing with case management applications on the papers; using hybrid hearings where accommodation is a problem; improving the provision of legal advice; and allowing multiple claims to be put on one claim form.

I would like to see a number of things in the Bill, and the Minister may be able to address some of these points when he responds. The Minister says the measures will make the process more streamlined, which they may do, but only up to a point. The proposals will address the real, chronic and ongoing problems in the employment tribunal system only to a limited extent. We have the debacle over the fees, where many are deprived of their rights and are unable to bring claims or, after bringing claims, are not refunded the money they are owed. There is a long wait to get to a tribunal—I think the average resolution time is 45 weeks, which is appalling—and we also have those problems with enforcement, even if employees win their case. The system really is in a parlous state. I wish there were measures in the Bill, or elsewhere, to address those issues.

James Cartlidge: I will respond briefly, because I really would emphasise that the clauses are limited in their impact on employment tribunals. I certainly hope that no one is under the impression that I am pretending they are a wholesale, comprehensive reform of the employment tribunal system. I have in no way implied that.

I welcome the recognition by the hon. Member for Hammersmith that it is, in his words, anomalous that the rule-making powers are held by the Department for Business, Energy and Industrial Strategy. To that extent, I therefore assume he welcomes the transfer. As he said, it certainly makes sense, and there are many positive aspects in its favour. Having more flexibility in the way the rules are made for employment tribunals will enable them to better respond to the backlog and related issues. Of course, that is not in itself enough to drive down the backlog or improve the overall user experience.

The hon. Gentleman asks what other steps the Government are taking. We are recruiting more employment tribunal judges. We also have a very positive initiative called the virtual region, which we estimate will save about 500 sitting days in employment tribunals. It is a virtual region of judges who, because cases are heard online, can sit pretty much anywhere in the country and hear an employment tribunal case anywhere else in the country, underlining how important technology has been.

It is a bit strange that, when my right hon. Friend the Member for South Holland and The Deepings—who is not here this morning—spoke about his desire to revert to in-person hearings and roll back the digital progress we are making, he seemed to get a lot of sympathy from the hon. Member for Hammersmith. If we were to do that in the employment tribunal sphere, we would have a massive backlog, and we would have far more limited means of dealing with it. I am bound to say that we would be reducing access to justice, both for those seeking to bring claims and in terms of the judicial ability to respond with things like the virtual region.

I will not go any further. One should recognise when clauses have a very specific purpose, which these do. The measure is positive and will help us to improve matters and, alongside some of the other things we are doing, it shows we are driving forward a positive agenda for employment tribunals.

Question put and agreed to.

Clause 32 accordingly ordered to stand part of the Bill.

Schedule 5 agreed to.

Clause 33

Composition of tribunals

Question proposed, That the clause stand part of the Bill.

11.45 am

James Cartlidge: The clause will make the Lord Chancellor responsible for determining the composition of employment tribunals and employment appeal tribunals through secondary legislation. That duty can be delegated

[James Cartlidge]

to the Senior President of Tribunals, the President of Employment Tribunals, or the President of Employment Appeal Tribunals. It also sets out a framework within which the Lord Chancellor or the presidents must exercise the power. That is the same approach as in the wider unified tribunal system. The clause will align the approach taken in employment tribunals to those tribunals, and will ensure that panel composition is a judicial function.

That does not mean that we will lose the unique characteristics of employment tribunals, or that we intend to move away from the current structure. Rather, the clause will provide the necessary flexibility to ensure that the composition of an employment tribunal or employment appeal tribunal can be tailored to the needs of users and the complexities of cases. It will mean that the handling of cases can be streamlined while ensuring that tribunals have the right composition to make fair and informed decisions.

Andy Slaughter: Again, we do no oppose the change. I make only one point, which I think the Minister alluded to, but that it may be useful to have on the record. It clearly makes sense to give discretion to the Lord Chancellor in terms of the composition of tribunals, but the distinctive lay element of them has been successful over the years. We would not want the change to alter that. The presumption should be in favour of it, save in circumstances where there are good reasons to derogate from it.

James Cartlidge: An individual with experience of appearing before employment tribunals and an employment tribunal judge or lay member will be appointed to sit on the committee so that the needs of the wider employment sector continue to be represented in the rule-making process. The tribunal procedure committee is also able to request external expertise to support the development of rules, including a representative to reflect the needs of business.

Question put and agreed to.

Clause 33 accordingly ordered to stand part of the Bill.

Clause 34

SAVING FOR EXISTING PROCEDURAL PROVISIONS

Question proposed, That the clause stand part of the Bill.

James Cartlidge: The clause ensures that existing procedure regulations and rules, including for tribunal composition, are not automatically revoked by these measures. That means that cases will continue to be dealt with under existing procedure rules until the TPC makes new procedure rules. Cases will continue to be heard by panels made up of the existing composition until the Lord Chancellor makes new regulations. That will allow the transition between the existing provisions and new employment tribunal procedure rules to be managed appropriately.

Question put and agreed to.

Clause 34 accordingly ordered to stand part of the Bill.

Clause 35

EXERCISE OF TRIBUNAL FUNCTIONS BY AUTHORISED PERSONS

Question proposed, That the clause stand part of the Bill.

James Cartlidge: The introduction of legal case officers has played a valuable role in helping employment tribunals to tackle the demands of the pandemic. They free up judicial time by allowing straightforward non-contentious administrative decisions to be made by legal case officers under the supervision of an employment judge. The clause will align an employment tribunal's power of delegation to legal case officers with the wider tribunal system. It will also allow the TPC to make rules for legal case officers. The decisions of legal case officers are always reviewable by the judiciary, and that will remain the case.

Andy Slaughter: We do not oppose the clause. There is always a hesitancy in transferring powers from a judiciary to a lay or administrative officer. As the Minister says, it is done in other parts of the tribunal system. We just wish for reassurance that it will be kept under review, and that where changes are made—I am talking about the system, rather than individual cases—we will look at it again, and ensure that it is working properly and that applicants are not disadvantaged in any way by the changes.

James Cartlidge: Yes, that is a fair point. Judicial functions can be delegated to HMCTS staff across tribunals and the wider civil justice system, including in employment tribunals, as the hon. Gentleman acknowledged. The Bill gives the tribunal procedure committee the same powers to make employment tribunal rules on judicial delegation as it has for the unified tribunals, so that it is consistent. This will allow for the creation of harmonised tribunal rules and greater alignment across the tribunal system. We always keep all matters under review. This positive change is in keeping with the way the wider unified tribunal system works.

Question put and agreed to.

Clause 35 accordingly ordered to stand part of the Bill.

Clause 36

RESPONSIBILITY FOR REMUNERATING TRIBUNAL MEMBERS

Question proposed, That the clause stand part of the Bill.

James Cartlidge: This is the final clause related to employment tribunals. As a consequence of the history of the establishment of employment tribunals, authority for the remuneration of pay and expenses for employment tribunal judges currently rests with BEIS, in contrast to the remainder of the tribunal system, where responsibility for the remuneration of panel members sits with the Lord Chancellor. The clause will transfer responsibility for that remuneration from BEIS to the Lord Chancellor, bringing employment tribunals in line with the wider tribunal system.

Question put and agreed to.

Clause 36 accordingly ordered to stand part of the Bill.

Clause 37

DISCONTINUANCE OF INVESTIGATION WHERE CAUSE OF DEATH BECOMES CLEAR

Andy Slaughter (Hammersmith) (Lab): I beg to move amendment 69, in clause 37, page 49, line 33, at end insert—

"(4) After subsection (2), insert—

(2A) The coroner is not to decide that the investigation should be discontinued unless—

(a) the coroner is satisfied that no outstanding evidence that is relevant to the death is available,

(b) the coroner has considered whether Article 2 of the European Convention on Human Rights is engaged and is satisfied that it is not,

(c) there are no ongoing investigations by public bodies into the death,

(d) the coroner has invited and considered representations from any interested person known to the coroner named at section 47 (2)(a) or (b) of this Act, and

(e) all interested persons known to the coroner named at section 47 (2)(a) or (b) of this Act consent to discontinuation of the investigation.".

