

Welcome to Landmark Chambers'

'Public Inquiry' webinar

Tuesday 17 May 2022

The recording may be accessed [here](#).

Your speakers today are...



Topic:
Replying to
requests for
information and
evidence

Fiona Scolding QC(Chair)



Topic:
Core participants
status and core
participants in
general

Christopher Jacobs



Topic:
Tips for
successful
preparation for a
Public Inquiry

Carine Patry QC



Topic:
Possible
outcomes of
Public Inquiries:
what success
looks like

Alex Shattock

Replying to requests for information and evidence



Fiona Scolding QC

The response not to make



[This Photo](#) by Unknown Author is licensed under [CC BY-NC-ND](#)

What powers does the inquiry have?

- Assuming a statutory inquiry, it has powers to compel the production of evidence under s21 of the Inquiries Act 2005.
- This power is rarely used unless a body asks that it be used.
- The Inquiry will send a “rule 9” request which will either ask for (a) documents or (b) witness evidence or both.
- Multiple requests can be sent over a period of time: don’t assume the first will be the last.
- Some inquiries ask for “bits” of evidence about particular subjects at different times on a “rolling basis”.

Voluntarily providing them with information

- The inquiry will ask for information under “Rule 9”: this is Rule 9 of the Inquiry Rules.
- There is nothing to stop a party from voluntarily providing the Inquiry with information (subject of course to issues of confidence, privilege etc.) at any time prior to such a Rule 9 being served.
- Examples may be:
 - (a) When you want to bring a particular piece of information to the attention of the inquiry whilst they are formulating the “scope” of their investigation (eg look at this – this may help you)
 - (b) When you want to make it clear the extent of your involvement.

When would you want s21 to be used?

- When GDPR may be engaged and so as an organisation you want to be able to demonstrate that it is “necessary”
- To avoid debates about the scope of the request internally.

What should be your response?

- If acting on behalf of a public body – candour: and by candour, I mean the whole truth.
- The inquiry is there to try and make recommendations for the future: having a partial or limited account does not help them and is unlikely to help you.
- Be reflective: what have you learnt? What could have been done differently?
- Be as transparent as possible.
- Collate relevant material (including that literal or metaphorical cupboard)
- If you don't consider you have to provide material, provide a list of what you are not providing and why (e.g. privileged, not relevant)
- Remember your continuing duty to disclose (the cupboard again)
- Be creative with “keyword searches”.

When can you refuse?

- (a) Cannot comply (do not have it: not available in the jurisdiction?)
- (b) Statutorily unable to provide it (different to confidence/privilege – there are various statutory provisions which prevent disclosure of information (eg security/intelligence information/census information))
- (c) Confidential material: but most confidence is “qualified” and subject to the overriding public interest – so medical records etc., private conversations can be disclosed
- (d) Unreasonable to comply either because of (a) scope or quality of what is requested or the timescales within which it is requested or (b) the evidence is not of “material assistance” – i.e. not relevant.
- (e) Privileged information: where one can claim privilege in civil proceedings
- (f) Public interest immunity.

Privilege

Section 22 of the Inquiries Act 2005 :

- Cannot be required to produce document or evidence if it were not able to be provided in civil proceedings
- Incompatible with an obligation under retained EU law
- PII rules as they do to civil proceedings.

Legal Professional privilege

- Is this document actually privileged: just referring to ongoing legal proceedings or advice does not make the document privileged (if you are not disclosing the contents of that advice)
- Can you redact out the information in the document to give them the “non-privileged bit”
- Is it relevant to see this document for (a) the terms of reference or (b) to understand the narrative – or are the actions which come out of any privileged information easy enough to divine.

Litigation privilege

- Documents which were created for the purposes of litigation.
- Usually easy to identify and spot.
- Proceedings are either pending or contemplated.
- Can apply to communications between the client and their lawyer, the client and a third party and the lawyer and a third party

Legal advice privilege

- Applies to confidential communications (the fact something has appeared in public at some time does not necessarily mean that confidence has been lost: depends on the facts and context).
- Can be “waived” or lost, but survives, for example, the dissolution of the company (*Addlesee v Dentons* [2019] EWCA Civ 1600).
- Can include both the advice but also material which “evidences” the substance of the communication – not enough for there to be something which makes someone think: have they got legal advice and what does that say but which creates a real inference about what advice is given (*Edwardian Group v Singh* [2017] EWHC 2805).

