

Preparing for a public inquiry: evidence gathering and what to expect from the inquiry



Carine Patry



Ben Fullbrook

Overview

- The inquiry's power to gather evidence
- Practical tips for preparing evidence
- What to expect from the inquiry

The inquiry's powers to gather evidence

- Statutory public inquiries are governed by the Inquiries Act 2005 and the Inquiry Rules 2006
- These include rules and regulations covering the gathering of evidence
- Rule 9 of the Inquiry Rules provides that the inquiry must send a written request to any person from whom it intends to take evidence
- It can ask for a document “*or any other thing*”. It can also, and commonly does, ask for a written statement. Where it does Rule 9 requires the inquiry to provide a description of the matters or issues to be covered in the statement.
- Once it has received the evidence, the inquiry may make a request for further evidence, being either a written statement or oral evidence
- Evidence provided can be disclosed

Sections 21 & 35 of the Inquiries Act “the sting in the tail”



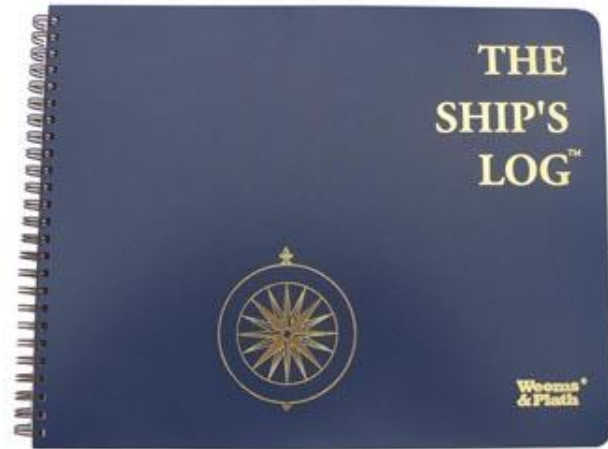
Sections 21 & 35 of the Inquiries Act “the sting in the tail”

- Section 21 provides the chair with the power to issue a notice requiring a person to attend at a particular time and place to give evidence or produce a thing or a document under his control. Can also require a witness statement where it appears reasonable to do so
- Section 35: it is an offence to fail to comply with a s.21 notice without reasonable excuse

Can I protect sensitive material?

- Section 22 of the Inquiries Act.
 - Cannot be compelled to produce or provide evidence if you could not be required to do so in civil proceedings, e.g. privileged material
 - Rules of law on PII apply as they would in civil proceedings
- Seek a restriction notice/order under s.19 of the Inquiries Act
 - Will be imposed if required by law
 - May also be imposed if the minister or chair considers it to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest having regard to the matters specified in ss.4

Practical tips for preparing evidence



What to Expect from the Public Inquiry

- Who are the main players and what power do they have?
- What are the relevant stages of an inquiry?
- Are the hearings all in public and will they be televised?
- Representation and funding
- The Inquiry Report – what to expect

The Main Players

- Arguably most importantly is the Chairman (and the Inquiry Panel) – how to gain access
- Secretary to the Inquiry
- Solicitor(s) to the Inquiry
- Counsel to the Inquiry
- Representatives of the core participants

The Main Stages of the Inquiry

- Each inquiry differs slightly, but the key stages are as follows
- The setting up and preparation for the Inquiry (often lengthy), including disclosure
- Oral hearings, starting with preliminary hearings and opening statements
- The oral evidence – POLL on who should give evidence first?
- Closure, and then publication of the report.

Are the Hearings in Public?

- It depends on the nature of the inquiry, but generally they should be (enhances public confidence) and it is very likely that this one will be
- In all likelihood, this one will be live-streamed, with the stream being picked up by TV stations – consequences of that
- Are there any exceptions? Yes – need a legitimate reason (the Fake Sheikh)
- Media training – consider this carefully (Counsel to the Inquiry, but frankly anyone giving evidence).

Representation and Funding

- The costs of an inquiry are often absolutely enormous, and can attract public criticism
- However, in addition to all the internal costs, inquiries are also empowered to grant funding for legal representation **where appropriate** to do so (section 40 of the Inquiries Act 2005; rule 20 of the 2006 Rules) – includes expenses, compensation for lost time and where appropriate legal representation
- Test is that you must be either attending to give evidence/preparing evidence, and that you have such a particular interest in the proceedings or outcome that this justifies an award. Can make application at any time.
- At Leveson, for example, those representing the CP victims obtained funding for legal representation (minus donations) but no need to be a CP

The Inquiry Report

- The Report usually takes a while to complete.
- The Inquiry will usually warn anyone who is likely to be the subject of criticism by way of a 'warning letter' (rules 13, 14 and 15 of the 2006 Rules) although there is no express statutory obligation to do so. If no warning letter has been served then no criticism can be made in the report.
- The warning letter will set out the criticism, the evidence in support and ask for a reply (duty of confidentiality applies)
- 2005 Act is silent as to standard of proof – depends on issue being decided

Thank you for listening

© Copyright Landmark Chambers 2021

Disclaimer: The contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

Follow us

🐦 [@Landmark_LC](https://twitter.com/Landmark_LC)
🌐 [Landmark Chambers](https://www.linkedin.com/company/landmark-chambers/)