

Title: The Victims and Prisoners Bill: Establishment of an Independent Public Advocate (IPA)

IA: MoJ043/2022

RPC Reference No: N/A

Lead department or agency: Ministry of Justice

Other departments or agencies:

Impact Assessment (IA)

Date: 29/03/2023

Stage: Legislation

Source of intervention: Domestic

Type of measure: Legislation

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Summary: Intervention and Options

RPC Opinion: N/A

Cost of Preferred (or more likely) Option (in 2022-23 prices)

| Total Net Present Social Value | Business Net Present Value | Net cost to business per year | Business Impact Target Status |
|--------------------------------|----------------------------|-------------------------------|-------------------------------|
| -£8.1m | N/A | N/A | N/A |

What is the problem under consideration? Why is government action or intervention necessary?

Important reforms have been made in recent years to support and empower the victims of major incidents, including the implementation of the Coroners and Justice Act 2009. However, the processes that take place following a major incident can be hugely complex, involve multiple agencies and deploy rules and procedures unfamiliar to most people. This can be daunting and overwhelming, and it is clear there remain concerns about how far the voices of victims of major incidents are heard and how far they are supported in understanding and participating in processes. Therefore, to ensure that the past experiences of victims following a major incident are not repeated and to increase trust between the victims of a major incident and the state, the Government has decided to establish an Independent Public Advocate (IPA) to help them navigate and participate in the processes that follow a major incident. Government intervention is required to place the IPA on a statutory footing as this will give it the necessary powers to fulfil its role effectively and to incur expenditure.

What are the policy objectives of the action or intervention and the intended effects?

The associated policy objective is therefore to ensure that the victims who were at the site of major incident are properly involved in, and supported, throughout the investigation, inquest and inquiry (if there is one) which would follow a major incident. The IPA will also, crucially, promote effective relationships between public bodies/the Government and the victims of major incidents. It is not the intention that the IPA duplicate existing roles or hinder those who deliver existing services to the victims of major incidents. Rather, the IPA will complement these provisions and fill the gap identified above.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The following options are considered in this Impact Assessment:

- **Option 0:** Do nothing
- **Option 1:** Legislate to create an Independent Public Advocate

Option 1 is preferred because it meets the policy objectives and Government priorities

Will the policy be reviewed? No Review date: NA

| | | | | |
|--|-------------|-------|-----------------|-------|
| Is this measure likely to impact on international trade and investment? | No | | | |
| Are any of these organisations in scope? | Micro | Small | Medium | Large |
| What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) | Traded: N/A | | Non-traded: N/A | |

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister

..... Date:

Summary: Analysis & Evidence

Policy Option 1

Description: Legislate to create an Independent Public Advocate

FULL ECONOMIC ASSESSMENT

| Price Base Year 22/23 | PV Base Year 22/23 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
|---|--|-------------------------|--|-------|--|
| | | | Low: | High: | Best Estimate: -£8.1m |
| COSTS (£m) | Total Transition (Constant Price) Years | | Average Annual (excl. Transition) (Constant | | Total Cost (Present Value) |
| Low | | | | | |
| High | | | | | |
| Best Estimate | £2.5m | 3 | £500,000 - £1m | | £8.1m |
| <p>Description and scale of key monetised costs by 'main affected groups' The IPA Secretariat in the MoJ has been allocated £2.5m from April 2022 to cover the Spending Review period. This will cover staff costs, the costs of recruiting a list of potential advocates, IT, revisions to existing guidance and those associated with raising awareness concerning the existence of the IPA with particular audiences. Thereafter costs of the Secretariat and wider activities for recruitment, training, IT, guidance and comms are expected to be between £500,000 and £1m per annum. This represents a total NPC of £8.1m over a 10-year appraisal period.</p> | | | | | |
| <p>Other key non-monetised costs by 'main affected groups' Individual government departments with policy responsibility for each major incident will bear the costs of the panel. However, whilst foreseeable, these costs are not able to be estimated as it will not be known what the size and scale of any major incident will be, how many people are affected and how long any follow-up investigation, inquest or inquiry will take nor is it possible to predict the number of major incidents which may occur.</p> | | | | | |
| BENEFITS (£m) | Total Transition (Constant Price) Years | | Average Annual (excl. Transition) (Constant | | Total Benefit (Present Value) |
| Low | | | | | |
| High | | | | | |
| Best Estimate | N/A | | N/A | | N/A |
| <p>Description and scale of key monetised benefits by 'main affected groups' It has not been possible to monetise the benefits of Option 1.</p> | | | | | |
| <p>Other key non-monetised benefits by 'main affected groups' For those victims of a major incident, the IPA will provide support, guidance and signposting. This support will include: understanding and advancing their interests; ensuring they understand the purpose and structure of an investigation, inquest and inquiry; supporting them to fully participate in these proceedings; and ensuring they have access to, or are signposted to, appropriate support services. This support and guidance should bring non-monetised benefits for those who qualify, most notably in reducing stress. The victims of a major incident should also have a higher level of satisfaction in the process and feel that their voices have been amplified. The IPA should help to negate the costs to individual government departments from establish bespoke arrangements following major incidents.</p> | | | | | |
| Key assumptions/sensitivities/risks | | | | | Discount rate |
| | | | | | 3.5% |
| <p>The total impacts of the IPA are impossible to estimate as there is great uncertainty over the number of major incidents that could happen in any given period, and about the length of time it would take from event to conclusion of support. Finally, although the IPA is not intended to duplicate the work of government agencies, there remains a risk that there could be some overlap.</p> | | | | | |

