
Date	27 March 2014
Publication	The Law Society Gazette (Online)
Type of publication	Legal press



The Inquiries Act 2005 – fit for purpose?

27 March 2014 | By Emma Ireton

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Public inquiries are under renewed scrutiny. Is the current process too cumbersome and expensive?

These days it might seem as though the first response of government or the opposition to a major crisis of public concern is to set up, or call for, a public inquiry.

In fact, only 14 public inquiries have been set up under the Inquiries Act since it was passed in 2005. They have dealt with wide-ranging issues, from the most recent announcement of a public inquiry into undercover policing following the findings of the Stephen Lawrence independent review, to the Mid Staffordshire and Leveson inquiries, and the Bloody Sunday inquiry into events in Londonderry in 1972 surrounding the death and injury of civilians in Londonderry by British Army personnel (pictured).



A Lords select committee has been reviewing the law and practice relating to public inquiries, taking written and oral evidence from chairmen, counsel and solicitors to inquiries, core participants, academics, interest groups and others. Some 32 recommendations for amendments or change have been published in its report. The key recommendations are:

- Inquiries into matters of public concern should normally be held under the 2005 act and ministers should give reasons for any decision to hold an inquiry otherwise than under the act;

- There should be stronger controls on the powers of ministers, for example seeking the 'consent', rather than 'consulting' with the chairman of an inquiry before setting or amending terms of reference, adding another member to the inquiry panel or terminating the appointment of a panel member; where the minister wishes to terminate the appointment of the chairman of an inquiry, a notice of his intention, with reasons, should be laid before parliament. Further, except in matters of public security, on publication of the report, only the chairman should have the power to withhold material from publication;
- Interested parties, in particular, victims and victims' families should have an opportunity to make representations about the final terms of reference;
- A central inquiries unit should be created to assist with the practical details of setting up an inquiry, including premises, infrastructure, IT, procurement and staffing, the costs of which, it is anticipated, would be more than compensated by the consequent savings;
- Rules relating to warning letters should be revoked. New rules should give the chairman discretion as to when a warning letter should be sent. This recommendation alone is expected to cut months off the length of an inquiry, and reduce the cost proportionately;
- Parliament should do more to hold ministers to account following publication of the inquiry report, on responding to recommendations and implementation.

Background

The Bloody Sunday inquiry, the longest running and most costly inquiry ever, at £192m and taking 12 years to complete, was a significant driver behind the desire to update legislation, which led to the introduction of the Inquiries Act 2005. A key focus of the act and the subsequent Inquiry Rules 2006 is the desire to control the length and cost of public inquiries.

When the act was introduced, there was significant concern over new ministerial powers, including the power to restrict attendance at an inquiry, or the disclosure or publication of evidence, and the power to determine whether any evidence in the report should be withheld in the public interest. There was also a substantial body of criticism over the apparent rush to introduce the legislation, and the lack of pre-legislation scrutiny.

Statutory or non-statutory?

The 2005 act was meant to consolidate numerous pieces of existing subject-specific legislation, and provide the primary framework for establishing public inquiries. However, non-2005 act public inquiries and investigations continue to be set up by government under two remaining statutory provisions as do, more significantly, many inquiries without any statutory basis.

The only significant differences between a 2005 act inquiry and a non-statutory inquiry are the powers to compel the giving of evidence, take evidence on oath, and the presumption that hearings will be public. There has been concern about the lack of transparency of ministerial decisions over when to convene a 2005 act inquiry. The 2005 act is generally recognised to be

good, but it is suggested that ministers may choose alternative forms of inquiry and investigation because they feel the act ties their hands, is too complicated, or is 'too public'.

Rules and warning letters

The Ministry of Justice has been concerned that the Inquiry Rules 2006 are 'unduly restrictive and do not always enable the most effective operation of the act'.

The rules prevent the chairman from including any explicit or significant criticism of a person in a report without first sending that person a warning letter and giving them a reasonable opportunity to respond. Where, at a late stage, evidence comes to light criticising an individual who has not previously been involved in the inquiry, it would be clearly unfair if the report was to criticise them without first allowing them to put their case.

However, it is usually clear from the outset that an inquiry is concerned with serious allegations against individuals, for example, staff at Stafford Hospital, and those individuals have the opportunity to argue their case during the inquiry.

The current requirement to send warning letters to anyone facing significant criticism, then dealing with each response and the associated obligations of confidentiality set out in the rules, is extremely onerous. This requirement is frequently singled out for criticism by inquiry chairmen, counsel and solicitors. It is estimated that the Mid Staffordshire inquiry was extended by at least six months by the warning letter process, and thousands of hours of work were added to Leveson, at huge public expense and significantly delaying the reports.

Conclusion

Many of the select committee's recommendations are not new. There have been repeated calls for change, but successive governments have failed to address those concerns. Public inquiries are an important device in holding authorities to account. Will the thoroughness of the Lords' consultation and deliberations now prompt the necessary reform?

Emma Ireton *is a senior lecturer in dispute resolution at Nottingham Law School and was formerly a member of the evidence-gathering team of the Bloody Sunday inquiry*

<http://www.lawgazette.co.uk/law/the-inquiries-act-2005-fit-for-purpose/5040566.article>