



The Hillsborough Law Bill: Navigating New Duties and Public Law Implications

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Your speakers for today



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Overview of the Bill and new duties on public bodies



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Background to the Bill (1)

- Backdrop of series of investigations into Hillsborough disaster, including original inquest, investigation by Stuart-Smith LJ, Taylor Inquiry, Hillsborough Independent Panel, second inquest, civil cases, and decades of campaigning
- Continuing traction in wake of criticism of public body engagement in public inquiries, inquests and other investigations



Image: Liverpool Echo



Background to the Bill (2)

- Report of Bishop James Jones, criticising *“instinctive prioritisation of the reputation of an organisation over the citizen’s right to expect people to be held to account for their actions”*
- Charter for Families Bereaved through Public Tragedy
- Public Authority (Accountability) Bill
- Labour Party’s 2024 manifesto

Historical injustices

Under the Conservatives, too many victims of historical injustices have had insult added to injury by years of legal delays. Without justice and the truth, victims and their families cannot move forward. Labour will right this wrong, act on the findings of the Infected Blood Inquiry, and respond to the findings of the Grenfell Inquiry and the Covid-19 Inquiry, to ensure swift resolution.

Labour will introduce a ‘Hillsborough Law’ which will place a legal duty of candour on public servants and authorities, and provide legal aid for victims of disasters or state-related deaths. We will ensure the victims of the appalling Windrush scandal have their voices heard and the compensation scheme is run effectively, with a new Windrush Commissioner. Labour will also ensure, through an investigation or inquiry, that the truth about the events at Orgreave comes to light.

Image: Liverpool Echo



The Draft Bill: Key Provisions

2 Duty of candour and assistance

(1) Public authorities and public officials must at all times act with candour, transparency and frankness in their dealings with inquiries and investigations.

Key points:

- Building upon the existing duty of candour in judicial review, reflecting the need for JR litigation to be conducted “with all cards face upwards on the table”: *R v Lancashire CC, ex p Huddleston* [1986] 2 All ER 94
- Not merely a “target duty”



The Draft Bill: Key Provisions

2 Duty of candour and assistance

(3) A public authority or public official must notify the person leading an inquiry or investigation where the authority or official has ground to believe that —

- (a) their acts are or may be relevant to the inquiry or investigation, or
- (b) they otherwise have information likely to be relevant to the inquiry or investigation

(4) 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 [...]



The Draft Bill: Key Provisions

2 Duty of candour and assistance

(5) Where a public authority is subject to the obligations in subsection (3) or (4), the public official who is in charge of the authority must take all reasonable steps to secure that the authority complies with those obligations.

(6) In complying with obligations arising under this section, a public authority or public official must act —

(a) expeditiously, and

(b) without favour to their own, or another person's position.



Scope of the Act: what is an inquiry or investigation?

Clause 8 clarifies this includes:

- Statutory AND non-statutory public inquiries
- Local authority inquiries
- Inquests (presumably of all kinds)
- “An investigation specified, or of a description specified, in regulations under paragraph 8(1) of Schedule 1”- power on the part of “the appropriate national authority” to specify that a particular investigation or description of investigations will be caught by new duties
- Notable absences: Ombudsmen investigations (TBC), regulatory investigations, criminal investigations...



Scope of the Act: what is a public authority?

Duty bites on “Public authorities and public officials”. Defined broadly in Sch 2, Part 2.

Note excluded bodies: courts, either Houses of Parliament and devolved assemblies.

“Functions of a public nature”- mirroring JR amenability test?

Officials include those who work for a public authority or a person who “otherwise holds office”, but “only to the extent of their functions as such an official”.

- (1) In Chapters 1 and 3 of Part 2, “public authority” means —
 - (a) a government department,
 - (b) a Minister of the Crown,
 - (c) the Scottish Ministers,
 - (d) the Welsh Ministers,
 - (e) a Northern Ireland devolved authority,
 - (f) any of the regular or reserve forces,
 - (g) a police force or policing body,
 - (h) a local authority,
 - (i) an NHS body,
 - (j) a school or further education provider, or
 - (k) any other body that comes within sub-paragraph (2).
- (2) A body comes within this sub-paragraph if—
 - (a) it is not an excluded body, and
 - (b) its functions —
 - (i) are functions of a public nature, or
 - (ii) include functions of a public nature.
- (3) But a body within sub-paragraph (2)(b)(ii) is a public authority only to the extent of its functions of a public nature.



