



Ministry
of Justice

Consultation on establishing an Independent Public Advocate

September 2018

Cm 9701



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of Justice

Consultation on establishing an Independent Public Advocate

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

September 2018



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About this consultation

- To:** All interested stakeholders, particularly people bereaved through public disasters and those who have survived them; the organisations that support bereaved people; organisations and services involved in investigating public disasters and major events involving fatalities; and anyone else affected by or with an interest in the issues in this consultation document.
- Duration:** From 10/09/2018 to 03/12/2018
- Enquiries (including requests for the paper in an alternative format) to:** Coroners, Burials, Cremation and Inquiries Policy Team
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- How to respond:** Please send your response by 3rd December 2018 to:
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London SW1H 9AJ
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Email: IPAconsultation@justice.gsi.gov.uk
- Additional ways to feed in your views:** A series of stakeholder meetings is also taking place. For further information please use the “Enquiries” contact details above.
- Response paper:** A response to this consultation exercise is due to be published by 03/03/2019 at: <https://consult.justice.gov.uk/>

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Foreword



Major disasters resulting in significant loss of life are thankfully rare in this country. When they do happen, it is important that those most deeply affected know what is going on and are able to fully participate in the subsequent inquests, investigations and inquiries.

The proposals in this consultation deliver on our commitment in last year's Queen's Speech to introduce an Independent Public Advocate to support the bereaved following a disaster and ensure their voice is heard in the process of establishing the facts of what happened and in seeing justice done.

The creation of an Independent Public Advocate will build on important reforms that have been made over the years to support and empower victims and their families.

The Inquiries Act 2005 created a strong legal framework for establishing inquiries into matters of public concern. It recognises the role of those individuals who have been affected, including giving them special status and in many cases funding their legal representation.

In 2013, the government introduced a number of coroner reforms to give bereaved people more rights in the inquest process, including the right to see most of the documents and to be kept informed of what is happening.

However, the aftermath of tragedies such as the Hillsborough disaster in 1989 and, more recently, the terrible fire at Grenfell Tower, show the exceptional challenges that affected families and those responsible for investigating them face.

It is clear there remain serious concerns about how far the voices of the bereaved are heard, and how far they are supported in fully understanding and participating in the investigatory process. An Independent Public Advocate will help to address these concerns.

I am determined that we should never again see families struggling, as we did in the many years that followed Hillsborough, against the very system that was supposed to deliver answers – and, ultimately, justice.

We will establish the Independent Public Advocate through an Act of Parliament. This consultation seeks views about the role, including the support the Independent Public Advocate should provide, to whom it should be provided, and the disasters that should qualify for the Independent Public Advocate's support.

The Independent Public Advocate forms part of our wider Victims Strategy to ensure all victims receive help and can be an active and properly supported participant in the process of seeing justice delivered.

I very much hope that a wide range of people and organisations will send us their views. We would particularly like to hear from those who have had experience of disasters and their aftermath, including the investigations into what happened and why.

We will carefully consider the responses we receive to this consultation and will announce our conclusions next year.

A handwritten signature in black ink that reads "Edward Argar". The signature is written in a cursive style and is positioned above a solid horizontal line.

Edward Argar MP

Parliamentary Under Secretary of State for Justice

Executive summary

The scope of this consultation

The Queen's Speech on 21 June 2017 confirmed the Government's intention, set out in the Conservative Party manifesto, to introduce an Independent Public Advocate who "will act for bereaved families after a public disaster and support them at public inquests".

We want to make sure that the additional distress that has sometimes been suffered by bereaved families as a result of a complex and, on occasion, inadequate investigation following a disaster is not suffered by others in the future.

We will establish the Independent Public Advocate through primary legislation but before we do so we need to be clear about the detail of the role. This consultation will help us get to the right answers about what it should be.

There are several well-established investigative processes that take place following deaths in disasters. Annex A of this document sets out the existing investigative context and explains the types of investigation that may take place. There are also arrangements under the Civil Contingencies Act 2004 which will be triggered following an 'emergency', as defined in the Act.

We envisage that the Independent Public Advocate will be established within this context, engaging constructively and robustly without taking over, duplicating or hindering the work of others.

Many of the existing investigation processes already provide support to the bereaved and there is much good practice. We recognise, however, that there are times when the scale and complexity of a disaster can make it challenging to provide the support the bereaved need. There have been occasions when bereaved people have felt that they have been marginalised and have been unable to engage effectively. Occasionally too – for instance the original inquests and public inquiry into the Hillsborough disaster – investigations have not fully established what happened and further investigations have been required. The introduction of an Independent Public Advocate aims to ensure that this does not happen again. Chapter 1 of this document examines the need for the role.

Chapter 2 explores when the support of the Independent Public Advocate will be available and who will be eligible for their support. We propose that the Independent Public Advocate will be engaged where the scale and complexity of events stretch the capacity of the investigatory body or where the circumstances surrounding the deaths are particularly challenging. The Grenfell Tower disaster is an obvious example.

In such an event, there are likely to be a wide variety of ways in which people are affected – from those who have been bereaved or seriously injured to those who have witnessed the event but have no lasting injury. We are clear that the Independent Public Advocate will support those who have been bereaved but in Chapter 3 we seek views as to whether others should receive support too.

Chapter 4 looks at the support the Independent Public Advocate should provide. We envisage that the Independent Public Advocate will act primarily to bring together those who hold responsibility for investigating a disaster and those who have been bereaved by

that disaster. They will help prepare the bereaved, and potentially others, for their interactions with the investigatory bodies, helping them to understand the processes and ensure that their views are heard. They will promote effective relationships between those bodies and the bereaved by providing advice and challenge to the investigatory body on the best way to engage with them. They may also, if required and appropriate, have a role in liaising with bodies responsible for other investigations that may relate to a disaster, such as the Independent Press Standards Organisation.

