

Title: Independent Public Advocate IA No: MoJ015/2017 RPC reference Number: Lead department or agency: Ministry of Justice Other departments or agencies: N/A	Impact Assessment (IA)			
	Date: 06 September 2018			
	Stage: Consultation			
	Source of intervention: Domestic			
	Type of measure:			
Contact for enquiries: general.queries@justice.gsi.gov.uk				
Summary: Intervention and Options			RPC Opinion:	

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2014 prices)	In scope of One-In, Three-Out?	Measure qualifies as
£3.3m	£0	£0	No	

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

Following several high-profile investigations into events involving multiple fatalities (e.g. the investigations and original inquests following the 1989 Hillsborough Stadium disaster) there has been criticism that the bereaved and injured have sometimes been marginalised and that their voices have not been heard. They often lack the knowledge, skills, and authority to access information critical to understanding how processes operate and therefore are unable to effectively engage.

The establishment of an independent public advocate (IPA) would support the bereaved in their interactions with the existing systems and procedures for investigating deaths and inquiring into matters of public concern to ensure that those directly affected are able to fully access and effectively participate. Government intervention is required to bring forward primary legislation to introduce the IPA who will have the necessary powers to act independently and incur expenditure.

What are the policy objectives and the intended effects?

The objective of the IPA is to ensure that bereaved families are properly involved and supported throughout the investigations, inquests and inquiry (if there is one) which follow a disaster. The intended effect is that bereaved people would have their needs and wishes heard, that they understand and are able to engage with the investigations, and that they have confidence that these are carried out in a respectful and transparent manner. With the introduction of an IPA, the Government aims to make sure that the past experiences of many families bereaved following a disaster, major incident or series of linked incidents are not repeated.

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

- **Option 0:** Base case (do nothing)
- **Option 1:** To bring forward legislation to create an Independent Public Advocate to act on behalf of people who have been bereaved as a result of a disaster in the following investigations. Option 1 is the preferred option as it best meets the Government's policy objectives.

Will the policy be reviewed?

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
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: 06 September 2018

Summary: Analysis & Evidence

Policy Option 1

Description: Establishment of an Independent Public Advocate role

FULL ECONOMIC ASSESSMENT

Price Base Year 2017	PV Base Year 2017	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: - 3.3

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual ¹ (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	Not Quantified	Max of 0.5	3.3

Description and scale of key monetised costs by 'main affected groups'

- It is not possible to accurately quantify the costs of this option until the final scope of the IPA role is determined. For the purposes of this Impact Assessment, an indicative upper bound cost of around £500k per annum for an IPA and five back office supports has been assumed. We have assumed the IPA would be implemented in 2019.

Other key non-monetised costs by 'main affected groups'

- The IPA may decide that a new inquiry, or an independent investigatory process (such as the Hillsborough Independent Panel) should be set up, or they may advise ministers on how to respond to any concerns, with the final decision as to how best to proceed being for the Government. Both of which could result in additional costs to Government.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	Not Quantified	Not Quantified	Not Quantified

Description and scale of key monetised benefits by 'main affected groups'

None monetised.

Other key non-monetised benefits by 'main affected groups'

- The IPA could help bereaved feel more satisfied with the outcome of the investigatory process, which may result in fewer inquiries and free up government resources.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
<ul style="list-style-type: none"> If the scope of the IPA is wider than currently proposed, the IPA would require a significant supporting administration, which would increase costs considerably for the MoJ. There could potentially be additional costs to Government agencies if they are compelled by the IPA to carry out extra work. There is a risk that some agencies could become complacent if they think part of their role is being conducted by the IPA. 		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: £0	Benefits: £0	Net: £0		

¹ This is based on a steady state from 2019

A. Background

1. We recognise that the aftermath of a public disaster involving multiple fatalities is hugely difficult and understanding the various processes can be extraordinarily hard. It is likely that a number of agencies will be involved in the following investigations and that there is likely to produce a wealth of information which can be difficult to digest and navigate - even more so in time of great personal distress. We know that bereaved families can feel as if the machinery of the investigations, inquest or inquiry (where there is one) take over and their voices are lost.
2. In particular, we are mindful of the experiences of families who lost loved ones in the Hillsborough Stadium disaster where the initial investigations were subject to significant and common criticisms by the bereaved that they had not been properly supported, listened to and respected. These failures contributed to the failings in initial inquiries into these events. We wish to avoid repeating these experiences.

