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To cite this article: Emma Ireton (2023): Public inquiries: irreconcilable interests and the importance of managing expectations, Journal of Social Welfare and Family Law, DOI: [10.1080/09649069.2023.2243137](https://doi.org/10.1080/09649069.2023.2243137)

To link to this article: <https://doi.org/10.1080/09649069.2023.2243137>



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Published online: 13 Aug 2023.



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Public inquiries: irreconcilable interests and the importance of managing expectations

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ABSTRACT

Public inquiries address serious matters of public concern, including those affecting the most vulnerable and marginalised in society. There are ongoing, heated debates about how inquiries should be set up and run and who primarily should be served by a public inquiry. However, these debates must be judged in the context of an accurate understanding of their role and function. This article explores the source of misplaced expectations of the process, leading to frustration and distress for participants and delays, which can seriously undermine participant and public confidence. It argues that, even where the public inquiry process is well understood, conflicting interests and expectations arise because of the different capacities in which people engage with a public inquiry, which are often difficult or impossible to resolve. The article examines evidence of how this has led to frequent challenges about the setting up and running of public inquiries and considers judicial decisions on the decision-making process. It recognises limitations to the public inquiry process, which cannot always deliver the outcomes and resolution sought by participants and the public. It identifies the need for clearer articulation of the role and function of a public inquiry and more effective management of expectations.

KEYWORDS

Public inquiries; core participants; accountability; inquiries act 2005; inquiry rules 2006 inquisitorial proceedings; adversarial proceedings; history of inquiries

Introduction

Public inquiries address the most serious matters of public concern, including those affecting the most vulnerable and marginalised in society. Current and recent examples include the COVID-19 Inquiry set up to examine the UK's response to and impact of the COVID-19 pandemic, the Muckamore Abbey Hospital Inquiry into the abuse of patients with severe learning disabilities and mental health needs, the Brook House Inquiry into the mistreatment of individuals who were detained at Brook House Immigration Removal Centre and the Independent Inquiry into Child Sexual Abuse to examine the failure of state and non-state institutions in their duty of care to protect children from sexual abuse and exploitation.

When they are announced, public inquiries are generally welcomed by those seeking an independent inquiry to address the matter of public concern and to make recommendations to inform future policy decisions and bring about significant positive change.

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However, ultimately public inquiries rarely satisfy everyone because of differences in expectations about their primary role (Riddell 2016, Norris and Shephard 2017).

The announcement of a public inquiry is frequently followed by articles in the media, petitions to the government and campaigns, all seeking to influence the scope of the inquiry and how it is set up and run. Formal consultation exercises with inquiry participants and the wider public are also becoming more common.¹ There are ongoing, heated debates between individuals, groups and organisations who engage with public inquiries in different capacities, about what a public inquiry ‘should’ be, and who primarily should be served by a public inquiry: the executive which convened the inquiry and to whom it delivers its report, the public, or the inquiry participants (particularly those most directly affected by the subject matter of the inquiry).

It is essential that views on what a public inquiry ‘should be’, how it should be set up and run, and its success or otherwise, are judged in the context of an accurate understanding of the role and function of a public inquiry and what, in practice, it can and cannot deliver alongside other accountability mechanisms. This research examines the source of conflicting interests and expectations in public inquiries and the extent to which hopes and expectations of inquiries can, or indeed should, be realised by the current form of UK public inquiry process.