This amendment would ensure that certain safeguards are met before a coroner can discontinue an investigation into a death.

The Chair: With this it will be convenient to discuss the following:

Amendment 70, in clause 37, page 49, line 33, at end insert—

"(4) After subsection (2), insert—

(2B) If a coroner is satisfied that subsection (1) applies and has complied with the provisions at subsection (2A)(a) to (d), prior to discontinuing the investigation, the coroner must—

(a) inform each interested person known to the coroner named at section 47(2)(a) or (b) of this Act of the coroner's intended decision and provide a written explanation as to the reasons for this intended decision,

(b) explain to each interested person known to the coroner named at section 47(2)(a) or (b) of this Act that the investigation may only be discontinued if all such interested persons consent, and

(c) invite each interested person known to the coroner named at section 47(2)(a) or (b) of this Act to consent to the discontinuation of the investigation.".

This amendment would ensure that family members and personal representatives of the deceased are provided with the coroner's provisional reasons for why the coroner considers that the investigation should be discontinued, to ensure that family members can make an informed decision as to whether to consent to the discontinuation.

Amendment 71, in clause 37, page 49, line 33, at end insert—

"(4) Omit subsection (4) and insert—

(4) A senior coroner who discontinues an investigation into a death under this section must—

(a) as soon as practicable, notify each interested person known to the coroner named at section 47(2)(a) or (b) of this Act of the discontinuation of the investigation and provide a written explanation as to why the investigation was discontinued, and

(b) if requested to do so in writing by an interested person, give to that person as soon as practicable a written explanation as to why the investigation was discontinued.".

This amendment would ensure that family members are informed in writing for the reasons for a discontinuation of an investigation, without being required to request this information.

Amendment 72, in clause 37, page 49, line 33, at end insert—

"(4) Section 43 of the Coroners and Justice Act 2009 (Coroners regulations) is amended as follows.

(5) In subsection (3) after paragraph (a) insert—

"(aa) provision for the establishment of an appeals process for interested persons who disagree with the decision to discontinue an investigation under the provision in section 4 of this Act.".

The purpose of this amendment is to ensure the Lord Chancellor establishes an appeal process for families who disagree with the decision to discontinue an investigation.

Andy Slaughter: We now come to the part of the Bill that deals with coroners, to which we have tabled a number of amendments and new clauses. We appreciate that the clauses in the part of the Bill we have just discussed, and indeed in other parts of the Bill, are very much a template for the Government to take forward procedural changes to parts of the courts and tribunal systems. We essentially have two things to say about that.

First, we are not against any of that per se, particularly where the aim is to make what is proposed more streamlined, efficient and economical. However, we must look at safeguards, because often in the process, as we have seen in earlier parts of the Bill on criminal procedure and online procedure, there can be dangers to current users of the system that need to be addressed. Secondly, as addressed in our new clauses, the Government are not short of advice on improvements to the coronial system, including most recently through the report of the Justice Committee, which we debated in Westminster Hall, but many opportunities for improvement simply have not been taken. We highlight some of those around representation, and vulnerable representation, which we will come on to. That is disappointing, given that that report is only the latest in a whole series, going back to Tom Luce's report in 2003—although there are many more recent than that—that have drawn attention to the limitations and the need for improvements in the coroners system. We just wish that there was more to address that, either in the Government's response to the Justice Committee report or in the Bill.

I thank some of the organisations that provided briefings to us, including Justice, the Association of Personal Injury Lawyers and, principally, Inquest, which I will say a bit more about when we debate the new clauses. It has been an outstanding organisation in representing, and fighting the cases of, bereaved families for many years.

I have concerns about clauses 37 to 39. Clause 37 will broaden the circumstances in which coroners can discontinue investigations, Clause 38 gives coroners powers to hold inquests in writing, and clause 39 enables the wider use of remote hearings, including the power to hold remote hearings with juries. I will argue that the increase in discretion to discontinue investigations in clause 37 risks important evidence not being tested and complex cases not being publicly scrutinised. I will describe the lack of evidence to support the introduction of clauses 37 to 39 and how evidence instead suggests the need for careful safeguards to ensure that proper investigation and scrutiny is permitted where necessary, with due weight given to the wishes of the family. I will also argue that the Bill should be amended to include provision on public funding for bereaved families at inquests where state bodies are involved.

[Andy Slaughter]

Chapter 4 deals with coroners and suggests that it will improve the efficiency of the service in the light of the backlogs in coroners' courts due to the pandemic. The measures in clauses 37 and 38 were recently recommended by the Chief Coroner in his 2020 annual report. I am not aware of some other cause or evidence—the Minister may want to point me to some—for these measures to be introduced. It is notable that none of the conclusions or recommendations in the Justice Committee's May 2021 report on the coroner service provides any justification for these measures, despite the Committee's detailed analysis of the current state of the coronial system. It is extremely concerning that the argument that these measures are needed to address the covid-19 backlog of cases in the coroners' courts is unevidenced, especially given the strong argument that the measures will lead to corners being cut and crucial opportunities for hearing and scrutinising evidence missed.

In its report, the Justice Committee found there to be

"unacceptable variation in the standard of service between Coroner areas."

In the absence of a national coroner service, which the Committee recommended but the Government have refused, a central concern is the widespread inconsistency in approach by individual coroners in relation to all aspects of the inquest process—a postcode lottery, in other words.

James Cartlidge: The hon. Gentleman has twice referred to the backlog in coroners' courts caused by the pandemic. Can I be absolutely clear? Does he accept that the pandemic has had a very significant impact on the backlog in the coroners' courts?

Andy Slaughter: The pandemic has had a substantial effect on almost every aspect of our waking lives and on backlogs throughout the court system. That does not abrogate the Government from responsibility for dealing with the backlog so called, or indeed for other reasons why backlogs have been building up in the system over that time.

I mentioned Tom Luce's fundamental review, in which he wrote:

"The phrase we have heard more than any other during the Review is 'the coroner is a law unto himself'. Virtually every interest has complained of inconsistency and unpredictability between coroners in the handling of inquests".

Clauses 37 and 38 will further entrench levels of coronial discretion and inconsistency, adding yet more challenges for bereaved families forced to navigate the inquest system. The Government have not evidenced how these measures will address the stated problem of reducing the backlog of cases in coroners' courts. The latest statistics on the coroner service indicate an 18% rise in deaths in state detention. Many of those cases are complex, meaning that these provisions are unlikely to apply.

Let me deal specifically with amendment 69 and amendments 70 to 72, with which it has been grouped. Clause 37 broadens the circumstances in which a coroner might discontinue an investigation into a death. The current law, the Coroners and Justice Act 2009, holds that where a coroner has commenced an investigation, they must proceed to an inquest unless the cause of death becomes clear in a post-mortem examination. The Government claim that is a costly and unnecessary step where the cause of death may become clear through other means, such as medical records. As such, clause 37 will amend section 4 of the 2009 Act to allow for an investigation to be discontinued if the coroner is satisfied that the cause of death is clear, thus removing reference to a post-mortem as a necessary requirement for discontinuing an investigation. If the investigation is discontinued, the coroner cannot then hold an inquest into the death unless fresh evidence later comes to light or a successful challenge is brought to the decision.

There are a number of concerns about that, and about the implications of the Bill for inquests and bereaved families. Amendment 69 seeks to address three main issues: the need to test evidence; what happens in article 2 cases; and the need to safeguard the wishes of families.