The Independent Public Advocate will be ideally placed to contribute to any lessons that need to be learned to improve how disasters are investigated, in particular how the families of the bereaved can best be involved.

Whilst the focus of this consultation is on the role of the Independent Public Advocate in the investigation that immediately follows a disaster, it also considers a potential additional role where – as happened with Hillsborough – following the conclusion of an investigation the bereaved families continue to have genuine concerns about the outcome, shared by others.

The sort of disaster that the Government thinks will need the Independent Public Advocate's involvement does not happen often but the Independent Public Advocate will need to be available quickly, wherever the disaster takes place. This poses questions as to how the role will operate which we explore in Chapter 5. As well as seeking views on the operating model we are keen to understand the skills and experience the Independent Public Advocate will need.

Chapter 6 concludes the consultation seeking views on our proposals in light of the Public Sector Equality Duty.

Introduction

1. Disasters with a large loss of life are thankfully rare. However, when they do occur it is important that those affected have the opportunity to be fully engaged in the investigatory processes that aim to establish what happened and why.
2. There is more than one way of investigating what happened. Much will depend on the circumstances and there may be a need for more than one type of investigation. Annex A sets out some of the main procedures that are currently in place for investigating disasters where there are fatalities. These include the coroner process and public inquiries. It also sets out some other investigatory bodies which might be involved, including those that examine maritime, rail and aviation accidents or incidents in care settings or at work.
3. Key to the Independent Public Advocate's success will be their knowledge of and ability to engage with the investigatory bodies and processes described in Annex A. Even more important will be their ability to build a supportive and trusting relationship with the bereaved families.

Existing duties to support the bereaved

4. There are organisations and individuals who already provide support to the bereaved, including where bereavement results from a disaster. Legal aid is available for early legal advice and assistance (legal help) relating to inquests and funding for representation at inquests may also be available through the Exceptional Case Funding scheme – all such funding is subject to means and merits tests.
5. The legal aid scheme does not apply in inquiries but the Chair of an inquiry established under the Inquiries Act 2005 has the power to make funding available to 'core participants' to make sure they have the legal support they need.
6. Investigatory agencies may also assign their own support officer or have access to support services. For example, the police assign a Family Liaison Officer (FLO) to the families in all homicide cases. FLOs played an important role in the aftermath of the Grenfell Tower fire where at an early juncture the Metropolitan Police considered that criminal charges might be brought.

Further support to the bereaved

7. The scale and complexity of a disaster may pose particular challenges for the investigatory process, one impact potentially being poor engagement with the bereaved.
8. The Independent Public Advocate will make sure the bereaved are better prepared and informed and will help the investigatory body understand and respond to their needs. In doing so, we intend that the Independent Public Advocate will not duplicate existing roles or hinder those who deliver those existing roles.
9. The chapters that follow set out the Government's ideas for the new role. On some issues the Government already has a clear proposal, while on others it has yet to come to a view as to which option is to be preferred. These include, for example,

whether the Independent Public Advocate should only be involved where fatalities occur – whilst this was our original idea, the role could potentially go wider – and also whether, following a fatal disaster, support should just be for the bereaved or for others who have been affected.

10. For ease, this document, unless otherwise specified, uses the terms ‘inquiry’, ‘inquiry process’ or ‘inquiring body’ to refer to all types of formal mechanism or system for investigating and making findings regarding deaths that have occurred as a result of a disaster. This includes coroner investigations and inquests, public inquiries, and the investigations undertaken by agencies such as the police or any of the other bodies listed in Annex A.
11. A Welsh language consultation paper is available at <https://consult.justice.gov.uk/digital-communications/establishing-an-independent-public-advocate>
12. An Impact Assessment looking at the financial impacts of our proposals accompanies this consultation document: <https://consult.justice.gov.uk/digital-communications/establishing-an-independent-public-advocate>. We will welcome views on its contents.
13. Annex B lists those organisations which have been sent copies of the consultation paper. This list is not intended to be exhaustive and responses are welcomed from anyone with an interest in or views on the matters consulted upon.

The proposals

Chapter 1 – The need for an Independent Public Advocate

14. The 2013 coroner reforms and the introduction of a statutory framework for public inquiries have seen the needs of the bereaved better served. However, the inquiries that take place following a disaster can be hugely complex, involving multiple agencies and deploying rules and procedures that will be unfamiliar to most people. This can be daunting, confusing and overwhelming for families.
15. We have concluded that there is a need for a dedicated and independent person who has the capacity to focus on the needs of the bereaved. The Independent Public Advocate will be knowledgeable about, but independent of, the various inquiry processes (inquests etc). They will directly engage with the inquiry to support and facilitate the bereaved in having their views heard.
16. We see the Independent Public Advocate's role as providing support immediately following a disaster – ensuring families are well informed and engaged from the outset – and then as needed throughout the life of an inquiry. In taking these proposals forward we have developed some principles for the role. We think that, in those disasters where it is decided that the Independent Public Advocate should be involved (how this should be decided is discussed in Chapter 2 below) the Independent Public Advocate should support families by:
- *understanding and advancing their interests. The role will not owe a duty to others;*
 - *providing support to ensure families can understand the purpose and proceedings of any investigation, inquest or inquiry that is established to determine the cause of the disaster and the resultant deaths;*
 - *supporting them to be able to fully participate in the investigation (where there is a right to do so);*
 - *gaining and maintaining the confidence of the families, providing support to those families and family members who want it;*
 - *building a relationship with the coroner, inquiry chair etc and engaging with them in the interests of the families;*
 - *not duplicating, replacing or hindering the existing functions of other agencies or persons involved in the investigatory process;*
 - *providing the same quality of support regardless of where in England or Wales the disaster occurred.*
17. We do not see the role of the Independent Public Advocate as including the provision of legal advice and representation to those bereaved by a disaster; it is not an 'advocate' in that sense. The bereaved may, of course, want access to independent legal advice and may already have it, as explained in the Introduction. We do not see the Independent Public Advocate's function of supporting a potentially diverse group of people whose views may differ, perhaps strongly, as compatible with performing the duties of a legal advocate.