BUSINESS ASSESSMENT (Option 1)

| | | | |
|--|---------------|----------|--|
| Direct impact on business (Equivalent Annual) £m: | | | Score for Business Impact Target (qualifying provisions only) £m: N/A |
| Costs: N/A | Benefits: N/A | Net: N/A | |

Evidence Base

A. Background

1. Following a major incident, various support services are triggered, including Local Resilience Forums, Casualty Bureaus and, Family Liaison Officers (FLOs) alongside several other Victim Support services. There is also the support from numerous charities, such as the British Red Cross and the Salvation Army, along with specialised ad hoc support provided by central government or Local Authorities.
2. As the ensuing investigation develops and the formal inquest/inquiry process begins, measures are also in place that supplement these proceedings, such as the ‘Guide to Coroners Services for the Bereaved’¹; in parallel, the implementation of the Coroners and Justice Act 2009 made the inquest process more sympathetic to the bereaved, as its purpose was to “establish more effective, transparent and responsive justice and coroner services for victims, witnesses, bereaved families and the wider public”.

Problem Under Consideration

3. Although important reforms have been made in recent years to support and empower victims, the formal processes that follow a major incident remain complex. The aftermath of a major disaster can involve multiple agencies, multiple families, and the deployment of rules and procedures that are unfamiliar to most people. This can be daunting, confusing and overwhelming. Furthermore, there are concerns about the extent to which the voices of the bereaved are being heard and how far they can meaningfully participate and understand the process.
4. Current systems are also stretched; the ‘Kerslake Report’² into the response to the 2017 Manchester Arena Bombing reported that “the Family Liaison Officers and Bereavement Nurses provided a vital source of support and comfort to many of the families which went well beyond their formal roles”.
5. Finally, there is no dedicated support function that stays with the families from start to finish. In particular, there is no dedicated body to explain to the victims of a major incident the process of a major incident response, what happens next and how they can interact with the authorities involved.

An Independent Public Advocate

6. The idea of an Independent Public Advocate (IPA) arises from the lessons learned from the 1989 Hillsborough Disaster. In particular, this was because the investigation and inquests that followed that event were heavily criticised by the families of the bereaved, who felt that they were not properly supported or listened to³.

¹ [A Guide to Coroner Services for Bereaved People \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

² [Kerslake Report into the Manchester Arena Bombing - 22nd May 2017](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655892/6_3860_HO_Hillsborough_Report_2017_FINAL_WEB_updated.pdf)

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655892/6_3860_HO_Hillsborough_Report_2017_FINAL_WEB_updated.pdf