Legal advice privilege -

- Need to be communicated between lawyer and client: not third parties; and needs to be about “legal advice” not “business”.
- If the lawyer puts on paper during the course of retainer things they know only because of their professional relationship with the client, those papers are privileged even if not sent to the client (e.g. drafts of documents).
- But there will need to be communication documents going for a client to a lawyer for advice – which can be expressed or implied but is not privileged just because it is sent to a lawyer.
- The client is currently narrowly defined (but the CA has identified that this rule is ripe to be changed). Currently, it only applies to those who have the authorization to seek or obtain legal advice from in house or external lawyers.

Legal advice privilege (2)

- Client/client discussions about the merits of a case is not subject to legal advice privilege.
- Documents which existed before the need to seek legal advice are not privileged – even if sent attached to a privileged e-mail.
- Example – *Glaxo v Sandoz* [2018] EWHC 2747. Two internal e-mails were sent in which an in house lawyer asked an employee for information to send to external lawyers. The employee replied with information. As the internal e-mails were not sent for the purpose of the in house lawyer giving the employee legal advice. Not subject to legal advice privilege.

Legal advice privilege

- Must have come into existence for the DOMINANT purpose of giving legal advice.
- So background documents may not count if they existed before the need for legal advice arose (*FRC v Sports Direct* [2018] EWHC 2284 (Ch) – reversed on appeal but not on this point [2020] EWCA Civ 177).
- “Legal advice” includes most work done by lawyers when using legal skills – so internal reviews conducted by lawyers and work with regulators by the lawyers (but not if the discussion between in house staff)
- *Civil Aviation Authority v Jet 2* [2020] EWCA Civ 35 at 61-68 sets out the key principles. Where the legal and non-legal can be severed – the parts covered by legal advice privilege can be redacted and the rest disclosable – but sometimes the “intermingling” is so great that this is not possible.

Public interest immunity

- The government has not made "class" PII claims since the mid 1990s.
- Usual claims would be national security, diplomatic relations
- Sources and informants – journalists (subject to s10 of the Contempt of Court Act 1981).
- Informants for the police, but also to other statutory agencies (for example re: staff who had provided information about the possible proceeds of crime – *Shah v HSBC* [2011] EWHC 1713).
- In cases concerning "sensitive government business" it is likely that a public inquiry – which will be set up to look precisely at those things – is unlikely to indicate that such immunity exists save for issues which would cause "*real risk of serious harm to an important public interest (or to a person)*".

PII (2)

- Even if there is a “real risk of serious prejudice to an important public interest” then that is not the end. The inquiry will examine:
 - (a) Can it give adequate protection to the public interest
 - (b) Can admissions, summaries, gists or “partial documents” be provided?
 - (c) Closed material proceedings (CPR 82 – with the use of the special advocate).

Self incrimination

- Where there is a serious possibility that material could be used not only directly for a prosecution but also as a “step” towards the material which the prosecutor may require in deciding whether to prosecute (but not necessarily those which may lead to a “line of inquiry” to other sources), then you should ask the Inquiry to seek an undertaking from the Attorney General.
- This would be not to rely upon evidence which is the product of an investigation commenced as a result of the provision by that person of such evidence and/or even to prevent prosecution at all (but the latter is highly unlikely to be granted save in the most exceptional of cases)
- It does not extend to offences outside the UK (but that may be a discretion as to whether a witness should have to answer a question) or for recovery of a penalty. But it does not extend to disciplinary or administrative proceedings.

Parliamentary privilege

- Article 9 of the Bill of Rights 1689 :

“The Freedom of speech and debates or proceedings in Parliament ought not be impeached or questioned in any court or place out of Parliament”.

Inquiries frequently look at the things said or done by MPs.

R v Chaytor [2010] UKSC 52 reviews parliamentary privilege.

Fundamentally means that an inquiry cannot bring into question anything said or done by suggesting that actions or words so spoken were inspired by improper motives or were untrue or misleading.

Relevant to querying the contents of ministerial statements given to the house or in select committees.