B. Policy Rationale and Objectives

3. Conventional economic approaches to Government intervention are usually based on efficiency or equity arguments. Governments may consider intervening on the grounds of efficiency if there are strong enough failures in the way markets operate (e.g. monopoly), or similar failures in existing interventions (e.g. outdated regulations generating inefficiencies). In all cases the proposed intervention should avoid generating disproportionate costs and distortions. Intervention can also be justified on equity grounds where Governments intervene for reasons of fairness and/or for distributional reasons (e.g. by reallocating resources from one group in society to another).
4. The proposal considered in this Impact Assessment (IA) is primarily justified on equity grounds. By establishing the IPA, the Government is intervening to ensure those directly affected by a disaster do not find their voices drowned out, either because they are only one of many who have been bereaved or because their views are competing with other, often better resourced and knowledgeable agencies or persons.
5. The establishment of an IPA role may also potentially free up resources for Government agencies by facilitating more effective and efficient interactions with the bereaved and by realising better focussed and more appropriate investigations or inquiries. These resources could be deployed elsewhere and result in efficiency savings.
6. The associated policy objective is to enable these bereaved families to fully understand and participate in the investigatory processes that are established to determine the cause of a disaster and the resultant deaths.
7. The policy objective is to establish a new office independent of government. At this stage it remains unclear whether it might be possible for the proposed role/function to be undertaken by an existing service or office-holder.

C. Affected stakeholder groups, organisations and sectors

8. The main groups that would be affected by the options analysed in this IA are shown below:
 - Those bereaved in a qualifying disaster
 - UK and Welsh Ministries who are responsible for establishing Public Inquiries
 - Ministry of Justice, who are responsible for the coroner system
 - Government agencies responsible for investigating specified matters that can be related to disasters that involve mass fatalities e.g. coroners, police, Health and Safety Executive etc.

D. Description of options considered

9. To meet the Government's policy objectives, the following options are considered in this IA:

- **Option 0:** Base case (do nothing)
- **Option 1: Establish an IPA.** Under this option, legislation would be introduced to create an Independent Public Advocate who would support those who have been bereaved following a public disaster.

10. The Government's preferred option is Option 1: to bring forward legislation to create an IPA who would support those who have been bereaved following a public disaster.

Option 0: Base case (do nothing)

11. Under "do nothing" base case, the current system would continue to apply. The investigations and inquests following mass fatality events would continue to be complex and may involve a large number of interested parties and information. There will continue to be a risk that bereaved people and victims are not properly supported or engaged in the process.

Option 1: Establish an IPA role

12. Under this option the IPA would be established. The scope of the IPA role is subject to consultation but our proposals are set out below.

i. The role

13. The IPA's primary interest would be in understanding and advancing the interests of those bereaved as a result of a public disaster. It is essential that the bereaved are able to have confidence in the role and any person appointed to it. In order to preserve the IPA's independence we therefore propose that their role would be set out in legislation and they would not owe a duty to any other agencies. They may, however, have a duty to report to Ministers and/or Parliament. Bereaved and injured people would remain free to determine they have no need for the role in respect of a particular disaster.

14. We do not envisage that the IPA would provide legal advice or representation, it would not be an 'advocate' in that sense nor secure health or welfare services for bereaved people. The IPA might, however, advise bereaved families on the implications of engaging lawyers or on where to seek health or welfare support. Bereaved families would remain free to engage legal or other forms of advocacy where the processes allow for it.

ii. Engagement

15. We consider that there are two broad areas in which the IPA would operate. Firstly, the IPA could be engaged immediately post-disaster and continue to be involved throughout the investigatory process. Secondly the IPA could have a role in those exceptional circumstances where the normal investigatory processes have failed to uncover the facts and there is a prevailing concern that the truth is yet to be revealed.

16. It is not our intention that the IPA should duplicate or replace the existing functions of other agencies or persons following a public disaster.

iii. Qualifying events

17. We propose that the IPA's role would be limited to involvement in events where there are multiple fatalities. We do not envisage, however, that the IPA would become engaged in every event where there is a significant loss of life. Instead, we see their involvement coming where the bereaved have a need for an IPA and there is significant public interest in the potential causes or implications of the event.