Clause 5: Offence of failing to comply

(1) A person commits an offence if –

(a) they fail to comply with the duty of candour and assistance in respect of an inquiry or investigation, and

(b) they –

(i) intend that their failure will impede the inquiry or investigation achieving its objective, or

(ii) in the case of a failure with an obligation arising under section 2(4) or (5), are reckless as to whether it will do so.

Sentences vary between fine and two years' imprisonment.



Clause 11: Offence of misleading the public (1)

- (1) A public authority or public official commits an offence if, in their capacity as such an authority or official –
 - (a) They act with the intention of misleading the public or are reckless as to whether their act will do so, and
 - (b) They know, or ought to know, that their act is seriously improper.

As with offence of failing to comply, sentences vary between fine and two years' imprisonment.



Clause 11: Offence of misleading the public (2)

HOWEVER, an act will only be “seriously improper” if it:

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



Other significant provisions

Duty of public authorities to “promote and take steps to maintain high standards of ethical conduct at all times by people who work for the authority” (clause 9)

Duty to “have regard to any guidance issued under this section that applies to the authority” in relation to ethical conduct (clause 10)

Further offences of “seriously improper acts” and breach of duty to prevent death or serious injury, including with extra-territorial application (clauses 12-14)

Amendments to LASPO to extend public funding for family member representation at inquests (Sch 6 Part 4)



Litigating the duty to act with candour, transparency and frankness, and tips for litigants



Natasha Jackson



What we will cover:

1. Where do we find the duty of candour? (Nolan Principles; Common Law; Statute)
2. How does the Hillsborough DoC compare to the common law duty?
3. Litigation tips for using the new duty
4. Questions of scope: privilege, PII and national security



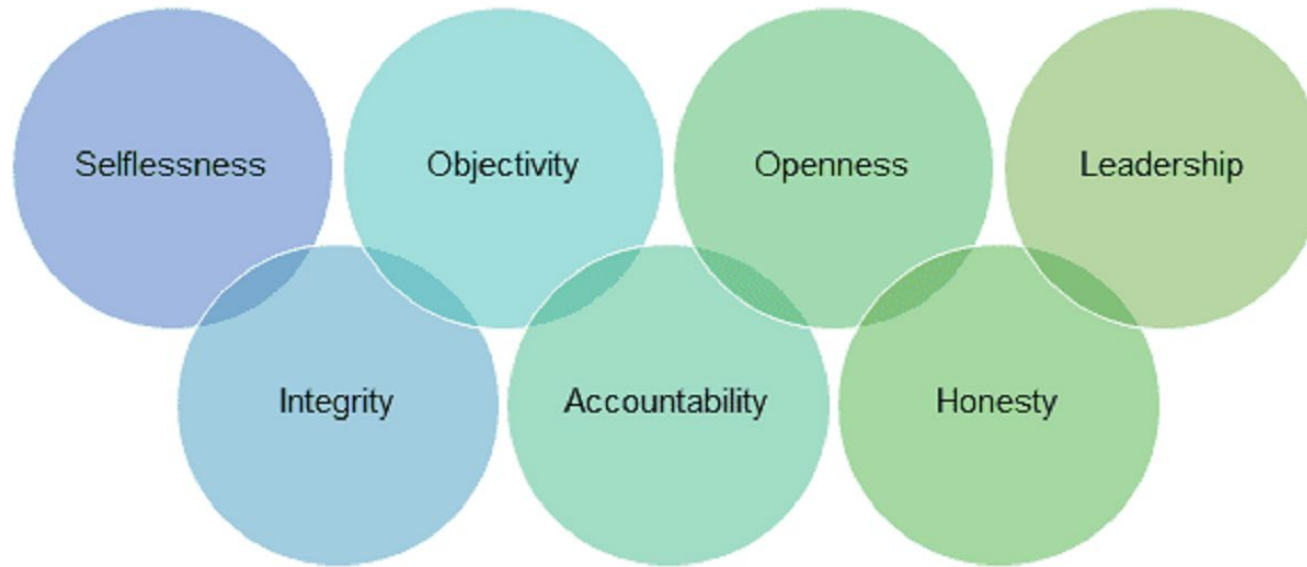
Where does the 'duty of candour' come from?

