

Ministry of Justice

**Consultation on the role of the Independent Public
Advocate**



A response by the Association of Personal Injury Lawyers

November 2018

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a history of over 25 years of working to help injured people gain access to justice they need and deserve. We have over 3,500 members committed to supporting the association's aims and all of which sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

Any enquiries in respect of this response should be addressed, in the first instance, to:

Alice Taylor

Legal Policy Officer

APIL

3, Alder Court, Rennie Hogg Road, Nottingham, NG2 1RX#

Tel: 0115 9435428; Fax: 0115 958 0885

e-mail: alice.taylor@apil.org.uk

Introduction

APIL believes that the Independent Public Advocate is a necessary, and extremely important, role. Our members report that people involved in major disasters, whether bereaved or injured themselves, often do not know where to turn to obtain the advice and support that they need. The Independent Public Advocate could co-ordinate the immediate aftermath of the disaster, ensuring that those affected are put in touch with the right organisations, and that they understand the inquiry process and how to contribute to it. We suggest that once the inquiry is up and running, the Independent Public Advocate would have an important role in keeping a watching brief, to ensure that the inquiry runs as effectively as it can. The Independent Public Advocate must be completely independent of the state, and have experience of handling large scale matters with many different stakeholders – ideally with experience of chairing inquiries themselves.

Q1) Do you agree with us about the need for the Independent Public Advocate?

We strongly agree that there is a need for the Independent Public Advocate (IPA). We believe that the IPA will provide vital assistance to the injured and bereaved to signpost them to the advice and support that they need. It is clear that after major disasters have occurred, many of those involved simply do not know where to turn. The IPA could be a conduit through which other support could be accessed. We also believe that the presence of an IPA will enable the government to set up public inquiries more quickly than at present.

Q2) How should it be decided whether an event is a disaster for which the support of the Independent Public Advocate should be available?

We agree with the list at paragraph 38 of the consultation document which sets out the factors that may be considered by the Secretary of State in determining whether the support of the IPA should be available. It is important, however, that these factors are not too prescriptive. There should not, therefore, be a requirement that all of these factors are satisfied before the IPA is involved. It is impossible to predict the nature of the next major disaster, and a set of criteria that is too strict will lead to those who need the IPA's support not being able to access it. Of particular importance is whether the disaster is of wider public interest.

We also agree that the decision as to whether the Independent Public Advocate should be engaged should initially fall to the Secretary of State. However, the IPA themselves should also be able to make an application to be involved in a particular inquiry, if they feel that they should be involved but have not been asked by the Secretary of State to do so. There should also be the ability for families or others involved in the disaster to appeal the Secretary of State's decision not to involve the IPA in a particular inquiry. There should be a set timeframe within which the Secretary of State must make the decision about whether the IPA should be involved.

Q3) Do you envisage any difficulties in the Government adding the Independent Public Advocate to a landscape in which the Civil Contingencies Act makes statutory provision for emergency response? If so, what are they?

We have no comments on this.

Q4) Should the Independent Public Advocate only be involved where there are fatalities? Please explain your answer.

No. We believe that the role of the Independent Public Advocate should not be limited to cases where there have been fatalities. The IPA could also have a role in situations where there is injury leading to an issue of public importance, even where this does not arise from the common understanding of a “disaster”. For example, it would have been extremely useful for the IPA to have had a role in the Independent Inquiry into Child Sexual Abuse, or in the contaminated blood inquiry. We believe that if the parties involved could have had an advocate who was a central contact point once findings came to light in either of these examples, this would have led to more efficient inquiries, with people being properly signposted to the necessary advice and support earlier on.

Q5) Who do you think should be eligible for the support of the Independent Public Advocate?

It would seem sensible to link eligibility for the support of the Independent Public Advocate to core participant status under the Public Inquiry Act 2005. Ultimately, however, the Independent Public Advocate should have the discretion to involve any other party that they believe would benefit from their support. If a particular party feels that they are being excluded from the support of the Independent Public Advocate when they need it, they should also have the right to challenge that decision.

The Independent Public Advocate should also have the authority to involve parties in the inquiry, should they feel that they hold necessary information which is vital to the inquiry.

Q6) Should eligibility for support be determined by the Government, perhaps through legislation, or be left to the Independent Public Advocate to decide in light of the circumstances following a particular disaster?

We believe that eligibility for support should be left to the Independent Public Advocate, in light of the circumstances following a particular disaster.

Q7) Do you think the Independent Public Advocate’s particular focus should be on supporting bereaved families, or do you think this is too narrow?

As above, we do not think that the Independent Public Advocate’s role should be limited to the support of bereaved families. A particular focus on supporting bereaved families would be too narrow.

Q8) What types of support should the Independent Public Advocate provide before and during an investigation, bearing in mind the need not to duplicate other support, or hinder those providing it?

Each different event will require different support. In general, the types of support that the Independent Public Advocate should provide include co-ordinating the immediate aftermath of the disaster, signposting those affected to organisations and legal advice, explaining the inquiry process and assisting those affected in knowing what their role will be in the conduct of the inquiry and the specific questions that will be inquired into, helping them to liaise with

the other parties to the inquiry and ensuring that their voices are heard. The IPA should also provide assistance in relation to what will happen after the inquiry.