It does so in order to inform understanding of, and improve engagement with, the current form of public inquiry process (rather than seeking to address proposed policy reform or to propose a normative framework on what an inquiry ‘should be’). Whilst there is a body of academic research on public inquiry policy reform, on proposed alternative inquiry mechanisms and on the reform of crisis management² (for example Mahon *et al.* (2021), Scraton and McNaul (2021) and Stark (2018)), and primarily practice-focused literature on UK public inquiry procedure (for example Maclean (2001), Kennedy *et al.* (2002), Beatson (2005), Steele (2006), Beer *et al.* (2011), Thomas (2015) and Mitchell *et al.* (2020)), there is limited literature, and even less evaluation, on the purpose and function of the UK public inquiry process in its current form, within the context of the constraints in which it is operating.³

This article argues that misplaced expectations are leading to significant frustration and distress for participants, can delay an inquiry, and seriously undermine participant and public confidence in specific public inquiries and in the public inquiry process as a whole. Further, it contends that, even where the function and nature of a public inquiry is well understood, conflicting interests and expectations still arise because of the different capacities in which individuals and organisations engage with a public inquiry. Such conflicting interests and expectations are often difficult, or impossible, to resolve.

Firstly, it observes how public inquiries evolved from parliamentary inquiries to become independent of government. It explores the impact of the granting of legal powers to public inquiries, the introduction of legal safeguards for witnesses, and the creation of formal roles for certain participants within the process on participant and public expectations. Secondly it analyses the impact, on interests and expectations, of the different capacities in which individuals and organisations engage with a public inquiry. Thirdly, it draws from a range of evidence from past and current inquiries to illustrate how misplaced and conflicting interests and expectations have led to frequent challenges to decisions on the setting up and running of public inquiries, which interrupt and delay the progress of an inquiry. In so doing, it considers the significance of judicial decisions

on the complexities of addressing the multiplicity of interests, the weight given to factors that may be considered during the decision-making process, and who ultimately has the final say in determining the primary role of a public inquiry and how it is run.

Finally, the article recognises the confusion around, and misplaced and conflicting expectations about, who is primarily served by a public inquiry and the inherent limitations on a public inquiry's ability to deliver the outcomes and resolution sought by many participants. It identifies a significant need for clearer articulation of what a public inquiry is and for more effective management of public and participant expectations of a public inquiry. It calls for the consistent adoption and implementation of best-practice lessons learnt from past inquiries to improve engagement with participants and calls for further research on the use of additional processes to address those needs and interests of participants that are not currently met by the public inquiry process.

The distinctiveness of a public inquiry

Public inquiries are a major instrument of accountability and play a key role in the way in which the executive addresses major crises. The Institute for Government Report *How public inquiries can lead to change* (Norris and Shephard 2017) notes the valuable legislative and institutional change delivered by many inquiries: from more effective gun control,⁴ industrial regulation⁵ and CRB checks,⁶ to the establishment of the Rail Accident Investigation Branch.⁷ Others have had 'a profound effect on behaviours and attitudes' such as the *Scott Inquiry's* recommendations on ministerial accountability and responsibility⁸ and the *Macpherson Inquiry* into the death of Stephen Lawrence,⁹ 'which helped to establish the concept of "institutional racism" within the public consciousness' (Norris and Shephard 2017).

It is essential to understand not only what public inquiries are but also what they are not. Public inquiries are often spoken about in public and the media as if they are a form of 'super court' or a 'gold standard investigative body' that has been convened to deliver answers and justice for participants where other processes have failed or are inadequate. In fact, they are neither.

In general terms, the role of an inquiry is to establish facts, analyse those facts, and produce a report to address a matter of public concern. By doing so in public, it enables participants, the wider public and media to scrutinise the inquiry process, draw their own conclusions on the subject matter of the inquiry based on the evidence presented, and to seek to hold those in authority to account. More specifically, it can be inferred, by reference to the many inquiries that have been convened, that the role of an inquiry may be made up of a number of elements: learning lessons; providing catharsis; making recommendations to prevent recurrence; developing public policy; and discharging the Government's obligations to investigate alleged breaches of Articles 2 and 3 of the European Convention on Human Rights (ECHR) (Beer *et al.* 2011). The precise role of a public inquiry, however, may differ significantly between inquiries, depending on an inquiry's subject matter and its terms of reference. For example, not all public inquiries are required to make recommendations; not all inquiries involve an element of catharsis.

