

Inquiry Law webinar series — Session 1

Introduction to Inquiry Law

Thursday 24 April



Your speakers for today



Samantha Broadfoot KC

(Chair)

Introduction to Public Inquiries



Harriet Wakeman

Key Issues for Core Participants



Claudia Hyde

Statutory and non-statutory
inquiries



Introduction to Public Inquiries

Origins, Purposes, and Key Features



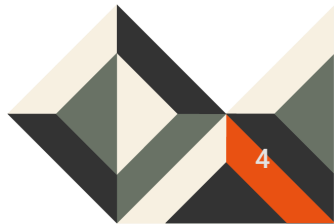
Samantha Broadfoot KC

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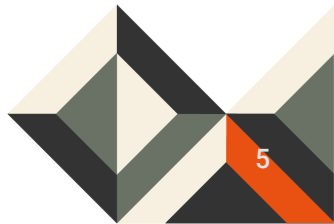
What Is a Public Inquiry?

- Independent investigations into matters of public concern
- Can be statutory (Inquiries Act 2005) or non-statutory
- Aim to establish facts and learn lessons, not assign blame



Where It All Began – A Brief History

- 1843 Andover Workhouse Inquiry exposed Poor Law abuse
- Led to Poor Law reform and scrutiny of state responsibility
- Early inquiries lacked legal powers or procedural clarity
- Often perceived as politically influenced and ineffective



The 1921 Act – A Turning Point

- Passed after Marconi Scandal to restore public trust
- Granted inquiries High Court-like powers
- Examples: Aberfan Disaster Inquiry, Bloody Sunday Inquiry
- Improved legitimacy but still had limitations
- Non-statutory inquiries were still established and performed important roles






The Inquiries Act 2005

- Response to lengthy, costly inquiries (e.g., Saville Inquiry)
- Shifted control from Parliament to government ministers
- Intended to streamline processes and improve transparency



Why Hold a Public Inquiry?

-  Establish Facts – what happened and why?
-  Learn Lessons – prevent future failures (e.g., Climbié case)
-  Give Voice to Victims – recognition and healing
- Essential for public confidence and institutional reform






How Inquiries Work – Key Features

- 📄 Terms of Reference – define scope and objectives
- 👤 Role of the Chair – leads and ensures fairness
- 👥 Core Participants – can access evidence and be represented
- 🆚 Inquisitorial not Adversarial – focus on truth, not blame



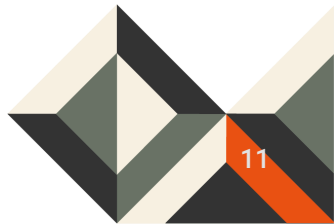
Benefits and Criticisms

-  Promote transparency, accountability, and reform
-  Can be slow, costly, and politically manipulated
-  Recommendations often ignored or diluted
- Success depends on political will and public engagement



Questions

1. Which is NOT a purpose of public inquiries?
2. Which Act currently governs public inquiries in the UK?



Final Thoughts

- Public inquiries reflect our commitment to truth and justice
- From Andover to Grenfell – they shape institutional memory
- They must be timely, transparent, and acted upon
- *A powerful tool for democratic accountability.*