Although the Government does recognise that the Independent Public Advocate is not a substitute for legal advice, we reiterate here that the IPA should not provide legal advice, and that independent legal advice and representation at an inquest is vital. We are concerned that in future, the presence of an IPA in a particular inquest or inquiry may be used as a justification for legal advice not being necessary. All bereaved families should have access to non means tested legal aid for representation at inquests. Representation is vital to ensure that there is a level playing field between the parties involved. The process of an inquest can be extremely daunting and there is simply no way that the average member of the public would be able to deal with the level and complexity of the evidence and information required in order to represent themselves, especially when taking into account the emotional turmoil that an inquest inevitably brings to a family. In cases where the family has not had representation at the inquest, it is common for the process simply to have been a white wash, with no real investigation into what happened. The family needs access to legal advice, to ensure that there is someone to “fight their corner”, and that person must be a legal representative, not the IPA.

We envisage that the support of the Independent Public Advocate will be largely at the start of the process – co-ordinating the immediate aftermath of the disaster, ensuring that an inquiry takes place where required, and helping those involved in the disaster engage with that inquiry. We agree that the IPA should not have any powers over the inquiry itself. Once everyone has legal representation and the inquiry is underway, the IPA’s role should be a step removed. They should continue to keep a watching brief over the inquiry, ensuring that those involved are accessing the support they need and that the inquiry is moving along as needed. There should, however, be a power for the IPA to intervene in the inquiry if there are severe delays, or other major issues arising which jeopardise the inquiry’s success. It is expected that this intervention should be initially carried out by the legal representatives of the parties, but if this does not occur, the IPA should be able to step in.

Q9) How should we ensure that the Independent Public Advocate is supportive of all the bereaved who want their support, in circumstances where the bereaved may hold differing and perhaps conflicting views?

The Independent Public Advocate needs to be adaptable, and in selecting an Independent Public Advocate, the ability to ensure support to all those who require it, even if those needing support hold differing and conflicting views, will be extremely important. The IPA must be skilled in working with those who are bereaved, who are experiencing grief and trauma and who have strongly held views that may differ from others around them. The IPA must also be prepared for those views to change, as those affected deal with the consequences of the disaster. The situations from which an inquiry will arise will be extremely stressful and emotionally charged. The IPA must be able to deal with this challenge, and not let it impede the support they give to those who need it.

Additionally, as above, we suggest that the IPA’s main role should be at the beginning of the process, co-ordinating the immediate aftermath of the disaster, ensuring that people know their rights and are properly signposted to the right help and helping them to engage properly with the inquiry. Because they are not going to be directly involved in the inquiry

themselves, and will not be advocating a particular view, issues with conflicting views are less likely to arise.

Q10) Do you agree that the Independent Public Advocate should potentially be involved across the range of investigation types, or do you think their involvement should be limited to inquests and public inquiries?

We believe that the IPA should potentially be involved across the range of investigation types, provided that these investigations fall into one or more of the categories set out at paragraph 38 of the consultation paper.

Q11) Should the type of support provided by the IPA be different in different types of investigations?

Inevitably, the type of support provided by the IPA will be different in different types of investigation. The support provided by the IPA will depend on the demands of the individuals, and the nature of the disaster.

Q12) Do you think the IPA should be required to report on their work? If yes, when and to whom should the Independent Public Advocate report?

We believe that, particularly at the end of a large inquiry, the IPA should be required to report to the Government with their findings. Also, the IPA should be required to provide a yearly report, available to the public, which details the inquiries that they have been involved in, the support they have provided, and the outcomes. This will be important to allow legal practitioners to get an idea of the sorts of situations that the IPA gets involved in, so that they can play a role in ensuring that the IPA does get involved where it is appropriate for them to do so.

Q13) What should be the purpose of any report and should there be a duty for the Government to respond?

The purpose of the report should be to set out the lessons learnt and any recommendations that the IPA has in relation to how the conduct of future inquiries could be improved in relation to the involvement of the bereaved.

Q14) Do you think the Independent Public Advocate should have a role in working with the bereaved where concerns are raised about the outcome of a past inquiry? If so, what should that role be?

We believe that the IPA should have a role in working with the bereaved where concerns are realised about the outcome of a past inquiry, and that this will be a key part of their role. As above, one of the IPA's key roles should be to ensure that an inquiry takes place when necessary. For example, in relation to the contaminated blood cases, Lord Archer initially chaired a privately funded investigation in 2007, but the subsequent report held no legal or official status, and the investigation proved difficult as it was not possible to subpoena witnesses or demand the disclosure of documents. Because this investigation had taken place, the Government did not agree to fund a proper inquiry into what had happened until 2017. The Independent Public Advocate should have a role in ensuring that inquiries take place where needed.

Q15) Do you think the Independent Public Advocate should have a role in advising ministers where there is ongoing concern about the outcome of an inquiry?

We believe that the IPA should have a role in advising ministers where there is an ongoing concern about the outcome of an inquiry. The reports produced by the IPA should be sent to the relevant ministers.

Q16) How should the Government ensure that the role of Independent Public Advocate can always be delivered when and where it is needed?

We do not see a problem with there being deputies who support the Independent Public Advocate, provided that they are also suitably qualified.

Q19) In light of all that you have read in this consultation document, what particular skills, experience or qualifications do you think the Independent Public Advocate should have?

The Independent Public Advocate must be completely independent from the government. There will likely be a perception that the IPA is just another arm of the state, and they must be completely independent to reassure those who require the advocate's services. The IPA should also have experience of dealing with large scale matters with lots of different stakeholders. The IPA should be experienced in the conduct of inquiries, ideally as the chair of an inquiry, to enable them to identify that the inquiry is progressing as it should and to know when it is necessary for them to intervene. The IPA must have the skills and experience, and be sufficiently respected, to be able to scrutinise and challenge those conducting the inquiry and the government.

- Ends -

Association of Personal Injury Lawyers

- ▶ 3 Alder Court, Rennie Hogg Road, Nottingham, NG2 1RX
- T: 0115 943 5400 ● W: www.apil.org.uk ● E: mail@apil.org.uk