18. In our choice of the name Independent Public Advocate we recognise, therefore, that there is some potential for confusion over use of the word 'advocate'. We do not think that this is a problem, however, because whilst not an advocate in the legal sense the Independent Public Advocate will certainly be an advocate for the families and we are confident that the role will become clearly understood in the public mind once it has been established. We also think it would be inadvisable to move away from the name we used in the Queen's Speech, with which stakeholders are already familiar.
19. Thus far, we have talked about a role for the Independent Public Advocate that starts immediately after a disaster. There may however be occasions when an initial inquiry, or a sequence of inquiries, do not get to the bottom of what happened and there is a lingering sense of injustice and public unease.
20. In these circumstances, where the initial inquiry processes have concluded but there remains a concern that the full facts have not been revealed - perhaps years after the event - there may, we suggest, be a further role for the Independent Public Advocate. We look at this in Chapter 4.

**Q1. Do you agree with us about the need for the Independent Public Advocate?
Please give your reasons.**

Chapter 2 – When the support of the Independent Public Advocate will be available

21. This chapter considers the circumstances in which the Independent Public Advocate should be available to those affected by a disaster.
22. Our focus is on those exceptional events which touch the nation, with many people affected and needing support, and which lead inevitably to an inquiry which will attract considerable attention.
23. We do not consider that all events involving fatalities will warrant the support of the Independent Public Advocate. Any event which results in loss of life is, of course, a serious matter, but we propose that the Independent Public Advocate will only become involved in a limited set of circumstances where ensuring the effective engagement of the families is felt likely to be a particular challenge.
24. We think the need for the support of the Independent Public Advocate will occur when the number of deceased is such that it becomes difficult for the bereaved to engage effectively with those responsible for inquiring into the disaster. This will be informed by both the resources available to the inquiring body and their operational arrangements. For example, when inquests are conducted simultaneously, as is often the case where the deaths occurred as a result of a single event, a single coroner may find themselves responsible for engaging with tens – or very exceptionally hundreds – of bereaved people. Coroners are supported by a small team of coroner's officers who the Independent Public Advocate could assist in managing their engagement with the bereaved, helping the families understand the coroner role and coroner processes.
25. The Independent Public Advocate will in these circumstances support the bereaved in their relationship with the inquiring body (or bodies). The independence of the Independent Public Advocate will enable them to provide the bereaved with an impartial understanding of the role and functions of the individual or agency undertaking the inquiry, as well as being able to share information with those undertaking the inquiry about the concerns of bereaved families.
26. We envisage that the Independent Public Advocate will have an early initial meeting with the bereaved and identify their questions, issues and concerns about how the deaths of their loved ones and the disaster itself will be inquired into. The Independent Public Advocate will help prepare the bereaved for the pursuit of those matters and will engage directly with the inquiry to help ensure understanding of the needs and perspectives of the bereaved.
27. The need for the Independent Public Advocate also lies in the number and range of other agencies and people with an interest in an inquiry. This can contribute significantly to the inquiry's complexity as the bereaved will want to understand the role of each agency or person. Examples would be agencies and people who may have held responsibility for public safety where the disaster occurred, or been responsible for delivering or regulating a service or other provision related to the disaster, or been involved in the response to the disaster. The Independent Public Advocate will work with the bereaved to help them understand who these interested parties are and their role in the inquiry process.

28. However, there will be events where the subsequent inquiry does not pose any exceptional challenges and where the existing available support to the bereaved is sufficient to meet their needs to be informed, engaged and heard. We have in mind road traffic accidents with multiple fatalities, for example.
29. On the other hand, there may be events where the number of fatalities is relatively low but the nature of the incident is such that the subsequent inquiry will involve a complex array of agencies and individuals, and engage the wider public.
30. We suggest that a qualifying disaster need not be a single event, like Hillsborough, or indeed a series of closely linked events like the four bombings on the London transport system on 7 July 2005. Rather, we think the Independent Public Advocate could also provide support where there has been a series of linked events that happened over a longer period of time, like the many deaths at the Mid Staffordshire NHS Foundation Trust or at Gosport War Memorial Hospital.
31. Whilst the focus of this consultation is on events that involve fatalities, we do not want to exclude events where there are no fatalities without having sought views on the matter. It is possible that an incident, for example, an explosion at a chemical installation, might warrant the support of the Independent Public Advocate, if it were to result in widespread disabling injury, emotional trauma or significant economic loss.
32. In determining whether a particular event or series of linked events is a disaster for the purposes of engaging the support of the Independent Public Advocate we recognise the challenges of providing a fixed set of parameters. There is no statutory definition of a “disaster” that assists in this, but there is a definition of an “emergency” and an existing set of arrangements into which the Independent Public Advocate will need to fit.
33. The Civil Contingencies Act 2004 includes a statutory definition of an ‘emergency’ which covers such things as flooding, fires, and infectious diseases. Events that might commonly be regarded as disasters are caught by this, as for example was Grenfell Tower. The Act puts the emphasis on the local tier taking the lead in preparing for and responding to these statutory emergencies. The term ‘local tier’ means the first responders such as local authorities and fire, police and ambulance services. The local tier has strategic control and oversight of the emergency, and any subsequent recovery. Depending on the nature of the emergency there will be a designated lead government department responsible for advice to government and support, as necessary, to the local area.
34. We need to make sure that the role of the Independent Public Advocate can work with the existing arrangements for responding to civil emergencies and not cut across them.
35. Our proposal in light of the above is that the Secretary of State for Justice will decide, having consulted the relevant minister in the lead government department and having also consulted the Independent Public Advocate, whether an event or events are such as to require the involvement of the Independent Public Advocate.
36. Once this has been determined the Independent Public Advocate will be available for the bereaved and potentially others affected to draw upon. The Secretary of State will be accountable to Parliament for this decision.