Risk of damage to the economy

- S23 of Inquiries Act 2005.
- Bank of England, the Crown (so govt dept), or the FCA
- Can apply to withhold information on the basis that it will cause a “risk of damage to the economy”
- Balancing exercise for the Panel of what is the public interest

Losing privilege

- Does privilege exist still? Is the document still confidential or has it become “public property and public knowledge”.
- Just because it’s been published or placed on the internet does not automatically mean that it has lost privilege: it is a question of fact and degree (*Mohammed v MOD* [2013] EWHC 4478 at [19]).
- There may also be issues to do with the anonymity of witnesses (if they have had anonymity granted by their role as witnesses or complainants in criminal proceedings – e.g. when youths, or in cases of sexual offences) – the fact that fifteen years ago they may have disclosed their identity does not necessarily lead to the inquiry to conclude that this has been lost forever.

Waiving privilege

- In most public inquiries the information given to lawyers and subject to privilege are likely to be highly relevant to the terms of reference of the inquiry.
- Serious consideration should be given to waiving privilege in these circumstances.
- Consider:
 - Whose privilege is it (is it the client – if several clients, do you have the power to waive it)

Restriction orders

- Even if you give the information to the Inquiry, you may ask that some matters are “restricted” so evidence not given in public, the witness granted anonymity, or material not disclosed to core participants, or not published even if disclosed to core participants.
- The inquiry has the power to do this under s19 of the 2005 Act read with s20.
- Most powers are obvious (cannot provide under statute or EU law: or required by way of LPP) but also,
- “Where it may be conducive to fulfilling its terms of reference or necessary in the public interest”

Assessment of when a restriction is required?

- Various criteria (but not exhaustive and only have to have “regard” to them) in s19(4) of the 2005 Act.
- The most important is whether there is “risk of harm or damage”: this has been given a “wide” construction – so as to include psychological harm.
- Relevant when your witness has significant mental health issues or physical health issues and so does not wish to give evidence or wishes to be anonymous.

Tips for Successful Preparation for a Public Inquiry



Carine Patry QC

Structure

- The Inquiry's Powers to Gather Evidence
- Tips for Preparing for the Evidence-Gathering Stage
- Can I protect sensitive information?
- How do I choose and prepare witnesses?
- Is there anything else I could be doing in preparation before the Inquiry starts?

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”

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 a reasonable excuse.

Tips for the Evidence Gathering Stage

- Document retention
- Exit interviews
- Preparing a narrative document
- Lessons learned document (remember that documents are disclosable)
- Organogram
- How did you actually affect the decisions taken, if at all?
- Organising your documents into a searchable form

Can I Protect Sensitive Information?

- 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
- Includes legal advice given in preparation of the presentation of material for the Inquiry (see Explanatory Notes to the Inquiries Act and *Three Rivers*)
- 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

Choosing Your Witnesses

- You may have an easy choice – only one person knows everything
- But if you're a government department or a wide interest group, then that won't necessarily be the case
- Think about the twin aims of the inquiry: narrative and recommendations
- Who knows what and who can think about lessons learned
- But also – who can reliably give evidence under pressure?
- You can to a certain extent guide the Inquiry – they will ask for evidence and you can tell them who should give it
- But key figureheads are very likely to be called: public confidence

Preparing Your Witnesses

- If you're involved for example in the Covid inquiry, it will be a very high profile Inquiry, with constant media and social media scrutiny, but most are
- Live streaming
- Witness preparation is essential – focus on knowing statement inside out and also being ready for the pressure
- Media training probably a good idea – and who to call when if it all goes wrong
- But don't over-prepare and seem rehearsed

Anything Else I Should be Doing Now?

- Keep a close eye on the Inquiry website for clues as to what is happening and when (in Covid inquiry, TOR will change as a result of HH's Letter to the PM) and some govt departments have already been invited for preliminary meetings
- Electronic searches – once there are draft TOR
- Keeping a close eye on duties of disclosure, even after the Inquiry has been announced. Often no end date is given until much later.
- Have a think about whether despite rules on privilege, you might think about waiving it
- Conflicts – think about these very early.

Issues relating to Core Participants



Christopher Jacobs

What is a Core Participant?