7. The experience of the victims following the 2017 Manchester Arena bombing and the 2017 Grenfell Tower fire also highlighted enduring gaps in existing forms of support provision. The Right Reverend James Jones' report, entitled 'The Patronising Disposition of Unaccountable Power' was commissioned by the Rt Hon Theresa May MP in her role as Home Secretary following the conclusion of the Hillsborough inquests in April 2016. In the report, Bishop Jones opens with a letter addressed to the Prime Minister and the Home Secretary, which includes the line 'the way in which families bereaved through public tragedy are treated by those in authority is in itself a burning injustice which must be addressed'. In this report, Bishop Jones welcomed the commitment to create an IPA.
8. There have also been previous attempts by interested parliamentarians to establish an IPA. Maria Eagle MP has introduced a Public Advocate (No.2) Bill several times, most recently on 23 June 2022, having previously introduced it in July 2019 and April 2020. Ms Eagle's Bill is identical to a Private Members Bill (PMB) introduced by Lord Wills in 2014/15 and 2015/16. Lord Wills has also recently reintroduced his Bill on 9 June 2022.
9. The intention is that the IPA will be engaged for exceptional events such as those on the National Risk Register for major accidents and malicious attacks. It is not intended for individual cases, societal risks, nor human and animal health risks. Nor will the IPA seek to duplicate existing roles or hinder those who deliver existing services for the victims of major incidents. Instead, the IPA will complement those provisions in order to render unnecessary the reactive ad hoc arrangements that individual government departments may face pressure to establish following such incidents.
10. It is intended that the IPA would be engaged as soon as possible in the aftermath of a 'major incident' and that it will build relationships with relevant organisations and the victims of major incidents. As mentioned above, the Hillsborough disaster, the Manchester Arena bombing, and the Grenfell Tower fire are the kind of events that would be in scope for IPA support if they were to happen after the establishment of the office of the IPA.
11. There will be a register of persons for the IPA that can be selected based on the skills and experience they possess and their relevance to a particular disaster and the community affected. Those selected to form the panel will have a range of responsibilities which may include (but is not limited to):
 - helping victims of major incidents understand the actions of public authorities in relation to the incident, and how their views may be taken into account.
 - informing victims of major incidents about other sources of support and advice, and services, that may be available in connection with the incident.
 - communicating with public authorities on behalf of victims of major incidents in relation to the incident.
 - assisting victims of major incidents to access documentation that they are entitled to access during the course of the investigation.
12. It is envisioned those on the register will possess a range of skills and experience from ex-emergency services personnel and medical staff to community leaders who

will begin to support the victims of a major incident in the immediate aftermath of an event and throughout any investigative processes which may occur. This approach will be more flexible than previous ad hoc arrangements and, with its pre-existing relationships with government and with public authorities, it will have a foundation upon which to begin immediately. The IPA will be supported by a full-time secretariat based in the MoJ.

Consultation

13. As noted above, the Government consulted on establishing an IPA between 10 September 2018 and 3 December 2018. There were (42) written responses; and (6) stakeholder sessions held.
14. Those who responded to the consultation and supported the proposals felt that an IPA would “provide vital assistance to the injured and bereaved to signpost them to the advice and support that they need” and could help to “ensure bereaved families have a true voice”.
15. In response, the Government decided to establish and legislate for an Independent Public Advocate. The options considered in this Impact Assessment (IA) form part of this process.

B. Rationale & Policy Objectives

Rationale

16. The conventional approach to government intervention is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (for example, monopolies overcharging consumers) or there are strong enough failures in existing government interventions (for example, waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and re-distributional reasons (for example, to reallocate goods and services to the needier groups in society).
17. The primary rationale for intervention in this instance is equity. By establishing an IPA, the Government will ensure that the victims of major incidents are able to understand and participate meaningfully in subsequent proceedings. The IPA will also ensure that the voices of the victims of major incidents are heard.

Policy Objectives

18. The Government aims to make sure that the past experiences of victims of major incidents are not repeated and believes this will primarily be achieved through an increase in trust between the victims of major incidents and the state which will be facilitated by the IPA.
19. The associated policy objective of the IPA is therefore to ensure that the victims of major incidents who were at the site of a major incident are properly involved in, and supported, throughout the investigation, inquest and inquiry (if there is one) which

would follow a major incident. The IPA will also, crucially, promote effective relationships between public bodies/the Government and the victims of major incidents. It is not the intention that the IPA duplicate existing roles or hinder those who deliver existing services to the victims of major incidents, Rather, the intention is that the IPA will complement these provisions by providing signposting and guidance to the relevant services that can assist them following a disaster.

C. Affected Stakeholder Groups, Organisations and Sectors

20. The options assessed in this IA will primarily affect the following groups:

- The victims of a major incident
- Those injured who were at the site of a major incident
- The Ministry of Justice (MoJ)
- Government departments who will fund the IPA panel
- Victim support services and broader organisations which offer support for the victims of a major incident.

D. Description of options considered

21. To meet the policy objectives, the following options are considered in this IA:

- **Option 0 – Do nothing**
- **Option 1 – Legislate to create an Independent Public Advocate**

22. Option 1 is recommended as it best meets the policy objectives described above.

Option 0

23. Under this option we would not establish an IPA meaning that the victims of major incidents would continue to rely on the arrangements described in Section A above. They would have to navigate the myriad of support services available to them in the immediate aftermath and would not be guaranteed a point of contact that would support them throughout until the conclusion of any inquest and possible inquiry.