37. Given the urgency following a disaster we would envisage an early decision, but with the possibility that the Secretary of State may wish to revisit an original decision not to deploy the Independent Public Advocate as further information about the circumstances of the disaster becomes available.
38. We list below a number of factors that might be considered by the Secretary of State in determining whether an event or series of events qualify as a disaster that should involve the Independent Public Advocate. They are:
- the number of people bereaved or injured as a result of a disaster, including instances of fatal illnesses it may have caused
 - the number, range and type of other agencies or people who have a role or interest in the subsequent inquiry – and the complexity that results
 - the interests of the wider public in understanding the causes of the disaster, such as where there are risks that the disaster could be repeated elsewhere in similar circumstances
 - whether the public reaction in the immediate aftermath of a disaster, including the reaction of the bereaved and others involved in the disaster, suggests that the support of the Independent Public Advocate is needed.

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

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?

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

Chapter 3 – Who the Independent Public Advocate should support

39. This chapter considers who should be eligible for the support of the Independent Public Advocate following a disaster.
40. There will be a wide range of people affected in different ways by any disaster.
41. There may be those who suffer serious and life changing injuries which may shorten their lives, potentially including people who contract terminal conditions as a result of the disaster.
42. There may be people who were directly involved in or who witnessed the disaster and who experienced recoverable injuries and trauma, or no injuries at all.
43. Other people, while not present, may have been caught up in the aftermath and experienced significant difficulties which could affect their housing, employment and access to basic services.
44. Amongst the survivors there may conceivably be people who face accusations of being in some way responsible for the disaster, or perhaps a bereaved family may face such an accusation about a loved one they have lost.
45. We recognise that everyone significantly affected by a disaster will have an interest in seeing the subsequent inquiry reach a satisfactory conclusion. However, we believe there needs to be clarity as to who the Independent Public Advocate will devote their energy and resources to supporting. There is an argument to be made that the families of those who died should be the Independent Public Advocate's primary concern and focus; the dead cannot speak for themselves and we should ensure that those who feel their loss most deeply have someone who can help them understand what happened.
46. We do not intend to draw a distinction between people whose death occurred during the disaster and those whose death occurred later, but still as a result of it.
47. We understand that in some cases several family members may want to attend meetings and hearings and engage with the Independent Public Advocate. This, however, raises the question whether day to day the Independent Public Advocate should work with one or some or all of those from any one family. Should, perhaps, the Government provide in legislation a list of qualifying relationships, or perhaps link eligibility to having Interested Person status at an inquest, Core Participant status at a 2005 Act public inquiry or, in the case of other types of inquiries, to those who are eligible for engagement in that inquiry process?
48. Whilst we would welcome views, we think that the best approach is for the Independent Public Advocate to have discretion to decide how to engage with families, including for example how to deal with such issues as estrangement within a family.
49. We are also interested in hearing views on whether there are other people who, while not bereaved, should be supported by the Independent Public Advocate.
50. We particularly have in mind people who survived the disaster, who may of course have valuable evidence to give to an inquiry and who will be just as concerned as the bereaved families that the inquiry gets to the truth.

51. There are also those who may represent a disaster survivor who is unable because of injury, age or other incapacity to actively engage in the inquiry process themselves.
52. Many people will feel, of course, that those who escaped from Grenfell Tower but who did not lose a family member in the fire are as deserving of the kind of support the Independent Public Advocate will provide as are the bereaved.

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

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?

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?

Chapter 4 – What support the Independent Public Advocate should provide

53. As explained in Annex A, there are different ways in which a disaster may be inquired into, investigated or reviewed. We do not envisage the Independent Public Advocate as providing an inquiring function additional to these processes. To do so would risk confusing the duties and responsibilities that those processes owe not just to the bereaved but all those who will participate in the inquiry.

Support immediately following a disaster

54. However, before any inquiry is underway we believe there is an important role for the Independent Public Advocate in the days and weeks that follow a disaster. This will include helping the bereaved understand what is going on around them - what the police are doing, the coroner's process in relation to the remains of their loved ones, etc – and what is to come. It will include being clear who is responsible for what, and where support of different kinds is to be found. The bereaved will not only have an interest in what others are doing, will do and why, but will want to know how their views are being heard and how they will be taken into account as decisions are taken on how the disaster will be investigated.

Brokering relations between the bereaved and the inquiry

55. Once an inquiry is established the Independent Public Advocate will need a good, effective and direct relationship with the inquiry team but so too will the bereaved. Communication between the bereaved and the inquiry team should not be mediated by the Independent Public Advocate but rather enhanced and facilitated by the support the Independent Public Advocate will provide.