- A Core Participant is not defined in the Inquiries Act 2005 or the Inquiry Rules 2006.
- Generally understood to refer to a participant who will play a key role during the Inquiry process.
- Usually attends for all of the proceedings (or substantial parts) either personally or by recognised legal representatives.
- Distinguishable from a witness, who is not permitted to ask questions or play an active part.

Entitlements of Core Participants

- Make opening and closing statements at any hearing.
- Ask questions of witnesses at public hearings under the Rule 10 procedure, if permitted to do so by Chair.
- See any evidence held by the Inquiry that relates to their interest in it – usually provided electronically, but subject to any restrictions made under section 19 of the Inquiries Act 2005.
- See any draft report relating to their interest in the Inquiry before it is published.

Numbers of Core Participants

- Infected Blood Inquiry – Over 1600
- Grenfell – Over 500
- IICSA – Over 350
- Brook House Inquiry. Approx 50
- Post Office Horizon IT Inquiry. Approx 250.

Applications for Core Participant Status

- Applications are usually submitted in writing by email or by post.
- An Inquiry will usually impose a deadline for such applications, which will be posted on the website and determined at preliminary hearings.
- It may be necessary to explain why this timeframe is not met.
- However, an application can be made at any time. In some cases, CP status will be granted immediately prior to or even during an Inquiry to ensure that that individual can be appropriately represented and can respond to any such criticism during the course of an Inquiry.

Applications for core participant status. Rule 5, Inquiry Rules 2006

5. (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

Rule 5. Continued

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.

The test

- The list in Rule 5(2) is not exhaustive and other relevant matters can also be taken into account.
- The Chair has wide discretion to designate.
- A ‘person’ for the purposes of Rule 5 includes “ *a body of persons, incorporate or unincorporate*” (Interpretation Act 1978). It would cover survivors’ organisations, interest groups, local authorities, and government departments.
- Designation can take place at any time. The Inquiry will usually invite applications for such applications within a specific timeframe, especially if an inquiry is sub-divided into separate investigations with separate phases.

The test

- Those deadlines will be posted on the website and determined at preliminary hearings. Often, it will be necessary to justify late applications.
- Importantly, the designation can take place at any time
- The Core Participant must consent to the designation.
- In some cases the Chair may invite individuals or institutions to become core participants, but has no power to compel them to do so.
- Many Complainant CPs may be traumatised, disaffected or concerned to protect their anonymity.
- Some Government Departments may consider that it is not necessary for them to be designated where other departments are already CPs.

The test – Paragraph 5(2) (a) & (b)

Direct and significant role

Significant interest in an important aspect

- Chair may consider that it is not necessary for a peripheral individual or organisation / institution if no significant and direct role.
- An inquiry is able to investigate the matters under its terms of reference by issuing a request for a written statement pursuant to rule 9 of the Inquiry Rules.
- Important not to conflate the grant of core participant status with the role of a witness.

The test – Paragraph 5(2) (a) & (b)

Direct and significant role

Significant interest in an important aspect

- Representatives should set out in detail the grounds upon which the proposed core participant can be seen to have an important interest in the inquiry or any particular investigation within it.
- In particular, whether an individual or organisation was involved in an important way in the events that the investigation or inquiry is considering.
- CP status may be granted if it would assist the Inquiry if the individual or organisation is able to be provided with disclosure of relevant documentation.

The test – Paragraph 5(2) (a) & (b)

Direct and significant role

Significant interest in an important aspect

- Institutional Core Participants - test will usually be met where the department/council has policy responsibility in relation to the issue upon which public concerns were raised, leading to the Inquiry being called for by the relevant Minister.
- Particularly where the matters to be investigated will have a bearing on the future direction of policy on the issue.

Rule 5(2) (a) & (b) - *Matters to which Inquiry relates*

- Consider the scope of the Inquiry.
- Set out in the terms of reference under which the Minister causes an Inquiry to be held under section 1 of the 2005 Act.
- If the terms of reference are broad, may be specifically established by the Inquiry.
- For example, IICSA Westminster Investigation. Following a preliminary hearing, the Chair directed that any Core Participant who wished to do so could file submissions on the suggested scope of that particular investigation. The Chair subsequently issued a determination on the scope of the investigation.