On the need to test evidence, I am concerned that clause 37 would allow a coroner to discontinue an inquest based on evidence that could change if tested. The current wording states that a coroner must discontinue an investigation into an individual's death if they are

"satisfied that the cause of death has become clear in the course of the investigation".

While the Chief Coroner states in his 2020 annual report that such a provision could include evidence such as medical records, the Bill itself does not clarify the types of evidence that could be used, and effectively allows any evidence obtained during the investigation to be used to justify discontinuance, without the opportunity for it to be challenged at a later stage.

12 noon

Clause 37 therefore requires amendment to set out a series of safeguards to be met before an investigation into a death is discontinued. Such an amendment should ensure that investigations are not terminated prematurely where there may be evidence that could change once tested.

My second point, regarding article 2 cases, can be illustrated well by the case of Laura Booth. Laura sadly died on 19 October 2016 at the Royal Hallamshire Hospital in Sheffield. Laura went into hospital for a routine eye procedure, but in hospital she became unwell and developed malnutrition due to inadequate management of her nutritional needs. The coroner overseeing the investigation into Laura's death was initially not planning to hold an inquest because the death was seen to be from natural causes. However, Laura's family and BBC journalists fought for the coroner to hold an inquest.

The inquest reached the hard-hitting conclusion that Laura's death was contributed to by neglect. A prevention of future deaths report issued by the coroner to the Royal Hallamshire Hospital noted serious concerns about the staff's lack of knowledge and understanding of the Mental Capacity Act 2005, and recommended that families should be better consulted in best-interests meetings.

If clause 37 had been applied to that case before evidence brought by Laura's family and journalists was properly scrutinised, there may never have been an inquest hearing. The serious failings in Laura's case would never have been brought to light and a prevention of future deaths report, which serves a significant public interest in attempting to stop similar deaths occurring in the future, would not have been published.

We ought also to consider the case of A, who died in hospital. A, who was admitted to hospital as a voluntary patient, had learning difficulties and a history of mental ill health. A's family waited several years for the inquest into A's death to begin. Prior to that, A's death was believed to be from natural causes, meaning that it would not have been subject to an inquest. However, A's family worked with lawyers who successfully argued that the case engaged article 2 and that an inquest should be held. Consequently, the coroner found that A's death was not in fact natural but that there were major failures in treatment and a missed opportunity to provide proper care. Had the coroner been able to discontinue the inquest prior to considering whether article 2 was engaged, we believe it unlikely that the case would have proceeded to a full inquest hearing.

The consequences of clause 37 that I have outlined could have a significant impact in cases involving the death of an individual in the community who was receiving state support, or a so-called natural causes death of a detained person. While such cases are often viewed as non-contentious and believed not to require an inquest, it is common for evidence to emerge during the process to suggest that further scrutiny is required. These cases are often borderline article 2 cases, meaning there has been some argument over whether the case breaches the operational or systemic duty to safeguard the right to life under the Human Rights Act.

Where article 2 is found to be engaged, the scope of an inquest is widened to include an investigation of the wider circumstances of the death. If clause 37 were used in such cases and an inquest hearing discontinued, there would be no hope of renewing submissions on article 2 if evidence were to emerge, as it often does, that engaged it. Clause 37 therefore must be amended to ensure that the coroner has considered whether article 2 is engaged and is satisfied that it is not.

The last point that I want to raise about clause 37 is the importance of the consent of bereaved families. The clause includes no safeguards that would ensure that the coroner has invited and considered submissions from bereaved families and asked for their consent to discontinue the investigation. Some of those considerations are included in clause 38, which we will come to in a moment, so it is not clear why they are not set out in clause 37. We believe that this inconsistency must be addressed, and clause 37 amended, to ensure that the wishes of bereaved families are taken into account in the decision by the coroner and that the family have an ultimate veto on the decision to discontinue an inquest.

Amendment 69 would act as a safeguard to ensure that investigations are not terminated prematurely where there may be evidence that could change once tested. The amendment aims to ensure that an investigation into a death is not discontinued before all available evidence, including that which might be disclosed as a result of investigations by public bodies, has been explored. It would also ensure that the possibility of article 2 being engaged is fully considered, that the wishes of the family are taken into account in the decision by the coroner, and that the family have an ultimate veto on the decision to discontinue.

Inquests have a vital role for bereaved family members in understanding the circumstances of their loved one's death. Clause 37 risks undermining that role. Bereaved families should have an ultimate veto on a decision to discontinue an investigation, and amendment 69 provides a mechanism for ensuring that the wishes of the bereaved family and personal representatives of the deceased are properly considered and respected, which would help to ensure that a family member's concerns about the death are made available to the coroner.

In addition, it is key that bereaved families can make informed decisions about whether to consent to an investigation being discontinued. Bereaved families should be fully informed of the reasons a coroner considers that the cause of death has become clear. Amendment 70 would build on amendment 69 in introducing new subsection (2B) to section 4 of the Coroners and Justice Act. That would ensure that family members and personal representatives of the deceased are provided with a coroner's provisional reasons for considering that the investigation should be discontinued, thus helping family members to make an informed decision on whether to consent to the discontinuation.

If the amendments are not accepted, the Coroners and Justice Act should be amended to ensure that family members and personal representatives of the deceased are always informed of the reason for a coroner's decision to discontinue an investigation. The Justice working party's report into inquests and inquiries found that often bereaved families are not uniformly given reasons for the decision to discontinue an investigation. That can leave families confused and unsure whether to challenge the decision.

Section 4(4) of the Coroners and Justice Act requires senior coroners to provide an interested person reasons in writing for the discontinuation of an investigation only if requested to do so. Given that clause 37 introduces a theoretically unlimited number of situations where an investigation could be discontinued, and the difficulties that many bereaved families have in engaging with the inquest process, amendment 71 seeks to ensure that family members are informed in writing of the reasons for the discontinuation of an investigation without being required to request that information.

I turn to amendment 72. A family may have a legitimate reason not to agree with a decision to discontinue an investigation. Currently, a coroner's decision can be challenged only at the High Court. That can be expensive and time consuming for bereaved families. Instead, there should be an easily accessible appeal process for families who want an investigation to continue. I imagine that the Government will have little objection to that, given their efforts in recent weeks to set up an appeal process for MPs—unless the Government think that they should have more bites of the cherry than families at inquests, who do not even have one right of appeal. That is an anomaly in the system, which was addressed in the Justice Committee's report. The Government show no inclination at the moment to agree to it, but the Minister may have news for us.

The experience of the family of Noreen Clements shows why an appeal process could be so important for bereaved families. Mrs Clements suffered a fractured pelvis after falling in hospital, and died two weeks later. Despite the family's belief that the fall contributed to her death, it was not recorded by the doctors who completed the medical cause of death. Mrs Clements' family were fortunate that the coroner listened to their concerns and instructed an independent expert, who eventually agreed with the family. That resulted in changes

being made to the hospital's procedures. Under the Government's proposals, another coroner may have been satisfied with the medical cause of death. The investigation may have been discontinued before an inquest could be held, leaving the family without the answers that they needed and missing a learning opportunity for the hospital. An appeal process could help to ensure that that does not happen.

In the Bill, the Government are repeatedly tightening and closing, and pushing to reduce, the service that is currently available and move a large section of it online. There has to be a level of compensation that comes with that change. I argue that the Government should consider it coming in the form of a proper appeal process for families. Amendment 72 would ensure that the Lord Chancellor establishes an appeal process for families who disagree with a decision to discontinue an investigation.