18. It may also be the case that a qualifying event is one where mass fatalities result from linked events as well as single events. For example, a single event could be an air crash whereas linked events may be consistent failures within a hospital trust leading to a large number of deaths.

iv. Territorial events

19. We do not envisage territorial limitations as to where the qualifying disaster must have taken place nor any nationality/residency restrictions on those bereaved who could be supported by the IPA. However, the relevant investigatory process must be conducted within the jurisdiction of England and Wales.

E. Cost and Benefit Analysis

20. This IA follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.
21. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in the UK with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts that cannot sensibly be monetised. These might be impacts on certain groups of society or some data privacy impacts, positive or negative.
22. The costs and benefits of each proposal are compared to option 0, the do nothing or 'baseline' case. As the 'baseline' option is compared to itself, the costs and benefits are necessarily zero, as its Net Present Value (NPV).
23. As the final scope of the IPA is still to be determined, and as it is not possible to predict the number of incidents where it would be required, we are unable to accurately quantify the costs and benefits of this proposal. Instead this IA will focus on identifying non-monetised impacts on individuals and organisations in the UK, and where possible, indicative monetised impacts are provided.

Option 1: Establish an IPA Role

Costs of Option 1

Ministry of Justice

24. The main costs of this proposal would be the salary of the IPA/IPAs, travel and accommodation costs. Until we know the responsibilities of the IPA and what incidents would qualify for IPA involvement (which are both to be determined as part of this consultation), it is difficult to estimate how many support staff would be needed and the likely costs.
25. One potential model would be to establish a cadre of IPAs, who would be paid on an ad hoc basis when required. This model may or may not involve the appointment of one permanent IPA with responsibilities for overseeing the recruitment, training and deployment of the cadre of IPAs. It is not possible to quantify the cost of this model because we cannot predict the number of future incidents that would require support from the cadre of IPAs.
26. Another model would be to have a single IPA with a back-office support team. It has been estimated that an IPA with a back-office support team of five staff would cost approximately £500k per annum, based on current departmental spending on similar staffing models. This is likely to be an upper bound of the costs for the IPA, as a permanent team of five staff could be more than is necessary, however it is not possible to improve this estimate while the responsibilities and scope of the IPA are unknown.

Government Agencies

27. The IPA would not duplicate or replace the existing functions of Government agencies or persons following a public disaster, and in the majority of cases there should be no extra work created for agencies as a result of the IPA. In instances where an investigatory process has failed to expose all the relevant evidence, the IPA may decide that a new inquiry, or an independent investigatory process (such as the Hillsborough Independent Panel) should be set up, or they may advise ministers on how to respond, with the final decision as to how best to proceed being for the

Government. This could result in additional costs to Government although, for the reasons given above, it is not possible to quantify them.

Benefits of Option 1

Bereaved

28. The proposal for an IPA should result in a higher level of satisfaction in the investigatory process for the bereaved and injured of a disaster. They should feel better informed of the investigatory processes and the options available to get to the truth and they should feel that their voices have been heard during the conduct of an investigation.

Government Agencies

29. The IPA may potentially free up some time for Government agencies, which they currently spend explaining the investigatory process to the bereaved of a disaster. In addition, the IPA should help manage the expectations of the bereaved, which may make their interactions with Government agencies more effective.

30. By keeping bereaved people well informed of the processes that follow a disaster and what to expect from Government agencies, the IPA could help bereaved people feel more satisfied with the outcome of the investigatory process, which may result in fewer inquiries and free up Government resources.

F. Risks and sensitivities

31. The following risks apply to the assessment of expected costs and benefits of Option 1:

- If the scope of the IPA is wider than currently expected, the IPA would require a significant supporting administration, which would increase costs considerably for the MoJ.
- Although the IPA is not intended to duplicate the work of Government agencies, there is a risk that some agencies could become complacent if they think part of their role is being conducted by the IPA. There is also a risk of there being confusion between the role of the Government agencies and the role of the IPA.

G. Equality impact

32. The creation of the Independent Public Advocate would not result in any direct or indirect discrimination; nor would it create a risk of victimisation or harassment. All people bereaved in a qualifying event will have access to the IPA. The benefits, set out above, would apply to all bereaved people, including those with protected characteristics. We have included a question regarding the possible equality impact in the consultation document and will consider the responses to this as part of our consultation response.