Rule 5(2)(c) - subject to explicit or significant criticism

- Many institutional witnesses can expect to be the subject of criticism by complainants if requested to provide a Rule 9 statement.
- Inquiries are held under section 1 where particular events have caused, or are capable of causing, public concern, or there is public concern that particular events may have occurred.
- Most institutions which receive requests for Rule 9 statements should consider applying for CP status. Other individuals, such as whistle blowers of individual employees within institutions who may be said to have been culpable engage Rule 5(2) (c).
- Representatives should address whether a proposed Core Participant may be subject to criticism by other witnesses of core participants.

Rule 5 (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.*
- Note - A restriction order will continue in force indefinitely unless it is varied or revoked pursuant to section 20 of the Inquiries Act.

Restriction Orders.

19 Restrictions on public access

- (1) Restrictions may, in accordance with this section, be imposed on—
 - (a) attendance at an inquiry, or at any particular part of an inquiry;
 - (b) disclosure or publication of any evidence or documents given, produced or provided to an inquiry.
- (2) Restrictions may be imposed in either or both of the following ways—
 - (a) by being specified in a notice (a “restriction notice”) given by the Minister to the chairman at any time before the end of the inquiry;
 - (b) by being specified in an order (a “restriction order”) made by the chairman during the course of the inquiry.

Restriction Orders

- (3) A restriction notice or restriction order must specify only such restrictions—
- (a) as are required by any statutory provision, enforceable [\[F1EU\]](#) obligation or rule of law, or
 - (b) as the Minister or chairman considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).
- (4) Those matters are—
- (a) the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;
 - (b) any risk of harm or damage that could be avoided or reduced by any such restriction;

Restriction Orders

- (c) any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the inquiry;
- (d) the extent to which not imposing any particular restriction would be likely—
 - (i) to cause delay or to impair the efficiency or effectiveness of the inquiry, or
 - (ii) otherwise to result in additional cost (whether to public funds or to witnesses or others).
- (5) In subsection (4)(b) “harm or damage” includes in particular—
 - (a) death or injury;
 - (b) damage to national security or international relations;
 - (c) damage to the economic interests of the United Kingdom or of any part of the United Kingdom;
 - (d) damage caused by disclosure of commercially sensitive information.

Restriction Orders

- A restriction order made pursuant to section 19(1) of the Inquiries Act 2005 binds all members of the public, the media and core participants.
- Any person affected by a restriction order may apply in accordance with section 20 of the Inquiries Act to vary its terms.

Designation of legal representatives

- Applications for Core Participant status under Rule 5 should be accompanied by an application for legal representation in cases where lawyers are acting.
- An Inquiry will usually deal with any application under Rules 6 and 7 of the Inquiry Rules 2006 at the same time as determining an application for Core Participant status.
- The Chair must designate a legal representative under Rule 6(1).

Rule 6

6 (1) *Where -*

*(a) a core participant, other than a core participant referred to in rule 7; or
(b) any other person required or permitted to give evidence or produce documents during the course of the inquiry, has appointed a qualified lawyer to act on that person's behalf, the chairman must designate that lawyer as that person's recognised legal representative in respect of the inquiry proceedings.*

Rule 7

7(1) This rule applies where there are two or more core participants, each of whom

seeks to be legally represented, and the chairman considers that -

(a) their interests in the outcome of the inquiry are similar;

(b) the facts they are likely to rely on in the course of the inquiry are similar; and

(c) it is fair and proper for them to be jointly represented.

(2) The chairman must direct that those core participants shall be represented by a single recognised legal representative, and the chairman may designate a qualified lawyer for that purpose

Rule 7

(3) Subject to paragraph (4), any designation must be agreed by the core participants in question.

(4) If no agreement on a designation is forthcoming within a reasonable period, the chairman may designate an appropriate lawyer who, in his opinion, has sufficient knowledge and experience to act in this capacity.

Applications for funding

- Upon designation directions will be given for receipt of applications for an award under section 40 (1) (b) of the Inquiries Act 2005 for expenses to be incurred in respect of legal representation at the public hearing.
- Often the Inquiry will direct that an application for an award should be filed by a particular date.
- Most Inquiries will have their own Cost Protocol on Legal Representation at Public Expense, which is usually accessible on the website.
- Funding provisions are dealt with at section 40 of the 2005 Act.
- Inquiries will often have their own costs protocols and may be subject to Minister's determinations under section 40(4).