24. In addition, under this option, the Government would lack an immediate interface with the victims of major incidents and vice versa.

Option 1 – Legislate to create an Independent Public Advocate

25. Under this option, the Government will legislate to establish an IPA.

26. The legislation will cover the following:

- Establishing the legal status of the IPA allowing it to support victims of a major incident. This measure will define a major incident as “an incident that occurs in England and Wales which, in the opinion of the Secretary of State has directly caused serious harm to a significant number of individuals”. It will also define a victim as “individuals who have been harmed by the incident and close family members or close

friends of individuals who have been caused serious harm by the incident". This measure will also determine the considerations the Secretary of State may make in appointing an advocate, such as their academic, professional or other qualifications, experience or skills, or their relationship with a geographical area or community.

- How the terms of appointment of an advocate are to be governed. This shall be made in terms agreed between an advocate and the Secretary of State. This will also enable the Secretary of State to remunerate an advocate such as is appropriate.
- A power for the Secretary of State to appoint multiple advocates for the same incident who will form a panel with a lead advocate. This lead advocate will be able to give directions to others in the exercise of their functions.
- The functions of an IPA. An advocate or advocates may support victims in the aftermath of major incidents, during any investigation by a public authority, an inquest and an inquiry. This measure will also provide a non-exhaustive list of support that an advocate may decide to provide to victims e.g., helping them understand the actions of public authorities in relation to an incident; informing victims about other sources of support and advice and services; communicating with public authorities and assisting victims to access documents or other information to the extent they are entitled to. This will also make clear that support from an advocate is restricted to those over 18 years of age, victims under 18 shall be supported through their representative.
- The exclusion of certain conduct of an advocate e.g., carrying out legal activity for any persons; providing financial support or health care.
- The reporting duties of the IPA.
- Information sharing protocols between the IPA and public authorities through express information sharing gateways.
- The territorial extent of the IPA. - England and Wales.

27. Guidance and a policy statement will cover the operational working of the IPA and set out the Secretary of State's policy for determining whether an incident qualifies as a major incident.

28. This option will allow the Government to meet the needs of the victims of major incidents.

E. Cost and Benefit Analysis

29. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.

30. This IA identifies impacts on individuals, groups and businesses in England and Wales, with the aim of understanding what the overall impact to society would be from implementing the options considered. IAs typically place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are important aspects that cannot sensibly be monetised which might include how the policy impacts differently on groups of society or changes in equity and fairness.
31. The costs and benefits of each option are usually compared to the ‘do nothing’ or ‘counterfactual’ option. As the counterfactual is compared to itself, its costs and benefits are zero, as is its Net Present Value (NPV).
32. In this case, however, it has not been possible to sensibly monetise all of costs and benefits associated with Option 1. In particular, it is unlikely that the main benefits of Option 1 can be monetised. There is also a further degree of uncertainty given the complex and unpredictable nature of a major incident and the timescales associated with the subsequent investigation, inquest and possible inquiry. The scope of a major incident is also deliberately flexible; however, this does make it difficult to estimate the likely cost to HM Government.
33. Therefore, for illustrative purposes and based on assumptions concerning the activities potentially associated with an IPA intervention, four different scenarios have been costed (excluding expenses) ranging from ‘low’ to ‘very high’. These are shown below alongside a recent event which may potentially meet the definition of a ‘major incident’ should the Secretary of State decide, which might correspond to the scale of a likely IPA intervention⁴. To note – the estimates below are based on an assumption of the number of days the advocates will need to work and are not based on the assumed severity of the incident:
- Low Support Scenario: £ 50,000 (Approx.)
 - Medium Support Scenario: £120,000 (Approx.)
 - High Support Scenario: £240,000 (Approx.)
 - Very High Support Scenario: £360,000 (Approx.)
34. Due to the uncertainties described above relating to the cost of the independent advocates, only the costs of the IPA Secretariat have been appraised in this IA. This means that, regardless of any benefits it may create, Option One will have a Net Present Cost (NPC). This NPC has been appraised over a 10-year appraisal period and all costs in this IA are given at 2022/23 prices. Given the high level of uncertainty regarding the various costs of the IPA at this stage, optimism bias has not been applied separately.

Option 1 – Create an Independent Public Advocate

Costs of Option 1

⁴ The scale of any IPA involvement is in no way a reflection that any disaster regardless of scale is any more or less tragic than others.