James Cartlidge: As ever, the hon. Gentleman makes a number of interesting points. Some of them go quite a bit wider than the clause before us, although he did enter the caveat that, given the importance of this clause, he was making some broader points, and I think that is fair. Taken together, these provisions are very important in terms of the coronial court. They do address matters relating to streamlining and ultimately, therefore, the backlog; and before I go into the specific points that he raised, some of which were very sensitive and very important, I want to talk about the backlog.

What the hon. Gentleman said was incredibly important. He specifically acknowledged that covid is responsible in large part—or however he wants to couch it—for the backlog in the coroners' courts, and he is absolutely right. Let us be absolutely clear about this: social distancing has had a dramatic impact in the courts, particularly where juries are concerned. That is true in the Crown court. It is true in the coronial court. It is simple maths. The coroners' buildings were not designed suddenly to have a rule about 2 metres, which was there, after all, for everyone's public health benefit. The coroner's house in Sunderland, for example, has capacity for, I believe, 54 persons in the courtroom. With social distancing, it had 11, so it does not take a great leap of imagination to work out how much harder it would have been to dispose of cases with a jury.

Dr Caroline Johnson (Sleaford and North Hykeham) (Con): In support of the Minister's point, I can say that during my visit to a Crown court last week, there were five defendants who would normally be sat in the same dock in the courtroom, but because of social distancing, a separate courtroom and separate dock are having to be used just to hold the extra defendants, which means, of course, that that courtroom cannot be used for anything else.

James Cartlidge: I am grateful to my hon. Friend. Was it Lincoln, by any chance?

Dr Johnson: The Old Bailey.

James Cartlidge: Ah! I asked because my hon. Friend is obviously a Lincolnshire MP. She is absolutely right. Since I got this job—I have been in post only a matter of weeks—I have visited Crown courts and magistrates courts around the country, and to someone who has not been to one recently, it is very striking to go to a Crown court and see the limitations caused by social distancing. We are trying to deal with those, but it has been a job of work to deal with them.

Dr Johnson: I just wonder whether my hon. Friend could update me on what work he is doing with the Department of Health and Social Care to alleviate some of these restrictions. Now that we sit next to one another in, for example, the House of Commons Chamber, is the social distancing measure still required?

James Cartlidge: There are some very good examples. There are one or two that we are working on at the moment, which I will go into more detail about at the appropriate moment. But the most important thing by far is that many existing courtrooms in the Crown court have come back into use as social distancing has reduced. For example, I was visiting Highbury magistrates, where the maximum number of people in the building had been lifted, because, for example, when people arrive to be allocated to cases—there are all kinds of reasons why we have lots of people in a court building—the capacity in itself becomes a significant constraint.

I appreciate that this provision is about coroners, but what I am describing is fundamental to the current debate. I could not care less, frankly, what people say on Twitter. They are all predetermined—there is not a single swing voter out there. But the Labour party has now strongly put forward a message, effectively, that the backlog in the Crown court is not because of covid but because of this Government. I find that wholly disingenuous. It is not only inaccurate—the hon. Member for Stockton North is shaking his head. It is not only inaccurate; it therefore conveys a false sense of the reality on the ground.

Let me give a statistical example. On 31 December 2009, the outstanding case load—what we have generally come to call the backlog, although there is always an outstanding case load—was 47,713. In December 2019, it was 38,291. Surprise, surprise: when courts were closed because of social distancing and jury trials suspended—although we restored them as quickly as possible—that figure shot up. It created a huge bottleneck. And we still have those problems. It really matters what we say on this, because people must understand the extent to which the pandemic has hit our ability to dispose of cases, because obviously it therefore dictates the solutions. On this side, as my hon. Friend the Member for Sleaford and North Hykeham said, that has meant, for example, trying to lift restrictions where we can, which I think is very important. Therefore I am grateful that, in the matter of coronial courts, the hon. Member for Hammersmith has put on the record his recognition of the impact of covid on the backlog.

12.15 pm

Andy Slaughter: The sensitivity of this is pretty clear. We have suddenly veered off to talk about backlogs in the Crown court. There will be ample opportunity to debate those matters in future. The relationship between backlogs and covid is a complicated one. No one is saying, clearly, that covid has not put pressure on the courts system—that would be bizarre—but the Minister is misinterpreting what I said. The Government have two responsibilities here. First, they must look at their

responsibility for the extraordinary cuts in justice budgets that occurred post 2010, long before covid was ever thought of. For a whole raft of reasons to do with lack of legal aid, court availability because of court closures and so on—the Minister knows all the arguments—we have put ourselves in that vulnerable position, as we did in other areas, such as the NHS. The fact that the court service, including the coronial service, is in a parlous state is at the door of the Government—the Minister was not there, but his colleagues were in government during that time. So, first, they must take responsibility for that. Secondly, they must now take responsibility for reducing backlogs, whether they were caused by covid or were pre-existing before covid. Trying to exculpate himself from that, he does himself no service.

James Cartlidge: I look forward to debating that further. Labour have pulled their Opposition day debate on the backlog twice, one of which was for good reason, given the business that the House was debating. I will be delighted if they have an Opposition day debate on the backlog at their next opportunity, because it is important to stress the very positive things that the Government are doing.

The reason I made that point is that the whole purpose of the provisions is to streamline the courts in the coronial system, so of course it matters if the hon. Member for Hammersmith accepts covid causation in the coronial courts backlog and yet, for political reasons, the Opposition's central message on backlog in the Crown courts magically does not relate to social distancing measures that have been so profoundly challenging to holding jury trials in particular and for cases with multiple defendants. But there we are. All I would add is that if he wants to go back to 2010, bring it on in that debate, because we know what their plans would have been had they got into government. He should always remember that.

On the specific points, I have great sympathy for those families who have had stressful cases in the coronial court or had cases in which they were disappointed with what happened. Obviously, as a Minister, I cannot comment on the specific cases raised by the hon. Gentleman. Those are determined by our independent judiciary, which is an important part of our constitution, but I sympathise with the families. Bereavement is an inherently distressing experience, we can all agree, and in part that is why we are trying where possible to address and reduce that anxiety with the measures in the Bill. For example, in this clause we are trying to reduce some of the bureaucracy that can come with bereavement.

The hon. Member for Hammersmith made a couple of other specific points about coroners' courts and the Justice Committee report. He was recently a member of that Select Committee, and I pay tribute to his work on it, and to the Committee more broadly under the chairmanship of my hon. Friend the Member for Bromley and Chislehurst (Sir Robert Neill). Recently, I spoke about such matters at length in a Westminster Hall debate on coroners, but to be absolutely clear, we have accepted six of the recommendations made by the Justice Committee in its report on coroners published in May. To enact some in the Bill is incredible timing—to have Committee recommendations in a Bill within six months. The obvious example is clause 41, dealing with the merger of coroner areas, which we shall come on to.

The other important specific point that I wish to make is on safeguards. Again, the hon. Member for Hammersmith is absolutely right. As I have said throughout the Committee's proceedings, streamlining measures—generally technological, but not always, as some might be in procedure or when a hearing is held and so on—are there to improve efficiency, and in itself that can actually help families. For example, if we reduce the need to hold an inquest, particularly because it has proven to be unnecessary because the cause of death was natural causes, that can remove some of the bureaucracy that can be faced by a bereaved family.

Andy Slaughter: If those safeguards exist, as the Minister says, why are they not on the face of the Bill? They are, at least in part, in clause 38, which we are going on to discuss, so why would the Minister not accept some or all of the safeguards that we propose?

James Cartlidge: I will be addressing all the points, but the hon. Gentleman is right: clause 38 contains very significant safeguards.

The intention behind clause 37 is to provide coroners with the flexibility to discontinue an investigation into a death where a death from natural causes has become clear through means other than a post-mortem examination. It is intended that the clause will negate the need for unnecessary procedures and processes, freeing up capacity and resources for the coroner to concentrate on more complex cases. The clause should be read along with section 4 of the Coroners and Justice Act 2009, which it amends.