Change of representatives

- In the event that a Core Participant's legal representative changes, the Inquiry will, upon notification, designate the new representative in accordance with rule 6(1).

Disclosure of documents

- Core Participants may be required to disclose documents.
- To be provided in unredacted form, except where Legal Professional Privilege or other legal bar to disclosure to the Inquiry is asserted.
- Inquiry will redact in accordance with DPA requirements and in accordance with any restriction order under section 19 of the Inquiries Act 2005.
- Inquiry will usually have a protocol on redaction of documents (such as IICSA), which is available on the Inquiry website.

Rule 10 applications

10. (1) Subject to paragraphs (2) to (5), where a witness is giving oral evidence at an inquiry hearing, only counsel to the inquiry (or, if counsel has not been appointed, the solicitor to the inquiry) and the inquiry panel may ask questions of that witness.

(2) Where a witness, whether a core participant or otherwise, has been questioned orally in the course of an inquiry hearing pursuant to paragraph (1), the chairman may direct that the recognised legal representative of that witness may ask the witness questions.

(3) Where—

(a) a witness other than a core participant has been questioned orally in the course of an inquiry hearing by counsel to the inquiry, or by the inquiry panel; and

Rule 10 applications

(b) that witness's evidence directly relates to the evidence of another witness,

the recognised legal representative of the witness to whom the evidence relates may apply to the chairman for permission to question the witness who has given oral evidence.

(4) The recognised legal representative of a core participant may apply to the chairman for permission to ask questions of a witness giving oral evidence.

(5) When making an application under paragraphs (3) or (4), the recognised legal representative must state—

(a) the issues in respect of which a witness is to be questioned; and

(b) whether the questioning will raise new issues or, if not, why the questioning should be permitted.

Rule 10 – practical steps

- Important part of the process for Core Participants.
- The proceedings are inquisitorial, so usually only CTI will be permitted to ask questions of witnesses.
- It is open for any core participant to apply for their own counsel to ask questions of a witness.
- In practice, if the applications are granted, the Chair will permit the question, but to be asked by CTI.
- It is important to focus on the mandatory requirements of Rule 10(5). The questions are often submitted on a pro forma sheet, which has separate columns relating to sections 5a and 5b.

Rule 10(5)

5a. The issue must fall within the scope of the Inquiry or investigation

- Should relate to a matter on which the witness is likely to be able to answer.
- References to the witness statement should be provided.

5b. If a new issue is raised, it is important to state why the question should be asked.

- Often section 5(b) will deal with issues that have been raised in the witness statement of a Core Participant, or in the opening submissions.
- If in scope the questioning should be allowed if relevant to an issue raised by a Core Participant.

Rule 10 applications. Cont'd

- If a list of topics for questioning has been circulated by CTI in advance of calling the witness, the Rule 10 question should not duplicate a question or an issue that is to be raised by CTI in any event.
- Often an Inquiry will require the Rule 10 application to be submitted 5 days in advance of the scheduled date for witness to give evidence.
- Applications which do not comply with that requirement are likely to be considered where based on material that is disclosed within the time limit.

Section 40

40 Expenses of witnesses

(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.

Section 40

- (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.

Public Inquiries: What does success look like?



Alex Shattock

Public inquiries

- Inquisitorial: not a court case
- Many interests involved and many different possible findings/ recommendations
- How to tell if you have won or lost?



What will be the end result?

- A report: factual findings based on the evidence and a set of non-binding recommendations
- Important to discuss with clients at an early stage what their best case scenario is: what facts, how responsibility should be allocated, what recommendations
- Inquiry cannot make a finding of individual or criminal liability (s.2 2005 Act)
- Inquiry cannot usually compel production of documents that are privileged, subject to duty of confidence et (s.22 2005 Act).

What will be the end result?

- An inquiry can, however, compel attendance (s21 2005 Act)- holding people to account.



What do the other participants want?

- It will be helpful to your side to work out what everyone else is trying to achieve.
- Lots of potential core participants: the next slides will focus on
 - Victims/ families/ individuals affected
 - Private companies subject to criticism
 - Public sector bodies.

