

Public Authority (Accountability) Bill Factsheet:

Duty of Candour measures

Background

The Government is clear that what happened following the Hillsborough disaster must never happen again:

- Police officers lying and changing witness statements to protect reputations;
- Families bereaved by a major disaster facing an inquest process with no funding for legal representation - while public bodies were free to appoint multiple legal teams to protect their own interests;
- A 25-year fight for an inquest to reach the right conclusion; and
- Investigations undermined by a lack of a duty of candour.

This Bill represents a powerful new package of measures to address these failings and others seen at Grenfell Tower, in the infected blood and Horizon scandals - and in too many other examples over too many years.

Duty of candour and assistance

What are we going to do?

At the public inquiry into the Hillsborough disaster, the chairman - Lord Justice Taylor - condemned the evidence of senior police officers, which he described as '*defensive and evasive*'. The Hillsborough Independent Panel later found that over 100 statements given by more junior officers had been amended before being provided to the inquiry to remove or alter comments unfavourable to the South Yorkshire Police.

This Bill establishes a new duty of candour and assistance at inquiries, inquests and other investigations - backed by criminal sanctions.

How are we going to do it?

The duty establishes new obligations on public bodies and officials to help investigations to find the truth: providing information and evidence with candour; proactively; and without favouring their own position.

This duty will apply to statutory inquiries and coroner's investigations, strengthening and reinforcing existing powers to compel evidence. It will also apply at non-statutory inquiries, giving chairs formal powers for the first time. And the Bill gives ministers

the power to extend the duty to more types of investigation through secondary legislation.

This legal duty is focused on the public sector, but also applies to some private bodies: those delivering public functions; those with a relevant health and safety responsibility; as well as relevant public sector contractors - such as in the Horizon scandal.

For those who do not comply with this new duty - the Bill sets out clear criminal sanctions, including prison sentences.

Professional duties of candour

What are we going to do?

This Bill will embed candour at the heart of public service - requiring professional duties of candour to be put in place across the public sector.

How are we going to do it?

The Bill will require all public bodies to establish a professional duty of candour for staff, to be set out within a wider code of ethics. These obligations will be underpinned by a new duty requiring public bodies to promote the ethical conduct of their employees.

Professional duties of candour will be tailored to the sectors to which they apply: meaningful to staff and responsive to the needs of those who use an organisation's services. Authorities will be legally required to set out the consequences for staff who do not comply, including potential disciplinary sanctions up to and including gross misconduct.

Codes of ethics will be based on the Nolan Principles of honesty, integrity, objectivity, accountability, selflessness, openness and leadership. All codes will be required to meet minimum standards - including ensuring that they set out clear processes for internal concerns and public complaints.

These requirements will apply widely - to all public authorities.

Offence of misleading the public

What are we going to do?

As the scale of the disaster at Hillsborough was becoming apparent, police lied about its cause - saying that Liverpool fans had broken into the stadium. This false

account was broadcast internationally and was the first explanation of the cause of the disaster to enter the public domain. In fact, as the Taylor Inquiry would later find, the main reason for the disaster was the failure of police control.

The Bill includes a new offence - aimed squarely at those who aim to mislead the public or cover up the truth. It has been designed with Hillsborough at the front of mind.

How are we going to do it?

This new offence applies where a public authority or public official acts with the intention of misleading the public (or is reckless as to that possibility) and they know, or ought to know, that their act is seriously improper.

This offence is intended to capture the most serious instances of public officials or authorities misleading the public. For example, the chief executive of a hospital instructing staff to lie to the press about a major incident in order to avoid criticism, or a police force issuing a public statement that they know gives a false account of events. It is not intended to apply to instances of accidental or inadvertent misleading.

The Bill sets out a minimum set of criteria which an act must satisfy in order for an act to be considered seriously improper. The act must have:

- Involved dishonesty that was significant or repeated in respect of matters of significant concern to the public;
- Caused, or contributed to causing, harm to one or more other persons or had the potential to do so, and
- Departed significantly from what is to be expected in the proper exercise of the person's functions as a public authority or public official.

Together, these conditions ensure that the offence is properly targeted at particularly culpable conduct.