Amendment 69 proposes to introduce additional safeguards into clause 37, as discussed, by requiring additional conditions when a coroner seeks to discontinue an investigation into a death where the cause of death becomes clear in the course of investigation, which typically will be where medical evidence shows that the death was from natural causes. The safeguards include a requirement that the coroner seek consent from interested persons before discontinuing such an investigation. Although I understand the hon. Gentleman's concerns, I would like to assure him that the amendment is not necessary. The 2009 Act already provides the safeguards that the amendment seeks to include in the Bill. Section 4 of the Act sets out instances where the coroner may not discontinue an investigation, which include violent or unnatural deaths, or deaths in custody or other state detention.

I also remind the hon. Gentleman that coroners are independent judicial office holders, and the way that they carry out investigations and inquests is a matter for them. Introducing a requirement for the coroner to seek consent from interested persons before making judicial decisions would be not only fettering their discretion but would, in effect, remove the decision from the coroner—that is, the judge, which is what they ultimately are—into the hands of an interested person or a number of interested persons. That is at odds with the most fundamental principle of judicial proceedings, which is that only the judge or the jury makes the decisions, having listened to all the arguments without fear or favour. We must be mindful that while interested persons have certain rights at the inquest, they do not control the inquest process or its investigations. That is for the coroner alone to determine, as a judicial office holder.

[James Cartlidge]

I would like to assure the Committee that in his capacity as judicial head of the coroner service, the Chief Coroner will provide guidance to coroners accompanying all changes, which we expect coroners will follow.

Amendment 70 proposes that the coroner gives interested persons an explanation as to why they are considering discontinuing an investigation, to enable them to make an informed decision about whether to consent to the discontinuance of the investigation. Section 4 of the 2009 Act, which clause 37 amends, already provides that a senior coroner must, on request, provide a rationale for the discontinuance of an investigation. We expect the coroner to work sensitively with bereaved families to address any concerns that they may have regarding the investigation into their loved one's death. However, as I have said, the decision on the direction of the investigation, including consideration of any discontinuance, must be for the coroner alone. In any event, section 4 has a narrow remit. It is to permit the discontinuance of an investigation where natural causes are found to be the reason for the death, and not in any other instances. Every day, coroners make the decision not to investigate deaths reported to them that they determine are of natural causes. Section 4 expressly prohibits the coroner from discontinuing an investigation where the coroner has reason to suspect that the deceased died a violent or unnatural death, or died while in custody or otherwise in state detention. That position remains unchanged.

Amendment 71 goes slightly further and proposes to set out in primary legislation a requirement for the coroner to provide to the bereaved family a written explanation of why they have decided to discontinue an investigation, regardless of whether a request has been received from the bereaved family. As I have said, section 4 of the 2009 Act already provides that the coroner must provide a written explanation for discontinuing an investigation on request. We consider that that ensures that only family members who actually require the information will receive it, and that additional work is not required of the coroner when it is not needed. After all, these are streamlining measures. The Government's intention behind the measures on coroners in the Bill is to reduce unnecessary procedures in coroners' courts and unnecessary distress to bereaved families. The amendment runs counter to the Government's intentions and would add additional administrative process to the system. Providing such information unsolicited could also unintentionally distress bereaved families, although I am not suggesting that that is the hon. Gentleman's intention.

Finally, amendment 72 would require a separate appeals process to be established for bereaved families who would like to challenge a coroner's decision to discontinue an investigation into the death of their loved one. Although I understand that the hon. Gentleman wishes to ensure that bereaved families have recourse to appeal if they are not happy with the coroner's decision, I must remind him that there is already a route for bereaved families to challenge a coroner's decision by seeking judicial review of the decision. In 2020, there were just 20 judicial reviews against coroners' decisions, of which five got permission and two were successful at hearing.

Additionally, an individual may apply to the High Court, with the permission of the Attorney General, for an investigation to be carried out if the coroner has not held one, or for a fresh investigation to be held, for example if new evidence comes to light. The High Court will allow a fresh investigation only if it would be in the interests of justice, but importantly, there is no time limit for making such an application, which of course is not the case with judicial review. We therefore do not think it appropriate to set up a seemingly freestanding, separate appeals process to deal with this single element of coroners' judicial decision making.

I hope that I have adequately addressed the hon. Gentleman's concern and assured him that appropriate safeguards are in place. On that basis, I urge him to withdraw the amendments.

Andy Slaughter: That was a disappointing response from the Minister. I was looking for any or all of the following: an explanation of why there are not safeguards in the clause that go beyond what is in the 2009 Act; perhaps acceptance of some, if not all, of the suggestions that we have made; and at least reassurances that the Government will look at mitigation. It is undeniable that the effect of the processes set out in this part of the Bill is to make it more difficult for bereaved families to be active participants in the process when all the evidence is that we should be taking steps to facilitate that.

The Minister mentioned the recommendations of the Justice Committee. I can tell him that the Justice Committee was extremely disappointed with the Government's response. I will not go into that in detail now—it is outside the scope of these amendments—but I will quote from the debate that we had recently in Westminster Hall:

"I counted at least seven major omissions from the Government's response, and many of them have been mentioned already…One is the provision of non-means tested legal aid,"

which we are coming on to.

"One is appeals on coroners' decisions. One is the issue of pathologists' fees. One is the national coroner service, which the report recommends. One is the inspectorate, which the report recommends. One is a complaints procedure. The last is the independent office."—[*Official Report,* 28 October 2021; Vol. 702, c. 216WH.]

The significance of that is that, individually and collectively, those recommendations of the Justice Committee were trying to give some consistency and rigour to the way that coroners' decisions are made. The reason I quoted Tom Luce was to point out that inconsistency has been the constant complaint over the years. Coroners, in a way that is not typical of the courts and tribunal system, can produce very anomalous responses to families in that situation.

The Government have chosen not to bring forward responses on the issues that I have mentioned that were raised in the Justice Committee report, and they have been generally quite negative about them, while not ruling all of them out. However, at the very least, we need the very specific safeguards that I have mentioned. Having heard everything that the Minister has said, we will press amendments 69 and 72 to a vote. I will not oppose the clause outright, but those amendments are, frankly, the least that is necessary to offer the safeguards that we have indicated.

12.30 pm

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 7.

Division No. 14]

AYES

Barker, Paula	Slaughter, Andy
Cunningham, Alex	
Daby, Janet	Twist, Liz

NOES

Cartlidge, James	Mann, Scott
Higginbotham, Antony	Marson, Julie
Hunt, Tom	
Johnson, Dr Caroline	Moore, Damien

Question accordingly negatived.

Amendment proposed: 72, in clause 37, page 49, line 33, at end insert—

"(4) Section 43 of the Coroners and Justice Act 2009 (Coroners regulations) is amended as follows.

(5) In subsection (3) after paragraph (a) insert—

'(aa) provision for the establishment of an appeals process for interested persons who disagree with the decision to discontinue an investigation under the provision in section 4 of this Act.'"—*(Andy Slaughter.)*

The purpose of this amendment is to ensure the Lord Chancellor establishes an appeal process for families who disagree with the decision to discontinue an investigation.

The Committee divided: Ayes 5, Noes 7.

Division No. 15]

AYES

Barker, Paula	Slaughter, Andy
Cunningham, Alex	
Daby, Janet	Twist, Liz

NOES

Cartlidge, James	Mann, Scott
Higginbotham, Antony	Marson, Julie
Hunt, Tom	
Johnson, Dr Caroline	Moore, Damien

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

James Cartlidge: Over the past year, the coronial system has shown great resilience in how it has coped with the impacts of the pandemic in ensuring that death investigations have continued as far as possible. I pay tribute to our coroners and all of those who work in the coronial system. We are, however, aware that a considerable number of inquests have been delayed due to the pandemic restrictions, and coroners, along with the Chief Coroner, are looking at post-pandemic plans to ensure that the system recovers.