56. The Independent Public Advocate will not be an 'advocate' in the legal sense, will not usurp the existing role of legal representatives, and will not participate in the investigatory process as such. This does not, however, preclude the Independent Public Advocate from representing the views of the bereaved where it is appropriate to do so. An example might be conversations or correspondence with a coroner, inquiry chair or other person leading the inquiry where the issues and concerns of the bereaved are shared and advice is imparted. In this way we see the Independent Public Advocate as a fail-safe, ensuring families are engaged in an inquiry process that they understand and can have confidence in.

57. We would expect all such communications to be subject to the normal rules on openness and disclosure relevant to that inquiry and that the Independent Public Advocate would have a duty to share such communications with the bereaved. We would see the Independent Public Advocate providing an 'honest broker' role, being able to advise and support exchanges and communications between the bereaved and the inquiring agency.

58. At an early juncture, the Independent Public Advocate will need to meet with the bereaved, and will continue meeting with them, to assist them in the following:

- having a good understanding of the purpose and function of the proposed or ongoing inquiry (or inquiries)
- knowing what role they (the bereaved) have in the conduct of the inquiry; and the specific questions that will be inquired into.
- knowing what associated rights or services they may be entitled to regarding the inquiry; this will include access to professional legal advice and support

- knowing to whom and how questions related to the disaster and the inquiry should be put. This may include assisting in formulating those questions.
- knowing what options may exist for addressing any issues that are out of scope of the inquiry
- knowing what options may exist for pursuing any unresolved matters following the conclusion of an inquiry.

59. In establishing the Independent Public Advocate we will not be granting any powers over the inquiry itself, or placing any new duties on inquiries. Rather, we will maintain the existing balance of responsibilities that inquiries have to all interested parties.

60. We recognise that there will be times when the wishes of the bereaved and injured may not always be met in the decisions of the inquiring body. We believe that those who are dissatisfied with the decisions or actions of the investigating body, or the services it provides, should make use of the existing review and complaints procedures rather than the Independent Public Advocate having a power to intervene. However, we would expect that the status of the Independent Public Advocate and good working relationship with the inquiry would help ensure that the views of the bereaved are fully understood and that issues are resolved early, without the need for escalation into complaints or appeals.

61. Lest any confusion may still exist, we should make clear that the type of support we envisage the Independent Public Advocate providing does not include wider support such as mental health or financial support. The need for these will be determined and, if necessary the service provided, separately.

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?

Supporting different needs among the bereaved

62. Those who have been bereaved by a disaster will want to understand how and why it happened. However, among the bereaved there may be concerns and priorities that are not shared by all. Whilst a tragedy will bring people together in shared grief, each bereaved person remains an individual with their own needs.

63. We believe that the support of the Independent Public Advocate should be available to all those eligible for that support and that the Independent Public Advocate should not function in a way that requires them simply to represent 'majority' views.

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?

Support in different types of inquiries

64. We explained in the Introduction that in this consultation document we would use the term "inquiry" in a generic sense, encompassing inquests, public inquiries and other types of investigation. However, we need to check that this is indeed the right approach and that the Independent Public Advocate should not, instead, be involved in providing support to a narrower range of inquiries.

65. In Annex A we explain that coroners have a duty to undertake an investigation into all deaths which are unnatural or violent or where the cause is unknown. Where there may be criminal culpability in the deaths the police will conduct an investigation that could lead to prosecutions. In some circumstances Ministers will commission a public inquiry into the incident. We also explain that there are, in addition, other agencies which have responsibilities for investigating incidents in which people may have lost their lives.
66. With each of these agencies goes a particular inquiry process and an operating framework with certain duties and responsibilities towards the bereaved. It is not the purpose of this consultation to consider in any detail the remit of any of these inquiry bodies. Their responsibilities, including their duties to support, inform and engage with the bereaved, are a matter of public record.
67. We see the role of the Independent Public Advocate as providing support to the bereaved in investigations that directly examine the disaster and the deaths of their loved ones. We recognise, however, that there may be secondary investigations which take place in the context of a disaster – for example the way a local authority or emergency service responded – and we would also see a potential role for the Independent Public Advocate here.

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? Please give your reasons.

Q11. Should the type of support provided by the Independent Public Advocate be different in different types of investigations? If yes, please specify.

Learning from each disaster

68. The Independent Public Advocate will be well placed to observe the working relationships between the bereaved and the inquiry body. We expect the Independent Public Advocate will from time to time form an opinion on best practice, on lessons learned or on issues for further consideration. As part of this work, the Independent Public Advocate may wish to use the “Charter for families bereaved by public tragedy” as set out in Bishop James Jones’s report on the experiences of families bereaved in the Hillsborough Stadium disaster.¹ It may make sense for the Independent Public Advocate to be required to prepare a report for publication on completion of their work supporting the bereaved in any particular inquiry.
69. If that were to happen, the expectation might be that the Government would respond to the report – any response most likely coming from the department with the greatest interest in the disaster under investigation.
70. Alternatively or additionally, the Independent Public Advocate might have a duty to prepare, from time to time, a report for the Secretary of State for Justice which would include recommendations to improve the conduct of future inquiries as regards the involvement of the bereaved.

¹ “The patronising disposition of unaccountable power: A report to ensure the pain and suffering of the Hillsborough families is not repeated”, The Right Reverend Bishop James Jones KBE (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655892/6_3860_HO_Hillsborough_Report_2017_FINAL_WEB_updated.pdf)

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

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

When questions about a disaster remain unanswered

71. There have been occasions when those bereaved by a disaster have had genuine concerns that the conclusions of an inquiry were inadequate and failed to establish the truth. It may be that the inquiry took place some years ago.

