



1 CROWN OFFICE ROW

An Inquiry for Inquiry's sake?

Jeremy Hyam QC

and

Rajkiran Barhey

1 Crown Office Row

www.1cor.com

Overview of inquiries

- Grenfell Tower Inquiry
- Undercover Policing Inquiry
- Independent Inquiry into Child Sexual Abuse (IICSA)
- Infected Blood Inquiry

A COVID-19 inquiry?

- 16 April, Financial Times - open letter written by a dozen peers calling on the main parties to commit to a public inquiry.
- 27 May, Nicola Sturgeon, reported in The Independent: *"Of course there will be a public inquiry into this whole crisis and every aspect of this crisis, and that will undoubtedly include what happened in care homes."*
- 5 June, The Guardian: *"UK needs urgent Covid-19 inquiry before we are hit by a second wave"* open letter – 27 medical professionals.
- 3 July, Keir Starmer, Sky News: *"I think an inquiry is inevitable... There will be an inquiry in due course."*

A COVID-19 inquiry?

- 22 April, Dominic Raab, reported by Reuters: *“I have to say I won’t take up his offer of committing to a public inquiry. I think that there are definitely lessons to be learned and when we get through this crisis it will be important that we take stock,” Raab told parliament.*”

A COVID-19 inquiry?

- Not clear if an inquiry will happen
- Government does not appear to be supportive
- But public pressure is mounting
- We will explore the case for and against an inquiry
- And, if any inquiry is held, what issues might arise

Question 1

Why hold a public inquiry, and what could it achieve?



C O R

1 CROWN OFFICE ROW

Why hold a public inquiry, and what could it achieve?

The Inquiries Act 2005

- **s.1 Power to establish inquiry**
- *(1) A Minister may cause an inquiry to be held under this Act in relation to a case where it appears to him that—*
 - *(a) particular events have caused, or are capable of causing, public concern, or*
 - *(b) there is public concern that particular events may have occurred.*

Why hold a public inquiry, and what could it achieve?

- Truth
- Accountability
- Learn lessons



1 CROWN OFFICE ROW

Why hold a public inquiry, and what could it achieve?

- Length
- Cost
- Recommendations – lack of implementation

Why hold a public inquiry, and what could it achieve?

Public inquiries in numbers, 1990–2017

INSTITUTE
FOR
GOVERNMENT

There have been

68

public inquiries since 1990. In the 30 years before, there were only 19.

These have covered issues as varied as assassinations, media ethics and decisions to go to war.

A typical public inquiry takes

2.5

years to publish a final report.

The Chilcot Inquiry took seven years to complete, while the Bloody Sunday Inquiry took 12 years from start to finish.



Central and devolved governments have spent more than

£639m

on public inquiries.

Since 1990,

only 6

public inquiries have received full scrutiny by a select committee, to hold government to account for what it has done with these recommendations.

Since 1990, 45 public inquiries have made a total of

2,625

recommendations for change.

The Mid Staffordshire Inquiry made 290 recommendations.

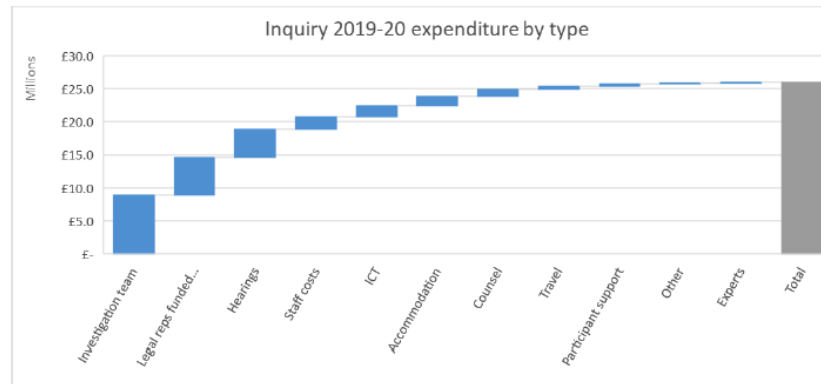
Why hold a public inquiry, and what could it achieve?

The Infected Blood Inquiry

Inquiry 2019-20 expenditure

- The Inquiry spent £25.987m for the financial year to March 2020 (as at date of publication).
- The Inquiry spent £9.308m in 2018-19, meaning total expenditure of the Inquiry to March 2020 is £35.295m.
- Expenditure for the financial year can be broken down as follows:

2019-20 expenditure	
Investigation team	8,851,080
Legal reps funded through the Inquiry	5,742,876
Hearings	4,292,127
Staff costs	1,861,175
ICT	1,714,789
Accommodation	1,327,730
Counsel	1,108,039
Travel	468,602
Participant support	338,220
Other	172,740
Experts	109,336
Total	25,986,715



Question 2

Why hold a public inquiry, as opposed to another type of process?



C O R

1 CROWN OFFICE ROW

Why hold a public inquiry, as opposed to another type of process?

- Possible alternative processes:
 - Inquests
 - Scrutiny through Parliament e.g. select committees
 - Non-statutory inquiry
 - Independent Panel
 - Series of individual investigations by care homes, Trusts, etc.
 - HSE, CQC

Why hold a public inquiry, as opposed to another type of process?

- Advantages
 - Bird's eye view
 - Independence
 - Powers

Why hold a public inquiry, as opposed to another type of process?