We expect that the coronial measures introduced in the Bill will play a major role in the coronial system's post-pandemic recovery, as they will reduce unnecessary procedures in coroner's courts. This will provide capacity to coroners as they address inquest backlogs in their courts. The Government's priority remains to ensure that bereaved families are at the heart of the coronial process. The measures in the Bill support this priority. Reducing unnecessary procedures in coroner's courts will reduce the distress of bereaved families. Clause 37 gives the coroner the flexibility to discontinue an investigation where the cause of death becomes clear and it has been revealed through means other than a post-mortem examination.

Where the cause of death has become clear otherwise than through a post-mortem examination, clause 37 will negate the need for the investigation to proceed to an inquest, reducing the distress for bereaved families. The clause does not remove the statutory requirement for a coroner's investigation into deaths in custody or other state detention to proceed to an inquest. Inquests into such deaths will still be required to take place as usual. We expect that the Chief Coroner will issue further guidance on this and the other coronial measures to ensure consistency of approach across the coroner areas.

Question put and agreed to.

Clause 37 accordingly ordered to stand part of the Bill.

Clause 38

Power to conduct non-contentious inquests in writing

Andy Slaughter: I beg to move amendment 73, in clause 38, page 50, line 18, after "hearing" insert—

"(e) the coroner has considered the views of any of the interested persons named at section 47(2)(a) or (b) of this Act who are known to the coroner,

"(f) all of the interested persons named at section 47(2)(a) or (b) of this Act who are known to the coroner consent to a hearing in writing."

This amendment will ensure that inquests are not held without a hearing if that is against the wishes of the deceased's family.

The Chair: With this it will be convenient to discuss the following:

New clause 10—*Publicly funded legal representation for bereaved people at inquests*—

'(1) Section 10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is amended as follows.

(2) In subsection (1), after "(4)" insert "or (7)."

(3) After subsection (6), insert—

"(7) This subsection is satisfied where—

(a) The services consist of advocacy at an inquest where the individual is an Interested Person pursuant to section 47(2)(a), (b), or (m) of the Coroners and Justice Act 2009 because of their relationship to the deceased; and

(b) One or more public authorities are Interested Persons in relation to the inquest pursuant to section 47(2) of the Coroners and Justice Act 2009 or are likely to be designated as such.

(8) For the purposes of this section "public authority" has the meaning given by section 6(3) of the Human Rights Act 1998.""

This new clause would ensure that bereaved people (such as family members) are entitled to publicly funded legal representation in inquests where public bodies (such as the police or a hospital trust) are legally represented.

New clause 11—*Removal of the means test for legal help prior to inquest hearing*—

'(1) Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is amended as follows.

(2) In paragraph 41, after sub-paragraph (3), insert—

"(4) For the purposes of this paragraph, the "Financial resources" provisions at section 21 (and in The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 do not apply.""

This new clause would remove the means test for legal aid applications for legal help for bereaved people at inquests.

New clause 12—*Eligibility for bereaved people to access legal aid under existing provisions*—

'(1) Section 10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is amended as follows.

(2) In subsection (4)(a), after "family", insert—

"or where the individual is an Interested Person pursuant to section 47(2)(m) of the Coroners and Justice Act 2009 because of their relationship with the deceased."

(3) In subsection (6), after paragraph (c), insert—

"(d) or they fall within any of the groups named at section 47 (2)(a), (b) or (m) of the Coroners and Justice Act 2009."

(4) Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is amended as follows.

(5) In paragraph 41, after sub-paragraph (3)(c), insert—

"(d) or they fall within any of the groups named at section 47 (2)(a), (b) or (m) of the Coroners and Justice Act 2009.""

This new clause would bring the Legal, Aid, Sentencing and Punishment of Offenders Act 2012 into line with the definition of family used in the Coroners and Justice Act 2009.

Andy Slaughter: As we move on to clause 38, I will speak to amendment 73 and the three new clauses about legal aid for representation and other matters.

Clause 38 gives coroners the power to hold inquests in writing where they decide that a hearing is unnecessary. Currently, rule 23 of the coroners' rules allows for documentary inquests to take place, where no witnesses are required to give evidence but a hearing must still take place. Clause 38 would change that by creating a new section 9C to the Coroners and Justice Act 2009, allowing a coroner to hold an inquest entirely in writing. New section 9C does include a list of considerations that the coroner must make before deciding to hold an inquest in writing. They include ensuring that all interested persons have been invited to make submissions; considering whether an interested person has put forward "reasonable grounds" for a hearing to take place; and determining that there is no public interest in holding a hearing.

The key concern with clause 38 is that there may be circumstances in which the bereaved family wants an inquest with a hearing but a coroner deems one unnecessary. Other interested persons invited to make representations may argue against a hearing. Holding an inquest in writing in this context could deprive the family of the opportunity to explore all available evidence and limit their ability to scrutinise the account provided by relevant authorities, including by hearing oral evidence and questioning key witnesses.

It is acknowledged that clause 38 provides some safeguards in this regard. However, we believe that those safeguards are insufficient. For instance, clause 38 does not mention the need to consider the bereaved family's wishes in terms and there is no guarantee that they will be given any weight in the coroner's ultimate decision. Therefore, it is not clear that a family's wishes would constitute the reasonable grounds needed to decide against conducting an inquest in writing. The current drafting of the Bill leaves a wide discretion to individual coroners to determine whether reasonable grounds for a hearing have been made out by a family.

Further, at the point where a family would be invited to make representations to the coroner on whether an inquest should or should not be held in writing, many families would not necessarily have legal representation to support them in making their views heard. That would put families at a disadvantage in comparison with other interested persons with the benefit of legal teams who were also invited to make representations and argue against a hearing.

I will refer to a particular case; my purpose is to illustrate the argument rather than deal with the specifics of the individuals concerned. Jessica died on 16 October 2020 at a women's crisis centre called Link House. Jessica had mental ill health and had suffered from an eating disorder and depression for most of her adult life. The inquest into Jessica's death was originally listed as a rule 23 documentary inquest. However, given emerging evidence that there were serious problems in Jessica's care, representations were made to the coroner that the inquest should be adjourned. That request was granted, and a pre-inquest review is scheduled for later in the year, when lawyers will be able to argue that article 2 is engaged.

If clause 38 had applied in this case, Jessica's family might have struggled to make clear their arguments that the coroner should proceed to an inquest hearing; an inquest in writing might have proceeded at the coroner's discretion and against the family's wishes. My amendment to clause 38 would ensure that the wishes of families are respected in decisions on whether to hold a paper-only inquest instead of having a hearing, as ordinarily happens. Some families may wish to have a hearing so that evidence can be fully aired and they have the opportunity to raise any concerns with the coroner directly. The amendment would ensure that inquests are not held without a hearing if that is against the wishes of the family of the deceased.

I move on to new clauses 10, 11 and 12. I start with a quote from Deborah Coles, the executive director of Inquest. She sums up the position we are in and why I am asking the Government to support the three new clauses on legal aid at inquests. Ms Coles says:

"It is now for the Government to put the experiences of bereaved people at the front and centre and ensure equality of arms, accountability, oversight and candour. There can be no more false starts, broken commitments or shelved recommendations."

Ms Coles knows well what she is talking about. Inquest has worked on more than 2,000 cases and investigation processes, with 483 families currently needing their support after a bereavement. This work is done to secure more effective scrutiny of the state when people die. These are people who die in police custody, in prison cells, in health or social care settings, but also in major disasters such as Hillsborough and, more recently, Grenfell.