Statutory and non-statutory inquiries

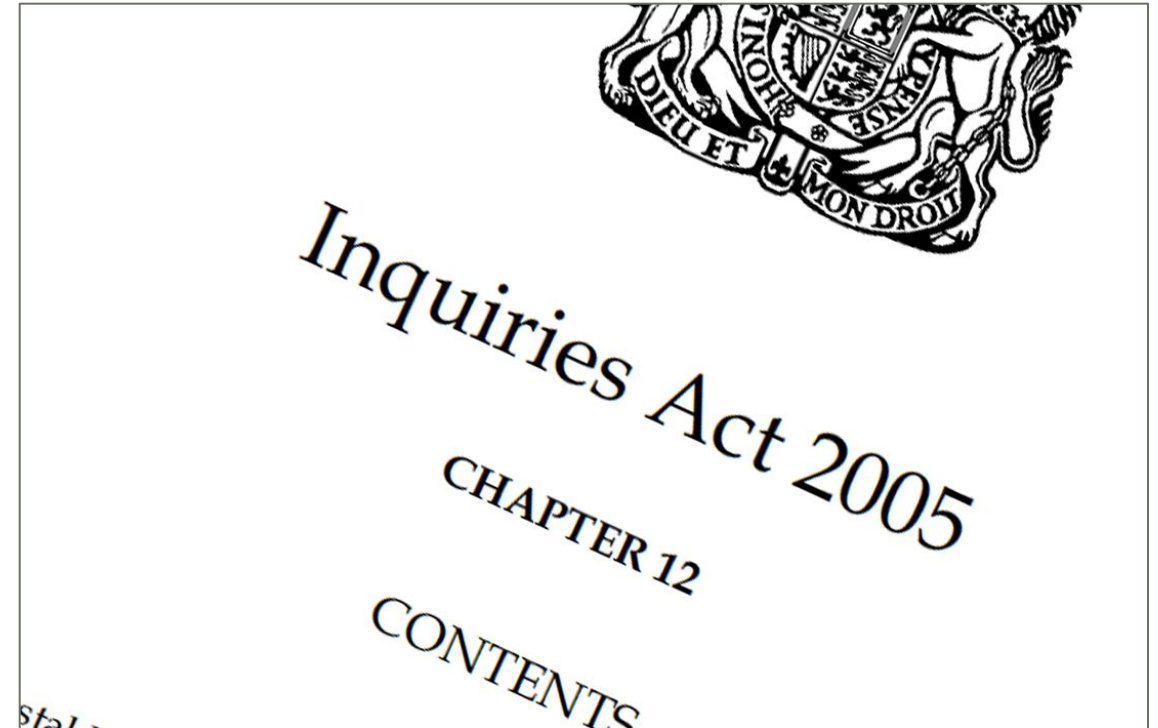


Claudia Hyde



Background to the Inquiries Act 2005

- Since entry into force, the 2005 Act has formed the basis for more than 40 inquiries
- Motivated by twin desires to (1) introduce comprehensive statutory framework and (2) limit costs- see the Bloody Sunday Inquiry under the predecessor legislation
- See section 17(3): “the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost”



Power to establish an inquiry

“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.”

Breadth of power reflected in diversity of public inquiry subject matters- no clear limit/fetter on the power



Appointments to inquiries (1)

- Chair alone, or a panel?
- Section 3 discretion, with appointments to follow procedures in sections 4 and 5
- Requirements of panel members:

“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.”



Appointments to inquiries (2)

- Requirement of impartiality contained in section 9:
 - (1) The Minister must not appoint a person as a member of the inquiry panel if it appears to the Minister that the person has –
 - (a) a direct interest in the matters to which the inquiry relates, or
 - (b) a close association with an interested party,
 unless, despite the person's interest or association, his appointment could not reasonably be regarded as affecting the impartiality of the inquiry panel.
- Importance of trust in the Chair/panel members and their independence: see the Independent Inquiry into Child Sexual Abuse
- Lack of clear appointment process- potential area for reform?



Terms of Reference (1)

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.



Terms of Reference (2)

- (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.
- Note: no statutory duty to consult on ToRs, but increasingly seen as best practice



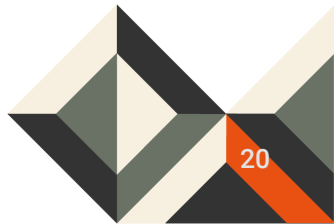
Evidence

- Section 17 confers wide discretion:

“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.”

- Scope for accommodating different witnesses’ requirements and flexibility
- Section 21 power to compel witnesses (to be discussed in turn)



Ending and suspending an inquiry (1)

- Section 14 power to end inquiry formally:

“14 End of inquiry

(1) For the purposes of this Act an inquiry comes to an end—

(a) on the date, after the delivery of the report of the inquiry, on which the chairman notifies the Minister that the inquiry has fulfilled its terms of reference, or

(b) on any earlier date specified in a notice given to the chairman by the Minister.”



Ending and suspending an inquiry (2)

- Section 13 power to suspend an inquiry:

“13 Power to suspend inquiry

(1) The Minister may at any time, by notice to the chairman, suspend an inquiry for such period as appears to him to be necessary to allow for—

(a) the completion of any other investigation relating to any of the matters to which the inquiry relates, or

(b) the determination of any civil or criminal proceedings (including proceedings before a disciplinary tribunal) arising out of any of those matters.”

- Recently considered by Supreme Court in *Re JR222’s Application for Judicial Review*



Non-statutory inquiries

- Practical differences may be limited- **but very dependent on the approach of the participants and is context-specific**
- Legal differences:
 - Non-application of the Inquiry Rules 2006 and greater flexibility in procedure
 - Lack of powers of compulsion under section 21
- Can result in serious issues with compliance- but can be converted into statutory inquiries under section 15
- Increasingly seen as a source of challenge: see, e.g. Brook House Inquiry



A third way?

- Recent settlement of judicial review relating to Manston Inquiry following challenge on Article 3 grounds
- Combining elements of statutory and non-statutory inquiries, but no power to compel witnesses
- Potential “blueprint” for future inquiries?