Victims/ families/ individuals affected

- Public inquiry itself is a goal: vindication/ catharsis
- Having their version of events heard
- Assigning responsibility: avoiding a situation where no-one is blamed or criticised
- Findings that open the door to civil/ criminal sanctions in future
- Recommendations re: compensation
- Preventing events from happening again: major change in structures and processes.

Private sector participants subject to criticism

- Concerned with reputation: criticism bad for business
- Minimising role/ deflecting blame
- Avoiding findings that could lead to criminal or civil responsibility
- If blame unavoidable, placing it on an individual rather than the entire company.

Other private sector participants

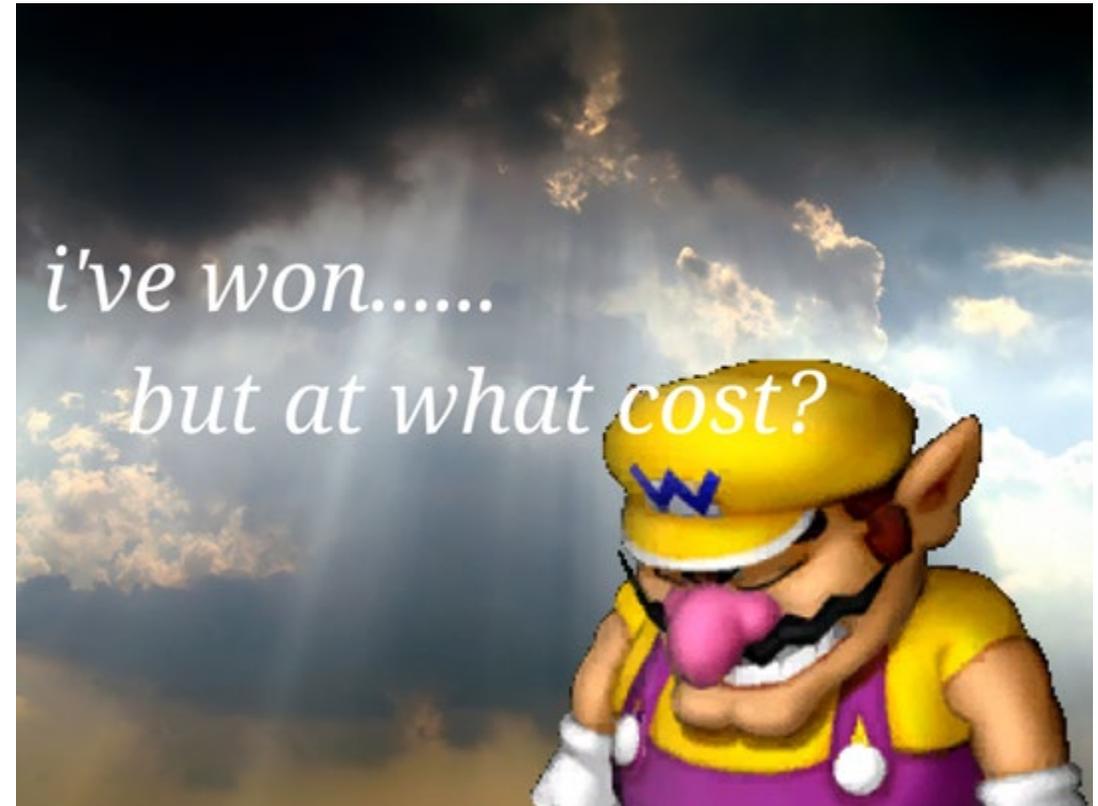
- Publicity
- Helping set the agenda
- Avoiding recommendations affecting business interests e.g. increased regulation.

Public sector participants

- Reputation: individual and institutional
- May be tensions between different parts of the public sector
- Providing context for individual experiences
- Avoiding recommendations that would involve significant restructuring or deemed too costly e.g. compensation.

Public sector participants

- However:
 - Public sector interested in improving governance: practical lessons for the future
 - Whitewash never in government's long term interests: so some criticism and recommended change anticipated.



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 for listening

© Copyright Landmark Chambers 2022

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

Cornwall Buildings
45 Newhall Street
Birmingham, B3 3QR
+44 (0)121 752 0800

Contact

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

Follow us

🐦 [@Landmark_LC](https://twitter.com/Landmark_LC)
📘 [Landmark Chambers](#)
📺 [Landmark Chambers](#)