When these deaths occur, there is a fundamental inequality of arms when it comes to what follows. Inquests following state-related deaths are intended to seek the truth and to expose unsafe practices and abuses of state power. However, the preventative potential of inquests is undermined by the pitting of unrepresented families against multiple expert legal teams defending the interests and reputations of state and corporate bodies. What is more, bereaved families often struggle for legal representation, while public authorities have unlimited access to lawyers at the taxpayer's expense.

I want to mention the intervention from the hon. Member for East Worthing and Shoreham (Tim Loughton) in the Westminster Hall debate on 28 October. The Minister was there replying for the Government. The hon. Gentleman himself, with the assistance of many, had to work to get to a situation where there was representation for the families in the Shoreham air show case. There were 18 different public bodies, all of which had legal representation. That is at the far end of what can happen, but it is not untypical for there to be not just one, two or three, but four, five or six different public bodies represented.

I did not accept the evidence of Mr Rebello. He made some very cogent points, which we will come on to in clause 39. Lawyers are employed to represent the interests of state parties. Yes, they will have a general duty, as all lawyers do, to assist the court, and, yes, they may, albeit asked by the court, assist unrepresented parties—or they will volunteer to—but that is not the norm. They are there to—and are paid to—represent their clients. They will, on the whole, make points that seek to exculpate their client from responsibility. To see that happening day-to-day, year-to-year, in the coroner's courts, where families are pitted in that way, is deeply disturbing, frankly.

Families will face hospitals, police and local authorities and other public bodies that have legal representation, often funded by the public bodies. Where these bodies do not have representation, they will still likely have formal assistance through in-house legal professionals or specialist inquest officers—none of which is available to most families. At the very least, public bodies will have witnesses who are experienced professionals, such as doctors, who will still have been provided with advice from a legal team prior to the inquest. All this, and yet a family suffering a bereavement and dealing with the trauma surrounding the circumstances of the death and the inquest process are likely to be refused the same publicly funded legal assistance.

Legal aid will be granted only under the Government's exceptional funding scheme if it is considered that there is a wider public interest in the inquest or if it is an article 2 inquest. As many of the Committee will know, an article 2 inquest is held when there is a death in state custody, or if it can be argued that the state failed to protect someone's right to life. Furthermore, to be granted legal aid under this scheme, families must currently also meet a financial means test.

In the absence of legal aid, some lawyers help bereaved families by funding representation through a conditional fee agreement—or CFA—otherwise known as no win, no fee. This funding arrangement has to be linked with a separate civil claim for compensation. If a CFA is not possible, either legal representation is provided free of charge by a lawyer, which can be unsustainable for law firms, or a family has to fund its own representation. This is simply unaffordable for many families—for most, I would argue. Legal aid provides families with the certainty that there will be equality of arms at the inquest and that they will not be alone during what is likely to be one of the most difficult periods of their lives.

12.45 pm

In September, the Government responded to the Justice Committee report on this point. The Committee said that the Ministry of Justice should,

"for all inquests where public authorities are legally represented, make sure that non-means tested legal aid or other public funding for legal representation is also available for the people that have been bereaved."

In their response to that report, the Government announced a plan to remove the means test for exceptional case funding and the means test for legal help in cases where exceptional case funding is granted. I acknowledge that that is a considerable step to ensure that bereaved families involved in inquests where article 2 is engaged are funded without having to go through a complex and intrusive application process.

However, while plans to remove the means test for exceptional case funding through secondary legislation appear well advanced—I think the Minister has said that he expects to bring forward secondary legislation on that in the new year; if he is able to give us any more details, that would be helpful—work on the legal help process is a long way from fruition. Legal advice is needed not only during the inquest hearing but from the point of death. There is a clear link between meaningful access to justice and the outcome of the legal process, as early legal advice has a significant impact on the scope and quality of inquests.

I do not know whether the Minister can say any more about that today; it will be helpful if he can. Again, I welcome the commitment that there will be legal aid for early help too. Will it be dealt with at the same time and in the same manner as exceptional case funding, or do the Government have other plans?

This policy reform, while welcome, does not go nearly far enough. Even before the financial situation of families is considered, it is rare for an application for exceptional case funding to be successful, especially in healthcare-related inquiries. The removal of the financial means test alone is unlikely to benefit many families, nor does it satisfy the requirements set out in recommendations made by countless reviews.

The evidence for the need for change is overwhelming. It has support from all quarters, including every independent review and public inquiry that has considered these issues in the last 20 years. The Justice Committee originally set a 1 October deadline, which has now passed, but the Bill presents an opportunity to address these issues. I therefore wish to set out the case for the three new clauses in turn, in an effort to address the current inequality of arms.

I turn first to new clause 10. It seems that in most cases where there has been a state-related death, the state is represented by publicly funded expert legal teams and routinely supported by relevant experienced professionals and senior personnel during the inquest. In cases where Inquest has been involved in supporting families, the state has always, without exception, had that level of support. All that is automatically in place for state bodies, largely at the taxpayer's expense. There is no test of merit, nor any means testing in place, for accessing that support.

I will read some quotes from families that Inquest has been supporting that were submitted as evidence to the Justice Committee. One family said:

"We haven't had the inquest yet, but I don't have much faith that we will get the answers or outcome we would like because we don't have representation and everything is stacked against us. All the services involved have representation – how can that be fair?"

Another said:

"It is horrendous and unfair that the process cost us over £30,000. The Trust had a very expensive barrister paid for by our taxes. The thought that justice is not available to families is terrible."

Dawn Boyle said:

"Without legal aid, people like us would just bury our sons with no questions asked. Legal aid makes a massive difference. Legal aid gives us that voice. Without legal aid, we have to sit back and accept it. We would be even more devastated if we couldn't find any answers."

Liz de Oliveira said that after the death of her daughter,

"the lack of funding meant I had to cross examine the pathologist myself on my dead daughter's body – something no parent should ever have to do."

Deborah Lockett said:

"I will say it again, and again, and again, until it is well known: the purpose of Legal Aid funding for inquests is to give the coroner the best possible opportunity to prevent future deaths, by hearing submissions from the family's barrister. There is no way that a family member can fill the professional role of a barrister. The family's barrister is there in court solely to assist the coroner to identify the legal issues in play in the inquest, all for the ultimate purpose of preventing future deaths. This simply cannot be achieved without Legal Aid. Does anyone now think Legal Aid for inquests is unimportant? Who is going to assist the coroner in his/her work if the family don't have a barrister?"

These experiences highlight the fundamental inequality of arms at the heart of the inquest process. State bodies and representatives have unlimited access to public funding and the best legal teams and experts; families have to fall within a strict, draconian framework to be granted legal aid, and face complex and demanding funding application processes. Many are forced to pay large sums towards legal costs or to represent themselves. Others have had to resort to crowdfunding. The existing funding scheme is having a damaging and distressing effect on families, further frustrating the inquest process by adding an additional layer of complexity and delay, and thwarting the process of scrutiny and the potential for learning.

I am concerned by the Ministry of Justice's suggestion that inquests are inquisitorial, informal processes in which families can either represent themselves and ask questions about the death of their relative, or ask others to answer their questions. That is simply a myth. The reality is that an unrepresented family is confronted by a bank of lawyers who represent other interested persons at the inquest, with a heavy focus on damage limitation for the organisation at hand. The process is much more adversarial than inquisitorial, and as such the inquest process requires specialist knowledge of organisational policies, procedures and the law.

Countless authoritative reviews and inquiries have all reached the same conclusion: the current funding arrangements for inquest representation needs fundamental reform. As recently as May this year, the Justice Committee said that

"it is unfair that public funding is available for bereaved people to be legally represented at inquests only in exceptional cases and subject to a means test. This is the case even at inquests that involve many public bodies each of which are legally represented".

