

Tips for Successful Preparation for a Public Inquiry



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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.

Thank you for listening

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