72. Under the Inquiries Act 2005, UK government ministers and ministers in the devolved administrations have powers to set up inquiries into matters of their choosing. Ministers also have powers to establish reviews, including non-statutory inquiries and royal commissions.

73. The most well-known example is probably the Hillsborough Independent Panel, established in 2010. The question for this consultation is whether, where there is concern about the conclusions of an inquiry, the Independent Public Advocate should have any role in exploring that concern with families and then in determining the response.

74. We think there is a case to be made for the Independent Public Advocate having a role in advising ministers on how best to respond to any concern. The Government may then, for example, decide that a Hillsborough style panel would be appropriate.

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?

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?

Chapter 5 – How the Independent Public Advocate should operate

75. We now turn to questions of how the Independent Public Advocate would operate, including how they would deal with two or more qualifying disasters happening in a relatively short space of time, giving each sufficient attention not just in the immediate aftermath but throughout the subsequent inquiry processes, which would take months and possibly years to conclude.
76. We would welcome views on how this issue should be addressed. One solution might be to have not one Independent Public Advocate but a small cadre of Independent Public Advocates, with one of them on duty and available at all times, on a rotating basis.
77. Alternatively, rather than a cadre of equals, there could be one Independent Public Advocate for England and Wales, who would then recruit deputies. There may be other workable options.
78. Should the final proposal post-consultation be the creation of a new central government Arm's Length Body, the usual government approval process would apply for such an entity.
79. We considered in Chapter 4 how the Independent Public Advocate could contribute to ongoing learning about the conduct of inquiries. Equally, we will aim to make sure over time that there is continuous improvement in the support provided by the Independent Public Advocate and that any concerns about this new role are addressed.

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

Q17. What would be the advantages and disadvantages of having a single Independent Public Advocate with deputies?

Q18. What would be the advantages and disadvantages of having a cadre of Independent Public Advocates?

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?

Chapter 6 – Equalities

80. In accordance with our duties under the Equality Act 2010,² we have considered the likely impacts of these proposals on individuals with protected characteristics.
81. We believe that the creation of the Independent Public Advocate will not result in any direct or indirect discrimination, nor will it create a risk of victimisation or harassment.
82. All people bereaved in a qualifying disaster will have the opportunity of access to the Independent Public Advocate. So too, subject to our considering responses to questions 3, 4 and 5, may people who are not bereaved but who are the survivors of a disaster. It may be that a disproportionate number of those supported by the Independent Public Advocate are people with a disability caused by the disaster itself.

Q20. What do you consider to be the impacts on people with protected characteristics of the proposals set out in this consultation paper?

Q21. Do you think these impacts are acceptable?

A list of all questions can be found at Annex C.

Annex D contains a form to use to tell us about yourself.

An Impact Assessment has been published alongside this consultation at <https://consult.justice.gov.uk/digital-communications/establishing-an-independent-public-advocate>

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>

² **Equality duties**

Section 149 of the Equality Act 2010 (“the EA Act”) requires Ministers and the Department, when exercising their functions, to have ‘due regard’ to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct prohibited by the EA Act;
- Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
- Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

Paying ‘due regard’ needs to be considered against the nine “protected characteristics” under the EA Act – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

Contact details/How to respond

Please send your response by Monday 3 December 2018 to:

Coroners, Inquiries Policy Team

Area 3.52
Ministry of Justice
102 Petty France
London SW1H 9AJ

Tel: 020 3334 3555

Email: IPAconsultation@justice.gsi.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <https://consult.justice.gov.uk/>.

Alternative format versions of this publication can be requested from IPAconsultation@justice.gsi.gov.uk.

Publication of response

A paper summarising the responses to this consultation is due to be published by March 2019. The response paper will be available on-line at <https://consult.justice.gov.uk/>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Annex A – Investigations and Investigatory Bodies

Some of the procedures that are currently in place for investigating disasters where there are fatalities are detailed below.

Coroner investigations and inquests

1. A coroner is a specialist judicial office holder who is required by law to investigate certain kinds of deaths – such as violent or unnatural deaths or deaths of unknown cause – in the particular local authority area or areas for which he or she is responsible. Coroner services are funded by local authorities, although under certain circumstances central government funding may be provided, for example the inquests into the deaths of the 30 Britons who were murdered at Tousse, Tunisia, in 2015.
2. The coroner’s job is to find the answers to the following questions:
 - who died; and
 - how, when and where they died.
3. An inquest is a court hearing held in public by the coroner to discover the facts of a death. Much may already have been established soon after the death, but when an inquest is held the coroner will have access to further information from their own and other investigations. At an inquest the coroner hears evidence from witnesses, experts and others concerned with the death. The process should be inquisitorial, not adversarial. The bereaved family will have the opportunity to put their own questions to those giving evidence in a process that is supported by the coroner to enable participation, usually without the need for legal representation.
4. An inquest is different from other types of court hearing because there is no prosecution or defence and no ‘parties’. Instead there are ‘interested persons’ – a term which includes the bereaved and may also include people injured in the event that caused the death or deaths.
5. Where a coroner is investigating several deaths in the same incident they are likely to hold the inquests together as one large hearing. This was the case with the second inquests into the deaths at the Hillsborough Stadium disaster, which concluded in 2016, and will be the case in the current inquests into the deaths in the 1974 Birmingham pub bombings. In such high profile or complex cases a judge, either serving or retired, is usually appointed to the role of coroner.
6. By law, an inquest cannot apportion blame but evidence revealed at an inquest may, depending on the circumstances, give rise to criminal prosecution or civil action. As noted above, its purpose is to determine who the deceased was and how, when and where they came by their death. Where the coroner considers that there are lessons to be learned from an inquest to help prevent future deaths they are required to submit a report to a person or organisation with power to take appropriate action. The recipient of such a report has a duty to respond, confirming what action they are taking.