Monetised Costs

Ministry of Justice

35. The IPA Secretariat is funded by the MoJ. £2.5m was allocated in April 2022 to cover 3 years from 2022/23 (£0.5m, £1m, £1m). This covers cost of staffing; recruitment of the list of potential advocates; training; IT; and revisions to existing guidance. This will also cover costs to HM Government for associated communications activity to specific audiences, to raise awareness of the IPA.
36. After the initial set-up and recruitment of the IPA, we envision the yearly costs to reduce as the IPA effectively becomes “inactive” other than day-to-day administrative work/costs until such time as it is required in the aftermath of a ‘major incident’. We estimate these costs to be approx. £1m per year, which would bring the total cost of the IPA over a 10-year period (assuming inactivity) from April 2022 to £9.5m giving an NPC over the appraisal period of £8.1m.

Non-Monetised Costs

Victim support services and broader organisations which offer support for the victims of major incidents.

37. As the IPA will be signposting and providing guidance on these services and charities in the aftermath of a disaster, it is foreseeable that there will be an increase in the number of people using such services which would result in an increased cost to those who offer them. Whilst these costs are foreseeable, they cannot be estimated in advance as it is not possible to predict the number of major incidents which may occur, the size and scale of any such incident, how many people will be affected and how long any follow-up investigation, inquest or inquiry will take.

Government departments which will fund the IPA Panel

38. The cost of the IPA panel will be borne by the government department with the policy responsibility. For example, terror attack such as the Manchester Arena bombing would be funded by the Home Office who sponsored the inquiry.
39. However, as no funding exists for the IPA Panel within other government departments, these costs (whilst foreseeable) cannot be estimated for the same reasons given above.

Benefits of option 1

Non-Monetised Benefits

The victims of a major incident

40. The IPA will provide support, guidance and signposting for the victims of a major incident. This will include: understanding and advancing their interests; ensuring the victims of a major incident understand the purpose and structure of an investigation, inquest and inquiry; support them to fully participate in these proceedings; ensure they have access to, or are signposted to, appropriate support from victim support to

financial support services; and gaining and maintaining the trust and confidence of the victims of a major incident.

41. This should bring non-monetised benefits to victims of major incidents, most notably in reducing stress. The victims of a major incident should have a higher level of satisfaction in the process and feel that their voices have been heard.

The MoJ and Government departments who will fund the IPA panel

42. The IPA should negate the need for government departments to establish bespoke arrangements following major incidents. For example, following the Grenfell Fire, an independent advisor was appointed by the Government.
43. The IPA may also reduce the burden on other organisations involved with such events. Given the gravity of major incidents, the number of persons who would require support is likely to be large and place considerable strain on the resources of existing bodies.

F. Risks and Assumptions

44. The above assessment is based on various assumptions. This also means that there are risks associated with the analysis. The main ones are discussed below.
45. It is possible that there could be a change in the of scope of what is held to be a major incident during the passage of legislation, or, in the Secretary of State's consideration of a major incident. If the scope of such an event were to change, there would be impacts on the costs of the panel.
46. Likewise, the costs of the various levels of intervention given above are only indicative. There is the risk that they could be either higher or lower once the panel has come into operation; for example there could be a larger scale disaster which occurs which is larger than the indicative examples set out above, such as an event with hundreds of casualties.
47. There is great uncertainty over the number of major incidents that could happen in any given period, and about the length of time it would take from event to conclusion of support. In addition, there is also a risk that there may not be any (or very few) major incidents occurring over a substantial amount of time. These risks have the potential to affect the cost to HMG and the cost effectiveness of the IPA.
48. Although the IPA is not intended to duplicate the work of government agencies; for example, the Victim's Commissioner or the Homicide Service, there is a risk that there could be some confusion. This will be mitigated as much as possible through engagement during the building and operationalisation of the IPA.

G. Wider Impacts

Equalities

49. We have carefully considered the impacts on equalities that an IPA might have, including from responses to our consultation. We have formulated our policy on this basis whilst having due regard for the Equalities Act 2010.

50. An equalities statement will be published alongside this IA.

Better Regulation

51. Option 1 is not considered a regulatory provision and is out of scope of the Small Business Enterprise and Employment Act 2015 and the Ministry of Justice's Business Impact Target.

International Trade

52. There is no significant impact on international trade.

Environmental Impact Assessment

53. We expect there to be no environmental impacts as a result of option 1 in this IA.

H. Monitoring and Evaluation

54. The impact of this legislative change will be monitored on an ongoing basis as evidence becomes available following the implementation of Option 1.