- Principles of good governance
- Common law duty (judicial review)
- Statutory duty



Nolan Principles

The Seven Principles of Public Life apply to anyone who works as a public office-holder;
Ethics and Integrity Commission



<https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>



Common law (judicial review)

Administrative Court Guide 2025, Part C ch.15

15.3.5 *The duty of candour means that:*

15.3.5.1 the process of preparing statements of case and evidence must be conducted “with all the cards face upwards on the table”; public authorities must not be selective in their disclosure;

15.3.5.2 pleadings and evidence must be drafted in clear, unambiguous language, must not deliberately or unintentionally obscure areas of central relevance and must not be ambiguous or economical with the truth or contain “spin”;

15.3.5.3 pleadings and evidence must not mislead by omission, for example by non-disclosure of a material document or fact or by failing to identify the significance of a document or fact.



Common law (judicial review) (2)

“There is no duty of general disclosure in judicial review proceedings. However there is - of course - a very high duty on public authority respondents, not least central government, to assist the court with full and accurate explanations of all the facts relevant to the issue the court must decide.”:

R (Quark Fishing Ltd) v SSFCA [2002] EWCA Civ 1409 at [50], per Laws LJ

“The duty of candour is a duty to disclose all material facts known to a party in judicial review proceedings. The duty not to mislead the court can occur by omission, for example by the non-disclosure of a material document or fact or by failing to identify the significance of a document or fact”:

Citizens UK v SSHD [2018] 4 WLR 123 at [106(5)], per Singh LJ

The purpose of the duty in judicial review is that it *“enables the court to adjudicate on issues involving the state without deciding facts or engaging in disclosure processes”:*

R (HM, MA and KH) v SSHD [2022] EWHC 2729 (Admin) at [15], per Edis LJ

See the ‘10 Principles’: ***R (Police Superintendents’ Association) v Policy Remuneration Review Body*** [2023] EWHC 1838 (Admin) at [15, per Fordham J



Common law (judicial review) (3)

- The DoC can be engaged pre-action: ***National Bank of Anguilla v Chief Minister of Anguilla*** [2025] UKPC 14 at [91]; ***Policy Superintendents***
- The duty is context-sensitive; what is required to discharge the duty at the substantive stage will be more extensive than what is required before permission has been granted: ***R (Batmanghelidjh) v Charity Commission*** [2022] EWHC 3261 (Admin)
- Applies to Claimants as well as public authorities: ***R (Khan) v SSHD*** [2016] EWCA Civ 416



Statutory duty of candour

Reg. 20, Health and Social Care Act 2008 (Regulated Activities) Regs 2014

1. Duty of act in an open and transparent way with people in relation to the care and treatment provided to them (reg. 20(1))
2. Specific duty of candour in all cases where there has been a 'Notifiable Safety Incident', including duties to notify, provide and account believed to be true, and give certain information (reg. 20(2)(a) and 20(3))

Breach of regs. 20(2)(a) and 20(3) is a criminal offence, with a penalty fine: reg. 22(3).

CQC prosecution of University Hospitals Plymouth Trust:

<https://www.cqc.org.uk/news/releases/care-quality-commission-prosecutes-university-hospitals-plymouth-nhs-trust-breaching>



How does the 'Hillsborough DoC' compare?

Early days... current Bill appears similar to common law formulation, with additional notification / procedural requirements

But remain mindful of the different contexts when considering what material is relevant to the object of the inquiry:

- JR = generally not focused on fact-finding (**HM**, per Edis LJ); Inquiries = almost always are
- No permission state for inquiries → Hillsborough DoC would seem to kick in sooner

Common law seems a helpful place to start; can expect parallel approaches to scope of DoC. But can anticipate Hillsborough Law-specific caselaw on the application of the duty in the inquiry context



Litigating the new duty in inquiries / inquests

The new duty goes further than existing Rule 9 / s.21 Inquiries Act 2005 compulsion; it does not require the Inquiry to ask the right question.

Request Knowledge and Information Management statements and data policies from authority (record-keeping is often key, e.g. HM)

Seek signed witness statements from relevant officials / authorities addressing the relevant information

Through inquiry procedures: request case management directions compelling notification of searches; apply for directions requiring compliance by a certain date; request procedural / interim hearing to deal with issues

Ask targeted questions through correspondence / through the chair (especially if you think there should be more)

Seek to agree documents e.g. chronology / statement of facts

Complement requests with parallel JR / FOIA / EIR mechanisms

If documents are provided late, seek a 'curing' protocol e.g. supplementary statements + re-opened XX

Ask Chair to record non-compliance with DoC

Consider referral to prosecuting authorities?