7. A coroner investigation will probably be suspended while other investigations take place, such as police investigations, criminal prosecutions or a public inquiry. When these are complete, the coroner will decide whether to resume their investigation. The senior coroner for Inner West London has opened and suspended the inquests into the Grenfell Tower deaths while the inquiry chaired by Sir Martin Moore-Bick does its work and the police continue their investigation.
8. If there has been a public inquiry, the issue for the coroner will be whether it has left unanswered any questions which the coroner has a duty to address. An inquiry may for example examine in detail why a disaster happened, but may perhaps not provide answers about the circumstances of each death – that would be for the coroner.
9. However, where a prosecution has taken place which effectively answers the questions that would normally be considered at an inquest, explaining the death of each of the deceased, the coroner may leave the inquest suspended indefinitely
10. The Coroners and Justice Act 2009 reformed the way coroner investigations and inquests are conducted, including those following a disaster. The reforms, implemented in 2013, put bereaved people at the heart of the process. For example, the bereaved can expect that they will be treated with compassion and respect and that their needs will be central to the investigation and inquest. They have the right to request most documents, and can expect the coroner's office to update them at regular intervals and explain each stage of the process. Work is currently underway to make inquests less adversarial, following the publication of Dame Elish Angiolini's report on deaths and serious incidents in police custody and Bishop James Jones's report on the experiences of families bereaved in the Hillsborough stadium disaster.
11. A Ministry of Justice *Guide to Coroner Services* booklet explains what bereaved people can expect from the coroner and their staff. It is available through all coroner's offices and at www.gov.uk/government/publications/guide-to-coroner-services-and-coroner-investigations-a-short-guide. An updated version is in preparation.
12. Coroners have a role in relation to the investigation of deaths that take place in England or Wales. They also have a role in relation to deaths overseas where the body is returned to England or Wales and the death would have given rise to a coroner investigation had it occurred here.

Public inquiries

13. A public inquiry is an investigation into a matter of public concern conducted by a person, often a serving or retired judge, who is appointed by the Government but acts independently of the Government as the Inquiry Chair. The Government sets the inquiry's terms of reference but will usually consult the individuals and organisations involved. A public inquiry can have a panel of independent people who conduct the investigation along with the Inquiry Chair.
14. Unlike a coroner's investigation, which takes place only when someone has died, an inquiry can take place in any circumstances where the Government decides that the public interest requires one. Inquiries are typically broader in scope than inquests and often take longer to complete. Inquiries are funded by the government department which is responsible for the area of policy engaged by the inquiry, for example the

Department for Transport in the event of a train crash. Responsibility for funding may be shared by more than one department, depending upon the circumstances.

15. The Government can establish inquiries in a range of different forms, such as Independent Reviews, Royal Commissions and non-statutory inquiries. Where ministers are minded to set up an inquiry they will normally consider doing so under the Inquiries Act 2005, which provides a statutory framework for the conduct of public inquiries. Like inquests, inquiries established under the 2005 Act cannot determine civil or criminal liability. Like an inquest too, there are no parties as such but instead the inquiry chair can assign 'core participant' status to those with an interest in the matters being considered. The bereaved will usually be core participants in a public inquiry.
16. In public inquiries established under the Inquiries Act 2005 – like the Grenfell Tower inquiry – the inquiry chair is under a statutory obligation to act with fairness in making any decision as to the procedure or conduct of an inquiry. Core participants have access to documents as part of the inquiry process. The inquiry chair has powers to access and obtain all documents relevant to the inquiry. There may be occasions, particularly where there are issues of national security, when some documents will not be disclosed to core participants. Guidance is provided by the Cabinet Office to those running inquiries – inquiry chairs, teams and sponsoring government departments – which sets all this out.
17. Where an inquiry is established under the Inquiries Act 2005 and the inquiry's terms of reference indicate that it is likely to investigate, amongst other things, the cause of the deaths of those involved, the coroner will invariably, as explained above, suspend their own investigation and decide after the inquiry has concluded whether there is a need to reopen that investigation.
18. A public inquiry will conclude with a formal report submitted to the sponsoring government minister together with a set of recommendations arising from the inquiry's findings. The government will publish both the report and its response to the report.

Other Investigations and Inquires

19. There are a range of other agencies with responsibility in certain circumstances for investigating incidents that resulted in a loss of life.
20. The police will investigate events where a criminal offence may have taken place and the Crown Prosecution Service will pursue prosecutions in appropriate cases.
21. There are specialist agencies which are responsible for investigating breaches of Health and Safety, others that investigate air and rail network incidents and others that investigate events that take place in health and care settings. Any of these could be involved in investigating a public disaster although their investigations will feature different powers and functions.
22. The air, rail and marine accident investigation branches (AAIB, RAIB and MAIB respectively) will investigate an accident to determine its cause and make recommendations to improve safety. They do not, however, apportion blame or liability or enforce recommendations made as a result of their investigations. An example of a recent AAIB investigation was the one into the Shoreham air show disaster in August 2015.