Key Issues for Core Participants

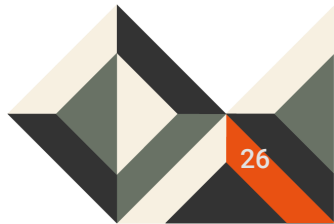


Harriet Wakeman



What is a Core Participant?

- Not defined in the Inquiries Act 2005 or Inquiry Rules 2006.
- Generally – it is an individual, organisation or entity which is granted a special status and afforded rights and responsibilities within the inquiry process.
- Usually attends for all of the proceedings (or substantial parts) either personally or by recognised legal representatives.
- Contrast with a witness who is not permitted to ask questions or to play an active role in the proceedings.
- Can be a Core Participant just for certain modules of an Inquiry – see the approach of the UK Covid-19 Inquiry.



Entitlements of Core Participants

Generally, a core participant will:

- Make opening and closing statements at Inquiry hearings.
- Ask questions of witnesses using the Rule 10 procedure, if permitted to do so by the Chair.
- Have access to relevant documents.



How many Core Participants will there usually be?

It depends!

- Dawn Sturgess Inquiry – 8
- Grenfell Tower Inquiry - over 600
- Module 7 of the UK Covid-19 Inquiry – 25
- Thirlwall Inquiry – 11
- Infected Blood Inquiry – over 2000
- Undercover Policing Inquiry – 249
- Post Office Horizon IT Inquiry – approx. 250
- Brook House Inquiry – approx. 50



Applying to be a Core Participant (1)

- Check if your inquiry has a CP protocol – e.g. the UK Covid-19 Inquiry Core Participant Protocol: [link](#).
- Protocol might set a deadline for applications but application can, in principle, be made at any time, including immediately prior to and during an Inquiry. Need to justify late applications.
- In some cases the Chair may invite individuals or institutions to become core participants, but has no power to compel them to do so.
- CP status ≠ the role of a witness.



Applying to be a Core Participant (2)

- Rule 5 of the Inquiry Rules 2006:

(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.

(3) A person ceases to be a core participant on—

(a) the date specified by the chairman in writing; or

(b) the end of the inquiry.



Disclosure

- CPs may be required to disclose documents.
- Disclosure should be provided to the Inquiry unredacted save for where LPP or another legal bar to disclosure exists. However – check the redactions protocol of your inquiry.
- Exact procedure for disclosure will depend on the Inquiry - often a 2-stage approach – check the disclosure/document protocol of your inquiry.
- Inquiry will redact in accordance with any restriction orders and also DPA.



Funding

S. 40 Inquiries Act 2005

40 Expenses of witnesses etc

- (1) The chairman may award reasonable amounts to a person—
 - (a) by way of compensation for loss of time, or
 - (b) in respect of expenses properly incurred, or to be incurred,
 in attending, or otherwise in relation to, the inquiry.
- (2) The power to make an award under this section includes power, where the chairman considers it appropriate, to award amounts in respect of legal representation.
- (3) A person is eligible for an award under this section only if he is—
 - (a) a person attending the inquiry to give evidence or to produce any document or other thing, or
 - (b) a person who, in the opinion of the chairman, has such a particular interest in the proceedings or outcome of the inquiry as to justify such an award.
- (4) The power to make an award under this section is subject to such conditions or qualifications as may be determined by the Minister and notified by him to the chairman.



Funding (2)

See recent decision: R (the Traveller Movement) v Chair of the UK Covid-19 Inquiry [2024] EWHC 3283 (Admin)



Top 10 Practical Tips for Core Participants (and those acting for them!)

Disclosure

1. Keep good records in relation to your disclosure exercise and set up well-defined disclosure processes internally.
2. If funds permit, use the same disclosure platform for your disclosure exercise as the Inquiry is using for theirs.

Witness evidence

3. Start work on witness evidence early, particularly where there is a corporate witness.
4. 'Get it right the first time' – full and comprehensive response to Rule 9 requests.
5. Tell the Inquiry if they've got the wrong end of the stick.



Top 10 Practical Tips for Core Participants (and those acting for them!)

In the lead up to the hearing and at the hearing

6. Build rapport with STI/CTI and solicitors and counsel for other CPs.
7. Read the Inquiry's protocols carefully, every Inquiry will do things slightly differently.
8. Ensure Rule 10 requests that are on-time, focused and well-drafted – do not bombard CTI with Rule 10 requests.
9. Raise issues early with CTI/Solicitors to the Inquiry e.g. unrealistic timeframes.
10. Work collaboratively with the Inquiry – remember this is not an adversarial process.



Q&A




We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the Q&A section which can be found along the top or bottom of your screen.

Thank you

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