Scope: privilege, PII and national security

Carve-out at cl.6 for 'security and intelligence information'. The DoC applies to intelligence services, but the notification obligation does not.

Sched 1, Pt 1 para 1(2) (statutory inquiries) and Pt 2 (non-stat inquiries) provides that the DoC does not require disclosure contrary to ss.21-22 of the Inquiries Act 2005:

- s.21: privilege (LPP / LP / privilege against self-incrimination)
- s.22 Inquiries Act 2005: PII

Tips for litigants: insist on formalities; schedules + challenge them (*R (IAB) v SSHD* [2023] EWHC 2930 (Admin), Swift J); request judicial inspection where appropriate; confidentiality rings (?)



Implications for public inquiry and inquest practice



Chris Jacobs



The Public Office (Accountability) Bill

The Bill refers to Inquiries in numerous places.

It is described in the preamble as a Bill to ‘*impose a duty on public authorities and public officials to act with candour , transparency and frankness, to make provision for the enforcement of that duty in their dealings with inquiries and investigations,To make provision enabling persons to participate at inquiries and investigations where the conduct of public authorities may be an issue , and for connected purposes .*’

Clause 1 (2) of the Bill imposes a duty on public authorities and public officials to act with candour, transparency and frankness in their dealings with inquiries and investigations and imposes criminal liability for breach of that duty.



Part 2. Chapter 1: Duties and Powers

Clause 2 of the Bill imposes the following duty on public authorities and officials in respect of inquiries and investigations :

‘(3) A public authority or public official must notify the person leading an inquiry or investigation where the authority or official has grounds to believe that—

- (a) their acts are or may be relevant to the inquiry or investigation, or*
- (b) they otherwise have information likely to be relevant to the inquiry or investigation.*

Furthermore, under Clause 3 subsection (3)(5) the person leading an inquiry or investigation may whether by a direction or otherwise

*require a public authority or public official to provide information of a particular description,
at a particular time or in a particular way (for example by identifying descriptions of
information that could be provided, or by giving an oral or written statement)*



Duties and powers continued

The duty of candour will not only apply to public bodies. Clause 4 states:

A person who— (a) is not a public authority or public official, but (b) had a relevant public responsibility in connection with an incident, must comply with the duty of candour and assistance in relation to an inquiry or investigation being held in connection with the incident.

The relevant public responsibilities to which the provision will apply are those relating to health and safety or those which were carried out as a service provider to a public authority and had a significant impact on members of the public. This provision would most likely apply to a party under investigation in an Inquiry such as the Grenfell Tower Inquiry.

Clause 5 imposes an offence of failing to comply with the duty of candour and assistance in respect of an inquiry or investigation.



Compliance Directions

Arguably the most significant change the Bill introduces is a new power for an Inquiry Chair to make a compliance direction

Schedule 1 Part 1 of the Public Office (Accountability) Bill sets out as follows:

PART 1

INQUIRIES UNDER THE INQUIRIES ACT 2005

1 (1) The Inquiries Act 2005 is amended as follows.

(2) After section 23 insert—

“23A Duty of candour and assistance: directions

(1) As soon as reasonably practicable after the start of an inquiry, the chair of the inquiry must (subject to subsections (9) and (10)) give a compliance direction— (a) to a public authority or public official, or

(2) (b) to a person who had a relevant public responsibility in connection with an incident to which the inquiry relates, if it appears to the chair that the person’s acts are or may be relevant to the inquiry or that they otherwise have information likely to be relevant.



Compliance Directions continued....

- A compliance direction is a direction to comply with the obligations of under the duty of candour and assistance at Clause 2 of the Bill.
- A compliance direction is not limited to the start of the Inquiry. It may be given at any other time during the course of the Inquiry (New S23A (2) IA 2005)
- A compliance direction must be given to the person who appears to be in charge of a public authority or who had public responsibility in connection with an incident to which the inquiry relates (New S23A (3) IA 2005)
- A compliance direction cannot be used to require production of evidence that is subject to privilege or public interest immunity (New S23A (8))
- Sections 35 and 36 IA 2005 are amended so the same enforcement provisions as in s.21 apply and there is an offence of failing to comply.
- A person ceases to be subject to the duty of candour and assistance when the inquiry to which it relates ends. (New S23A (11))



Compliance Directions – Official Secrets Act 1989.

