

# THE PUBLIC AUTHORITY (ACCOUNTABILITY) BILL 2025

## REPORT OF LEGAL ADVISER & MONITORING OFFICER



**For Information**

### 1. PURPOSE OF REPORT

- 1.1 To inform the Committee of the introduction of the Public Office (Accountability) Bill, known as the Hillsborough Law, into Parliament. The Bill is at the early stages having had a second reading in Parliament and therefore has some way to go before it can be made law, but if enacted in its current form it will significantly change the landscape for public authorities and public officials in the way they perform their functions with particular impact on the conduct of public inquiries and inquests.

### 2. RECOMMENDATIONS

- 2.1 That Members note the contents of this report and that further reports be received by the Committee as to the progress of this legislation.

### 3. BACKGROUND

- 3.1 The impetus behind the Bill was the campaigning of those affected by the failings of public bodies, including most notably those involved in the Hillsborough Public Inquiry (1990), who have long been calling for a law to enforce a duty of candour on public bodies and public servants and require them to actively assist in inquiry and inquest investigations. The Hillsborough Inquiry criticised the 'defensive and evasive' evidence from senior police officers. The Hillsborough Independent Panel (2012) found over 100 statements given by junior officers had been amended to alter comments unfavourable to South Yorkshire Police.

This led to referrals to the Independent Office for Police Conduct. In addition, bereaved families have no access to legal funding for inquests as seen in the cases of; Windrush, Grenfell, Post Office Horizon, Infected Blood Inquiry.

On the 16 September 2025, the Government published the Public Office (Accountability) Bill with three main themes, namely;

1. A Duty of Candour (including a new offence of misleading the public)
2. Misconduct in Public Office
3. Parity of Arms.

#### **4. THE DUTY OF CANDOUR AND ASSISTANCE**

- 4.1 The Bill places a duty on public authorities and public officials to act with candour, transparency and frankness in their dealings with inquiries and investigations. Of particular note, “Public authority” includes; ministers and government departments, the armed forces, police forces, local authorities, NHS bodies, education providers, and any other body with functions of a public nature. Whilst the definition of “Public official” includes ‘an individual who works for a public authority, holds office under a public authority or holds a relevant public office.’ Those acting in a judicial capacity are exempt as are “excluded bodies” namely; the courts, both Houses of Parliament, the Scottish Parliament, Welsh Assembly and the Northern Ireland Assembly. The Bill also extends the duty of candour and assistance to those who are neither a public authority or official but who have “relevant public responsibility”, for example those with health and safety responsibilities or service providers who carried out activities on behalf of public bodies, in connection with an incident that had a significant impact on members of the public.
- 4.2 Where a public authority or public official has grounds to believe that their acts may be relevant to an inquiry or coroner’s investigation or have information that is likely to be relevant, the public authority or public official must notify the person leading the inquiry or investigation. A public authority or public official must provide all such assistance as they can reasonably give to assist an inquiry or investigation to meet its objectives, including providing information, drawing attention to information, correcting errors or omissions.
- 4.3 The Bill places a specific further obligation on the public official overseeing the authority, commonly the chief executive or the person carrying out functions corresponding to those of a chief executive, who “must take all reasonable steps to secure that the authority complies with those obligations”. In complying, the public authority or public official must act expeditiously and without favour to its own, or another’s, position.
- 4.4 Whilst the Bill’s stated purpose is to ensure that public authorities and public officials perform their functions with candour, transparency and frankness “at all times”, the statutory duty imposed applies to inquiries and coroners’ investigations, with a power reserved for the government to make regulations extending the duty to other types of investigation.
- 4.5 Criminal sanctions will follow non-compliance with this duty in the form of a new offence. The Bill makes failing to comply with the duty of candour and assistance in respect of an inquiry or investigation an offence for which the maximum sentence is two years’ imprisonment. It must be shown that the Defendant either intended that their failure would impede the inquiry or investigation or, where a breach relates to a failure to assist or take all reasonable steps to secure compliance, that the Defendant was reckless as to whether it would impede the inquiry or investigation in achieving its objectives.

