

Public Inquiries

Practice and Procedure: an Overview

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Public Inquiries: an introduction

Purpose of this talk: brief introduction to statutory public inquiries held under the Inquiries Act 2005. Overview of procedural issues:

- The Inquiries Act 2005
- The Inquiry Rules 2006

Public inquiries, because of their generally controversial subject matters, and need to please often large numbers of victims and persons with interest, often with conflicting aims and objectives, can be fraught with procedural issues.

Typical controversies: funding, budgets, terms of reference, identity and suitability of the chair, timetable, disclosure, and inquiry's procedures

Public Inquiries: an introduction

- Increasingly common in the UK – often demand from the public for public inquiries when something goes seriously wrong.
- Recent examples include: the Leveson Inquiry, Mid Staffordshire NHS Trust, Death of Alexander Litvinenko, Grenfell Tower Inquiry, Independent Inquiry into Child Sexual Abuse and Infected Blood Inquiry
- Why do we hold public inquiries, as opposed to other forms of recourse?
 - Establish facts
 - Learn lessons
 - Determine accountability
 - Catharsis/therapeutic (IICSA interesting example here)
 - Restore public confidence
 - Remedies: effect change in public institutions, individual remedies and compensation

Public Inquiries: an introduction

- Why specifically hold statutory public inquiries under the Inquiries Act 2005?
 - Legal powers to compel witnesses to give evidence
 - Legal safeguards and procedures
 - Statutory framework for appointment of chair and other inquiry personnel, taking of evidence, production of a report and recommendations and the payment of expenses
 - Can set limits on Government's discretionary control of inquiry

Establishment of a statutory public inquiry

- Section 1 of the Inquiries Act 2005:

(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.*

NB Cabinet Secretary Guidance 2010: large scale loss of life; serious health and safety issues; failure in regulation; other events of serious concern

Identity of the chair

- Section 3 of the Inquiries Act 2005:

(1) An inquiry is to be undertaken either—

(a) by a chairman alone, or

(b) by a chairman with one or more other members.

- A highly significant decision
- Options to appoint either one chair or a chair and other panel
- NB sections 8 and 9 have specific requirements as to suitability and impartiality
- 2018 Ministerial Code says Minister must consult with Prime Minister before appointing the chair
- The majority of chairs are judges, although NB the consultation requirements in section 10 of the 2005 Act with relevant head of the Judiciary for certain sitting judges

Identity of Grenfell Tower Inquiry Chair



Assessors

- Section 11 of the 2005 Act also allows “assessors” to be appointed to assist the inquiry panel, either:
 - Before the setting up by the Minister, or
 - During the course of the inquiry by the chair.
- Must have “expertise that makes him a suitable person to provide assistance to the inquiry panel”
- Typically do not give formal evidence to the inquiry – separation of roles of assessors and formal expert witnesses
- Advice ordinarily disclosed to core participants

Terms of reference

- S5 of 2005 Act:

(1) In **the instrument under section 4 appointing the chairman**, or by a **notice** given to him within **a reasonable time afterwards**, the Minister must—

(a) specify the date that is to be the setting-up date for the purposes of this Act; and

(b) before that date—

(i) set out the terms of reference of the inquiry;

(ii) state whether or not the Minister proposes to appoint other members to the inquiry panel, and if so how many.

S5(4) Minister must **consult the chairman or the proposed chairman** on the terms of reference – no obligation to consult more widely but NB Grenfell Inquiry and Infected Blood Inquiry – chairs consulting more widely on the terms of reference.

Terms of reference

Section 5(6) defines what the terms of reference are:

(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.

- Why important? Inquiry does not have power to act outside its terms of reference
- *** Scope to get involved here on behalf of your clients – consultation or even JR***

Liability

- From the outset, it must be highlighted that section 2 of the 2005 Act provides:

(1) An inquiry panel is not to rule on, and has no power to determine, any person's civil or criminal liability.

- However:

(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.

This does not mean that there cannot be civil or criminal liability flowing from facts established by an inquiry, just that the inquiry has no power to expressly determine it

Core Participants

- Participants with special rights in the inquiry, relating to evidence, disclosure, representation and right to make submissions.
- Governed by Rule 5 of the Inquiry Rules 2006:
- Factors in rule 5(2) for chair to consider:
 - (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.

Taking evidence and obtaining documents

- Broad overview:
- A statutory inquiry may take evidence from witnesses, either via an interview procedure or in a public hearing. Section 17(2) of the 2005 Act allows for evidence to be taken on oath.
- Section 21 of the 2005 Act allows for the chair of an inquiry to require a person to give evidence, or to produce any documents.
- A person is guilty of an offence under section 35 if they intentionally suppress or conceal a relevant document, or prevent it from being given to the inquiry. Sanctions for non-compliance with an inquiry under the Act. The offender may be imprisoned, fined or both.

Costs

- The chair of an inquiry has substantial discretion over the incurring of day-to-day costs. Section 40 of the 2005 Act provides that the chair can meet the expenses of witnesses.
- Inquiry Rules nos 19-34 provide detailed rules on the subject of expenses. They require that the hourly rates of remuneration for publicly-funded legal representation, and the nature and estimated duration of the work, must be agreed in advance.
- Dilemma: public demands a proper inquiry but simultaneously can be backlash against what are perceived as excessive costs

Grenfell inquiry cost to taxpayers nears £10m, FoI request reveals

Exclusive: First legal bills, disclosed at Guardian request, are fraction of final costs



▲ The costs disclosed so far are the same as the amount that was spent on refurbishing Grenfell Tower before the fire. Photograph: Dan Kitwood/Getty Images

Public bodies have already spent close to £10m on lawyers for the [Grenfell Tower inquiry](#), and the final bill is expected to be many times higher when all the initial costs are added up.

The Report

- Section 24 of the 2005 Act: the chair must deliver a report to the Minister setting out:
 - *The facts determined by the inquiry panel*
 - *The recommendations of the panel (where the terms of reference required it to make recommendations, or where they did not)*
 - *Anything else the panel considers to be relevant to the terms of relevance*
- Power to issue interim reports
- Section 25 of the 2005 Act places a duty on either the Minister or the chair to publish the reports in full
- Limited scope to withhold material in the report from publication

Follow up???

- Problem: no statutory process for following up on the recommendations of the inquiry, either ministerial or otherwise
- Worryingly, perhaps, a 2017 Institute for Government report identified that it was relatively rare for governmental departments to follow up inquiry recommendations effectively, risking recurrence of failures
- Political pressure, getting MPS on side, use of media strategies. Requires careful thinking from the start.