Schedule 1 Part 1 of the Public Office (Accountability) Bill reads:

(10) A compliance direction may not be given to a public official if it would require the official to provide information relating to security or intelligence, within the meaning given by section 1(9) of the Official Secrets Act 1989, and a public official is not required to provide any such information in response to a direction given in breach of this subsection (but this section otherwise applies to an intelligence service as it applies to other public authorities).

Section 1(9) of the Official Secrets Act 1989 states:

(9) In this section “*security or intelligence*” means the work of, or in support of, the security and intelligence services or any part of them, and references to information relating to security or intelligence include references to information held or transmitted by those services or by persons in support of, or of any part of, them.

- This provision has given rise to concerns that the bill would not apply to individual employees of the intelligence agencies. (BBC News 13 January 2026).
- This provision could impact on public inquiries where the conduct of security agencies is under investigation (e.g Finucane Inquiry)



The existing powers in the Inquiries Act 2005

- The new power adds to the existing powers under the Inquiries Act under section 21. This section has been the main means by which public inquiries compel parties to comply.
- Section 21 enables the Chair of an inquiry to issue a notice to require a person to attend to give evidence, provide a statement or produce documents or any other thing in his custody that relates to a matter in question at the inquiry.
- There are exceptions under section 22 for matters covered by privilege or withheld on grounds of public interest immunity, but no references to the Official Secrets Act.
- Section 35 creates an offence for failing to do anything required under a s21 notice or 'distorting or otherwise altering any evidence, document or other thing that is given, produced or provided to the inquiry panel, or preventing any evidence, document or other thing from being given, produced or provided to the inquiry panel.'
- Section 21 notices can be enforced in the High Court or the Court of Session by the Inquiry Chair (or after the end of the Inquiry by the Minister) – section 36 of the 2005 Act.



How will compliance directions affect public inquiries?

- The measures could provide an exemption for members of the security services, who are able to rely on the Official Secrets Act.
- There is an overlap between s21 IA 2005 and the compliance directions powers. Section 21 has been generally effective.
- Compliance directions are more likely to impact organisations at the pre-hearing disclosure stage. Section 21 is directed to production of specific material.
- Institutional tendencies to defensiveness – pause for thought.
- Might prevent covering up if officials concerned know that institutions will be required to disclose material in the event of a public inquiry. (Post Office Horizon IT Inquiry).
- Waiver of privilege more likely.



How will compliance directions affect public inquiries... continued

- Effect of individual responsibility – ‘public official’ and ‘individual appearing to be in charge of ..authority or body’. This is likely to lead to greater institutional accountability.
- Potential conflict with s2 IA 2005: *(1) An inquiry panel is not to rule on, and has no power to determine, any person's civil or criminal liability. (2) But an inquiry panel is not to be inhibited in the discharge of its functions by any likelihood of liability being inferred from facts that it determines or recommendations that it makes.*
- Self incrimination warnings.



Participation of Persons at Inquiries and Investigations

Clause 18 (part 4) of the Bill deals with parity at inquiries and investigations and imposes a requirement that public authorities engage legal representatives to act for them at UK inquiries and investigations where necessary and proportionate. This is unlikely to result in significant changes as public authorities are usually represented where they are core participants in public inquiries.

Perhaps more significant are the provisions at Clause 18 (d) and (e)

(d) requiring those conducting or participating in UK inquiries held under the Inquiries Act 2005 and inquests to have regard to an overriding objective aimed at ensuring (among other matters) that affected persons are able to participate fully and effectively in proceedings at the inquiry or inquest;

(e) providing for legal aid to be made available, without a means test, to bereaved family members at inquests where a public authority is an interested person.



Non-statutory Inquiries

- Schedule 1 Part 2 provides a similar power for compliance directions in non-statutory inquiries. This represents a significant departure from the hitherto limited powers of a non-statutory Inquiry chairperson.
- A number of the provisions of the Inquiries Act 2005 will apply to non-statutory inquiries in relation to the duty of candour (i.e form of direction, exception for privilege and public interest immunity).
- Provisions already affecting conduct of non-statutory inquiries. On 15 January 2026 the Manston Inquiry, which is a non-statutory Inquiry, held a preliminary hearing. The Inquiry Chair, Sophie Cartwright KC referred to the Bill and stated: “ *The Inquiry expects and encourages candour, transparency and frankness from all Material Providers and Inquiry Participants.*”
- When the Bill is enacted this expectation will become a requirement.