The Inquiries Act 2005

s.21 Powers of chairman to require production of evidence etc

- *(1) The chairman of an inquiry may by notice require a person to attend at a time and place stated in the notice—*
 - *(a) to give evidence;*
 - *(b) to produce any documents in his custody or under his control that relate to a matter in question at the inquiry;*
 - *(c) to produce any other thing in his custody or under his control for inspection, examination or testing by or on behalf of the inquiry panel.*
- *(2) The chairman may by notice require a person, within such period as appears to the inquiry panel to be reasonable—*
 - *(a) to provide evidence to the inquiry panel in the form of a written statement;*
 - *(b) to provide any documents in his custody or under his control that relate to a matter in question at the inquiry;*
 - *(c) to produce any other thing in his custody or under his control for inspection, examination or testing by or on behalf of the inquiry panel.*

Why hold a public inquiry, as opposed to another type of process?

The Inquiries Act 2005

s.35 Offences

- *(1) A person is guilty of an offence if he fails without reasonable excuse to do anything that he is required to do by a notice under section 21.*
- ...
- *(7) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level three on the standard scale or to imprisonment for a term not exceeding the relevant maximum, or to both.*
- *(8) “The relevant maximum” is—*
 - *(a) in England and Wales, 51 weeks;*
 - *(b) in Scotland and Northern Ireland, six months.*

Why hold a public inquiry, as opposed to another type of process?

- Disadvantages

- Legalistic
- Too broad, Trust by Trust approach (for example) might be more useful

Question 3

How should the future Chair approach scope?



C O R

1 CROWN OFFICE ROW

How should the future chair approach scope?

The Inquiries Act 2005

s.5 Setting up date and terms of reference

- ...
- *(3) The Minister may at any time after setting out the terms of reference under this section amend them if he considers that the public interest so requires.*
- *(4) Before setting out or amending the terms of reference the Minister must consult the person he proposes to appoint, or has appointed, as chairman.*
- *(5) Functions conferred by this Act on an inquiry panel, or a member of an inquiry panel, are exercisable only within the inquiry's terms of reference.*
- *(6) In this Act “terms of reference”, in relation to an inquiry under this Act, means*
 - *(a) the matters to which the inquiry relates;*
 - *(b) any particular matters as to which the inquiry panel is to determine the facts;*
 - *(c) whether the inquiry panel is to make recommendations;*
 - *(d) any other matters relating to the scope of the inquiry that the Minister may specify.*

How should the future chair approach scope?

- A wide approach
 - Credibility with the public
 - Workability
 - Process

How should the future chair approach scope?

- A narrow approach
 - Effectiveness
 - Appropriateness of forum

Question 4



1 CROWN OFFICE ROW

What might a future inquiry look like?

What might a future inquiry look like?

The Inquiries Act 2005

s.8 Suitability of inquiry panel

- *(1) In appointing a member of the inquiry panel, the Minister must have regard—*
 - *(a) to the need to ensure that the inquiry panel (considered as a whole) has the necessary expertise to undertake the inquiry;*
 - *(b) in the case of an inquiry panel consisting of a chairman and one or more other members, to the need for balance (considered against the background of the terms of reference) in the composition of the panel.*
- *(2) For the purposes of subsection (1)(a) the Minister may have regard to the assistance that may be provided to the inquiry panel by any assessor whom the Minister proposes to appoint, or has appointed, under section 11.*

What might a future inquiry look like?

The Inquiries Act 2005

s.11 Assessors

- *(1) One or more persons may be appointed to act as assessors to assist the inquiry panel.*
- *(2) The power to appoint assessors is exercisable—*
 - *(a) before the setting-up date, by the Minister;*
 - *(b) during the course of the inquiry, by the chairman (whether or not the Minister has appointed assessors).*
- *(3) Before exercising his powers under subsection (2)(a) the Minister must consult the person he proposes to appoint, or has appointed, as chairman.*
- *(4) A person may be appointed as an assessor only if it appears to the Minister or the chairman (as the case requires) that he has expertise that makes him a suitable person to provide assistance to the inquiry panel.*
- ...

What might a future inquiry look like?

The Inquiries Act 2005

s.17 Evidence and procedure

- *(1) Subject to any provision of this Act or of rules under section 41, the procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct.*
- *(2) In particular, the chairman may take evidence on oath, and for that purpose may administer oaths.*
- *(3) In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).*

What might a future inquiry look like?

Issues to consider

- Devolved nations
- Core participants
 - How to deal with large numbers of bereaved, survivors, affected citizens.
- International angle
- Other actions? Civil actions?
- Undertakings

Core Participant Status

Inquiry Rules 2006

r.5 Core Participants

- *(1) The chairman may designate a person as a core participant at any time during the course of the inquiry, provided that person consents to being so designated.*
- *(2) In deciding whether to designate a person as a core participant, the chairman must in particular consider whether –*
 - *(a) the person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;*
 - *(b) the person has a significant interest in an important aspect of the matters to which the inquiry relates; or*
 - *(c) the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.*

Core Participant Status

- Benefits of CP status?
 - Rule 17(1) – entitled to a copy of report(s) prior to publication.
 - Rule 10(4) – can apply to the Chair for permission to question a witness.
 - Rule 11 – opening and closing statements.
 - Disclosure
 - Funding of legal representatives

Questions?



1 CROWN OFFICE ROW

Catch up on the latest legal news with our **UK Human Rights Blog** and podcast, **Law Pod UK**, available on your favourite podcast platforms (iTunes, Audioboom, Overcast.)

Keep up to date with the latest legal news via our **Quarterly Medical Law Review**, available on our website or by pre-release email (subscribe: medlaw@1cor.com)

www.1cor.com