The past few years have seen an unprecedented focus on how agencies investigate and scrutinise contentious state-related deaths. The momentum for change is now overwhelming and the call for funding that we make today is echoed from every possible quarter—from Dame Elish Angiolini, Bishop James Jones, Lord Bach, two Chief Coroners, Baroness Corston, Lord Harris, the Joint Committee on Human Rights, the independent review of the Mental Health Act, the Westminster commission on legal aid, and agencies including the Independent Office for Police Conduct.

Back in 2017, Dame Elish Angiolini stated:

"For the state to fulfil its legal obligations of allowing effective participation of families in the process that is meaningful and not 'empty and rhetorical' there should be access for the immediate family to free, non-means tested legal advice, assistance and representation immediately following the death and throughout the Inquest hearing."

Bishop James stated that

"publicly funded legal representation should be made available to bereaved families at inquests at which a public authority is to be legally represented."

Members of this Committee were sent a letter just a few days ago, on 16 November—I am sure we have all seen it—in support of the intention of the new clause. That letter was signed by Action against Medical Accidents, Appeal, the Association of Personal Injury Lawyers, the British Institute of Human Rights, Clinks, Cruse Bereavement Support, the Equality Trust, the Howard League for Penal Reform, Justice, the Law Centres Network, the Law Society, the Legal Action Group, the Legal Aid Practitioners Group, Liberty, Paul Farmer, Mind, Medical Justice, the Prisoners' Advice Service, the Prison Reform Trust, the Public Law Project, Release, User Voice, Women in Prison, and the Zahid Mubarek Trust. We seldom see such universality and agreement on a single point.

Without funded representation, families are denied their voice and meaningful participation in the processes of investigation, learning and accountability. That undermines the preventive potential of inquests to interrogate the facts and ensure that harmful practices are brought to light. Many families enter into the long, complex and incredibly daunting inquest process in the hope that by their doing so future deaths will be prevented. As has been often said by families who have been through this, the objective in pursuing what is a traumatic and difficult process is often not only truly to understand what may have happened to a loved one, but to try to ensure that no one else will suffer in the same way.

Many key findings on the conduct of state bodies arise from cases that fall within article 2 and are therefore eligible for exceptional case funding. However, such findings also crucially arise from many cases in which article 2 may not be arguable. Those include healthcare-related deaths in custody, in which currently the prison service, the police, or the mental health trust would be legally represented at an inquest but the family would not be eligible, or self-inflicted deaths in mental health settings of voluntary patients or those detained under the Mental Health Act 1983, in which, if the coroner rules that article 2 on the Rabone test is not engaged, the family do not get funding. There is considerable inconsistency in coroners' decisions on article 2 in that context, and currently a large number of cases that might actually qualify for article 2 are not being funded, with families being left unrepresented.

Other instances include self-inflicted deaths where the person is under the direct care of a mental health trust but is living in the community, deaths in supported accommodation where the person has been placed there by a public body, self-inflicted deaths of people who have presented in mental health crisis at a hospital but the hospital is not willing to admit them, deaths in care settings where placements are funded by a local authority, which would include the deaths of people with learning disabilities, and cases involving complex or systemic

medical concerns. In all those instances, there would be no benefit from the changes currently proposed by the Ministry of Justice. Such cases must be included in the criteria for non-means-tested funding for bereaved families' legal costs during the entire inquest process.

Funding should also be granted in cases involving wider state and corporate accountability and multiple deaths, such as Hillsborough, Grenfell and terrorist attacks. The little-used public interest category of funding needs to be expanded and clarified to broaden the scope to cover important cases that raise issues of wider public concern and benefit. The extremely limited number of grants on public interest grounds demonstrates that the current test, and the way in which it is applied by the Legal Aid Agency, is not fit for purpose.

I would like to give a few examples of why the case for change is so important. The first is the case of Connor Sparrowhawk, who died after he drowned in a bath as a result of an epileptic seizure on 4 July 2013. He was admitted to a now closed down short-term assessment and treatment unit run by Southern Health NHS Foundation Trust. Connor's death was originally viewed as being from natural causes, meaning it would have been extremely difficult for it to be assessed as eligible for legal aid under ECF. The coroner eventually determined that article 2 had in fact been engaged and, at the inquest into his death in 2015, the jury found that Connor's death was contributed to by neglect.

Connor's family were not able to pay for legal representation out of pocket and relied on pro bono advice and representation. As Connor's family told the Joint Committee on Human Rights in 2018, lawyers for the multiple state agencies involved in their son's death adopted an adversarial and obstructive approach preceding and during Connor's inquest. Therefore, without legal representation, it is likely the significant findings made about neglect in Connor's care would never have come to light.

Inquest informed me of the case of D, involving a death in private supported accommodation. The individual had recently been released from prison and was placed in accommodation that the local council noted was unsanitary. The inquest was originally listed as a rule 23 inquest, which meant a documentary inquest without hearing from key witnesses. Lawyers working on this case were thankfully able to argue that article 2 was in fact engaged and funding was eventually granted. Without legal representation, it is likely this case would never have proceeded to a full inquest hearing.

In the case of Matthew, who died on 8 January 2019, the inquest concluded that his death was sudden, unexpected and linked to alcohol dependency. Matthew's family were keen for his inquest to be as broad as possible in scope, to understand the circumstances around his death. They paid privately for legal representation to make the case for the inquest to be article 2 during the pre-inquest review, given systemic issues around detoxification pathways from A&E.

Ultimately, the coroner decided that article 2 was not in breach in this case, and therefore Matthew's family were not eligible for legal aid under exceptional case funding. Crucial failings were identified in the care Matthew received, including the fact that Matthew should have been admitted for inpatient detoxification four days prior to his death and that there was poor communication between staff on his case.

Although it was ultimately decided that Matthew's case did not engage article 2, with help from lawyers the inquest into his death revealed critical findings about his care at the hands of the state. Given the state's involvement, Matthew's family should not have been forced to pay out of their pocket for legal representation, especially when the five other interested legal parties all had legal representation, mainly paid for by the state.

I also want to highlight the case of Harry Richford, who died seven days after birth at the Queen Elizabeth the Queen Mother Hospital in Margate, Kent. Harry's family were not able to pay for specialist legal help and needed to navigate the complex inquest process, in which NHS trust lawyers dropped 1,400 pages of new evidence on the morning of the second day of the inquest. The family worked with their local MP and the organisation Advocate to secure pro bono legal representation.

Following the inquest into Harry's death, the Care Quality Commission confirmed that it would be criminally prosecuting the trust for unsafe care and treatment for both Harry and Sarah, his mother. Without legal representation, Harry's family may never have found out what went wrong in their son's care, and there would have been no accountability for his death. It is unfair that state agencies were able to be represented at the taxpayer's expense while Harry's family had to struggle to find pro bono representation.

Properly conducted inquests in which families are legally represented can help to ensure scrutiny and examine and address the systems and practices that are meant to ensure safety and prevent deaths. While the individual rights and interests of the families in each case are vital, the benefit of ensuring proper legal representation for those families does not end there. Inquests can help to save lives by exposing unsafe systems of care and holding public and private services to account. Funding for families therefore has a wider public benefit, far beyond individual rights and interests. New clause 10 would ensure that the bereaved are entitled to publicly funded legal representation in inquests where public bodies are legally represented, giving effect to the recommendation in the Justice Committee's report on the coroner service.

I will now deal with new clauses 11 and 12, unless the Government Whip wishes to interrupt me.

Ordered, That the debate be now adjourned.—*(Scott Mann.)*

1.2 pm

Adjourned till this day at Two o'clock.