Investigations under Part 1 of the Coroners and Justice Act 2009

- Part 4 of Schedule 1 to the Public Office (Accountability) Bill provides for compliance directions in hearings before coroners, as follows:

PART 4 INVESTIGATIONS UNDER PART 1 OF THE CORONERS AND JUSTICE ACT 2009

(1) The Coroners and Justice Act 2009 is amended as follows.

(2) In Schedule 5 (powers of coroners), after paragraph 2 insert— “Duty of candour and assistance: directions

2A (1) A senior coroner who is conducting an investigation under this Part must (subject to sub-paragraph (9) [Official Secrets Act exemption]) give a compliance direction—

(a) to a person who is a public authority or public official, or

(b) to a person who had a relevant public responsibility in connection with an incident to which the investigation relates, if the person is an interested person in relation to the investigation.



Implications for public bodies and ensuring compliance



Fiona Scolding KC



Implications for public bodies

(1) Statutory enforcement of the Nolan principles for all public authorities

- Currently all public officials have to comply with the Nolan principles. For some (i.e. civil servants – that is set out in the Civil Service Code which has statutory effect).
- For those in local government, current proposal that there will be a national code of practice/conduct which will be applicable to all local authorities (along with a national board to deal with the conduct of councillors where it falls below the requisite standards).
- Clause 9 provides for a public authority promoting and taking steps to maintain high standards of ethical conduct at all times for those who work for the authority.
- Given the wide nature of public authority, this will include those who discharge public functions.



Practical implications of the new Code to be implemented

- (1) Making sure it applies to private contractors who may be undertaking public work .
- (2) Ensuring it is baked in to procurement of and deliver of services which are public in nature .
- (3) Providing training on the new Code and/or reinforcing the Nolan principles through refresher training.
- (4) Need to have your whistleblowing lead add this to their roster of matters to be dealt with.
- (5) Power under the Bill for it not to apply to various officers/officials/those working in the public sector – who would that be and in what circumstances? (Clause (7) and (8).



Extension of duty of candour and assistance to those with "public responsibilities" - Clause 4

(a) Someone who has a "relevant public responsibility" has to comply with the relevant duty of candour in respect of any inquiry and incident . Includes

(a) Health and safety responsibility (i.e. responsibility under health and safety legislation) or

(b) Service providers to public authority (under a direct contractual relationship – where does that leave sub contractors etc on a building project?) and had a significant impact on members of the public

© Includes incidents on the Parliamentary estate



Practical implications for public authorities

- (a) Insertions of clauses into contracts with private suppliers of services
- (b) Insertion of clauses into contracts wherever there are health and safety responsibilities
- © How does the public authority ensure that these are then discharged in the case of an inquiry – ie mechanism for enforcement by the public authority against the service provider?
- (d) Procurement of services
- (e) How about foreign companies/multi nationals where officers may reside abroad?
- (f) Is it a standard pre contract question – are you being investigated under the Act (when passed)?
- (g) Training for service providers/contractors?



Misleading the public (Clause 11)

- Broad general criminal offence : with intention or reckless as to the act and they know that their act is seriously improper.
- Seriously improper is to be decided on an objective basis taking account of all the circumstances.
- Must involve:
 - (a) Dishonesty significant or repeated (falsehood, concealment, obfuscation) in respect of matters of significant concern to the public
 - (b) Caused or contributed to causing harm to one or more other persons and departed from what it so be expected as a person's functions as a public authority and public official.



Practical implications

(a) Possible meretricious claims

(b) What is significant departure from relevant functions?



Misconduct in public office (Clause 12)

This was previously a common law offence. Law Commission report published in 2020, suggesting it should be replaced with 2 new statutory offences for corruption and then one for serious breaches of duty.

This clause is at least in part a partial response to this.

First time that this becomes a statutory offence

Main implications:

(a) Training on the act

(b) The broad nature of the possible acts which are caught to this – either a benefit to self or detriment to other – including reputation or physical or sexual benefit/detriment.

Meaning of "seriously improper" defined under Clause 12(3).



Breach of duty to prevent death

Active bystander action by those in public office.

Must be under a duty to prevent or the risk of another person suffering critical harm – which means death or GBH

Very broad test.

Wide implications eg for police forces, other investigative bodies (eg security services) , but also for example the local authority in Grenfell.

Also these offences can be committed outside the England and Wales if they are a UK national or habitually resident in England and Wales.



Broad implications for public office holders

- Applies to all public office holders
- Even those undertaking voluntary roles (eg Non exec roles in public bodies, governors of schools etc.)
- Particular focus upon the criminal offences which may then apply








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