## 5. **MISCONDUCT IN PUBLIC OFFICE**

- 5.1 The Bill abolishes the common-law offence of misconduct in public office and creates two statutory offences of misconduct in public office. This follows the Law Commission Report 'Misconduct in Public Office' (2020) which recommended placing the offence on a statutory footing.

### **(1) "Seriously improper conduct"**

- 5.2 Under the Bill, anyone who uses their office to obtain a benefit (whether for themselves or another, or to cause another person to suffer a detriment) when they know or ought to know that doing so is seriously improper, commits an offence. Benefit and detriment can be temporary or permanent and can include financial gain, enhancement to a person's reputation, or benefit of a physical or sexual nature. The Bill provides a 'reasonable excuse' defence. The maximum penalty for the offence is ten years' imprisonment.

### **(2) "Breach of duty to prevent death or serious injury"**

- 5.3 An offence will be committed where, a person who holds public office, and as a result, is under a duty to prevent another person from suffering critical harm, and
- they intentionally or recklessly cause, or create a significant risk of, critical harm, and
  - the breach falls far below what could reasonably be expected of the person in the circumstances.
- 5.4 The offence will carry a maximum sentence of 14 years' imprisonment. Again a 'reasonable excuse' defence could apply.
- 5.5 The Bill also creates a new offence of 'misleading the public'. A public authority or public official commits this offence if they act with the intention of misleading the public or are reckless as to whether their act will do so and they know, or ought to know, that their act was seriously improper. The offence carries a maximum sentence of two years' imprisonment. A 'reasonable excuse' defence would apply.
- 5.6 An act is "seriously improper" if;
- the act involved significant or repeated dishonesty in respect of matters of significant concern to the public,
  - It caused, or contributed to causing, harm to one or more persons, or had the potential to do so, and
  - It departed significantly from what is expected in the proper exercise of a person's functions as a public authority or public official.
- 5.7 The Explanatory Notes to the Bill indicates that this offence would not apply to 'individual interactions' for example, a teacher speaking to parents or a doctor advising a patient or where *'it may be necessary to mislead someone as part of your job'* for example, as part of *'undercover operations'*.

## 6. **PARITY OF ARMS**

- 6.1 A key aim of the Bill is to achieve parity of arms between families and other interested persons in inquests. It does so through what the government describes as an ‘interlocking package’ of measures aimed at assisting families and placing new obligations on public authorities and courts. The Bill would amend the Legal Aid, Sentencing and Punishment of Offenders Act 2012, to make non-means tested legal aid available for all bereaved families in inquests where a public authority is also an interested person. This includes inquests where local authorities, government departments, the NHS, the armed forces, schools, or the police are interested parties.
- 6.2 The Bill would seek to require public authorities to have regard to guidance setting out principles that promote the need to act with candour, transparency and frankness in their dealings with inquiries and investigations and support the inquisitorial nature of inquiries and investigations and assist them to meet their objectives.

## 7. **CODE OF ETHICAL CONDUCT**

- 7.1 The Bill would place a statutory duty on public authorities “*to promote and take steps to maintain high standards of ethical behaviour at all times by people who work for the authority.*” This supplements the existing statutory duty placed on public authorities to “*promote and maintain high standards of conduct*” under Section 27 of the Localism Act, 2011. This would be satisfied by adopting a code that reflects the seven ‘Nolan principles’ which is presently the case. However, the code ‘must’ also set out the following;
- “*Practical ways in which the standards set by the code are to be met*”
  - “*otherwise promote ethical conduct, candour, transparency and frankness*”,
  - Disciplinary consequences for breach,
  - How to report breaches,
  - Whistleblowing,
  - Complaints process.
- 7.2 It is envisaged there would be ‘exceptions’ to the application of the code and exclusion from disclosure if “*contrary to the public interest.*” Again, public authorities must have regard to government guidance.

## 8. **SUMMARY**

- 8.1 The Bill is notable for the introduction of a ‘duty of candour’ on a statutory footing. The earlier ‘Caldicott principles’ did establish a framework for the ethical and legal use of confidential health and social care information, but the Bill seeks to go further with a statutory duty underpinned by new criminal offences and statutory standards of ethical conduct. Clearly the Bill is at the very early stages and further reports will be brought to the attention of the Committee as and when required or is otherwise desirable for Members to be informed.

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