23. The Care Quality Commission (CQC) monitors, inspects and regulates care services to ensure that they meet fundamental standards of quality and safety, publishing their findings. They can hold people accountable for poor care and bring prosecutions where people have been harmed or are in danger of harm. In addition, they can conduct special reviews and investigations into NHS care where there is evidence of significant problems. This could lead to enforcement action where providers are not meeting the fundamental standards of care although the CQC has no power to enforce wider recommendations. An example of one such investigation was the 2012 investigation into the University Hospitals of Morecambe Bay NHS Trust which looked at concerns about the Trust including its maternity and emergency services.
24. The Health and Safety Executive (HSE) is an independent regulator which acts in the public interest to reduce work-related deaths and serious injury across the UK. Alongside its co-regulators (e.g. local authorities) it will inspect workplaces to check that risks are managed safely and, where something has gone wrong, will investigate to find out what happened and learn lessons to prevent it happening again. They hold people to account where there have been failures, prosecuting cases where there have been breaches of health and safety law.

The table below sets out the roles of the main bodies which may be responsible for undertaking an investigation into a disaster, including where there are mass fatalities.

ORGANISATION	REMIT/DUTIES
Air Accidents Investigation Branch www.gov.uk/government/organisations/air-accidents-investigation-branch	To improve aviation safety by determining the circumstances and causes of air accidents and serious incidents and promoting action to prevent recurrence (it is not to apportion blame or liability). Provides assistance and expertise to international air accident investigations and organisations.
Care and Social Services Inspectorate Wales www.cssiw.org.uk	Regulates and inspects to improve adult care, childcare and social services for people in Wales.
Care Quality Commission www.cqc.org.uk/	Monitors, inspects and regulates care services, such as old people's homes, to make sure they meet fundamental standards of quality and safety and publish findings including performance ratings.
Defence Safety Authority www.gov.uk/government/organisations/defence-safety-authority	An independent organisation which investigates defence accidents and regulates safety across defence including aviation, nuclear, maritime, land, ordnance and explosives.
Health and Safety Executive www.hse.gov.uk	Independent watchdog for work-related health, safety and illness. It acts in the public interest to reduce work-related death and serious injury across Great Britain's workplaces. HSE (or another relevant enforcing authority, for example a local authority) will investigate and, where appropriate, prosecute breaches of health and safety law.

ORGANISATION	REMIT/DUTIES
Independent Office for Police Conduct	Oversees the police complaints system in England and Wales, investigating the most serious matters including deaths following police contact. Sets standards by which the police should handle complaints and uses learning from its work to influence changes in policing.
Marine Accident Investigation Branch www.gov.uk/government/organisations/marine-accident-investigation-branch	Carries out investigations to determine the cause of accidents at sea, increasing awareness of how marine accidents happen and co-operates with other investigation organisations internationally to share and encourage good practice.
National Police Chiefs' Council www.npcc.police.uk/Home.aspx	Enables independent chief constables and their forces to work together to improve policing for the public in the UK. It co-ordinates national police operations, commands counter terrorism operations and delivers counter terrorist policing, co-ordinates the national police response to national emergencies and co-ordinates the mobilisation of resources across force boundaries and internationally.
Office of Nuclear Regulation www.onr.org.uk	Ensures appropriate arrangements are in place to deal with a nuclear emergency. Seeks at international, national and regional levels to influence and assess UK arrangements, through its dedicated Emergency Preparedness and Response team.
Rail Accident Investigation Branch www.gov.uk/government/organisations/rail-accident-investigation-branch	Carries out investigations to determine the causes of railway accidents, makes recommendations to prevent future accidents, increases awareness of how railway accidents happen and co-operates with other investigation organisations nationally and internationally to share and encourage good practice.

Annex B – List of consultees

Copies of this consultation paper are being sent to:

Air Accidents Investigation Branch
Association of Police and Crime Commissioners
Care and Social Services Inspectorate Wales
Care Quality Commission
Chief Coroner of England and Wales
Chief Fire Officers Association
Chief Nuclear Inspector
Civil Aviation Authority
Coroners' Courts Support Service
Coroner Service Managers
Cruse Bereavement Care
Cure the NHS – Mid-Staffordshire inquiry campaign
Defence Safety Authority
Disaster Action
Environmental agency
General Medical Council
Grenfell United
Health and Safety Executive
Hillsborough Family Support Group
HM Chief Inspector of Constabulary
HM Chief Inspector of Fire Services (for England and Wales)
HM Crown Prosecution Service Inspectorate
HM Inspectorate of Railways
Independent Police Complaints Commission
Justice4Grenfell
Justice4the21
Law Society
Lord Chief Justice
Marine Accident Investigation Branch
National Police Chiefs' Council, Chief Constable
Office for Nuclear Regulation

Rail Accident Investigation Branch
Royal College of General Practitioners
Royal College of Nursing
Royal College of Physicians
Royal College of Surgeons of England
Senior Coroners, Area Coroners and Assistant Coroners
Survivors Assistance Network
The Coroners' Society of England and Wales
Victim Support
Victims' Commissioner
Victims' Commissioner for London

This list is not intended to be exhaustive and responses are welcomed from anyone with an interest in or views on the matters consulted on.

Annex C – Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Q1. Do you agree with us about the need for the Independent Public Advocate? Please give your reasons.

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

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?

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

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

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?

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?

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?

Q9. How should we ensure that the Independent Public Advocate is supportive of all the bereaved, in circumstances where they may hold differing and perhaps conflicting views?

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? Please give your reasons.

Q11. Should the type of support provided by the Independent Public Advocate be different in different types of investigations? If yes, please specify.

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

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

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?

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?

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

Q17. What would be the advantages and disadvantages of having a single Independent Public Advocate with deputies?

Q18. What would be the advantages and disadvantages of having a cadre of Independent Public Advocates?

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?

Q20. What do you consider to be the impacts on people with protected characteristics of the proposals set out in this consultation paper?

Q21. Do you think these impacts are acceptable?

Thank you for taking part in this consultation.

Annex D – About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

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