In contrast to the civil and criminal justice systems, public inquiries are inquisitorial rather than adversarial; there are no 'sides' or 'parties' to an inquiry. The inquiry's role is not to make a determination between the different viewpoints and positions of opposing

parties but to investigate the evidence and to follow lines of inquiry where they lead, in accordance with the terms of reference. Public inquiries form part of the political rather than the legal process (Inquiries Act 2005, s1; Blom-Cooper 2017, Ireton 2018).¹⁰ They have no power to determine civil or criminal liability, nor can they impose sanctions on any individual or organisation.

Unlike the civil and criminal justice systems, which are permanent, with predetermined fixed sets of rules and procedures, public inquiries are ad hoc bodies, convened to address a specific matter of public concern. When a public inquiry is convened, the minister makes decisions that determine its scope, form and nature. The chair, who acts independently, has a very broad discretion to determine the inquiry's procedure. This flexibility is deliberate and is a strength of the public inquiry process; it enables a public inquiry to be set up and run in a manner that best suits the very broad range of terms of reference, scale and matters of public concern that may be the subject of a public inquiry. However, this lack of uniformity between inquiries can also significantly contribute to confusion, and misplaced and conflicting expectations, over the role and function of a particular inquiry and what it may deliver.

Public inquiries are convened by the government minister whose department is most relevant to the matter of public concern, to investigate the matter and produce a report. Calls for a public inquiry are often made by survivors and the bereaved, civil society, the wider public, and the media. However, there is no process by which those demanding a public inquiry can make an application; the decision rests with the minister (Inquiries Act 2005, s1). The report containing the inquiry's findings and recommendations is delivered to the minister who convened the inquiry; it is laid before Parliament and is published. The decision on whether or not to implement an inquiry's recommendations is a political decision for the Government.

Inquiries do not replicate other accountability mechanisms, such as courts and inquests, but complement them. Unlike those other mechanisms, inquiries operate on a macro-level, looking at broad administrative systemic and regulatory failure and high-level policy considerations at a systemic level, including failings in 'the checks and balances', rather than individual incidents. (Whilst the subject matter of an inquiry may centre on a single death, such as that of a Victoria Climbié, or a single incident, such as the Grenfell Tower fire, the inquiry operates on a macro level, looking at the failings that enabled that matter of public concern to occur.) Examination of past and current inquiries, discussed in detail below, shows that misplaced or simply conflicting expectations of an inquiry's function, and what an inquiry can and cannot achieve, can give rise to frequent challenges to the way in which an inquiry is set up and run, which can interrupt and delay an inquiry, and can undermine participant and public confidence in the public inquiry process as a whole.

The move to independent inquiries and the granting of legal powers

In order to fully understand the role and function of a public inquiry in contemporary times, and the source of these conflicting interests and expectations, it is necessary to examine the origin and evolution of the public inquiry process. Public inquiries have evolved over the last 100 years from parliamentary committee inquiries to independent public inquiries, to address procedural challenges posed by

a lack of independence, a reluctance to participate, the risk of damage to reputations of witnesses, and increasing cost and duration. They have done so in a reactive way, without any clear deliberation on, or definition of, the overarching justification, role and function of a public inquiry and who is primarily served by a public inquiry.

Since the seventeenth century, in the UK, there has been a long history of parliamentary committees, particularly select committees, holding inquiries into alleged misconduct of government ministers and failures of government, private corporations and individuals (Thomas 2015). Select committees (made up of small cross-party groups of members of the House of Commons or Lords) have frequently been given specific remits to investigate and report back to the House on incidents, or series of incidents, of public concern (House of Commons 2011). Parliamentary committee inquiries can question experts and officials and require the Government to provide information. They publish their findings in the form of a report and the Government is expected to respond to any recommendations made. Royal commissions (ad hoc advisory committees) have also been convened in the past by governments, in the name of the Crown, to inquire into matters of public importance. In the UK, royal commissions, however, have tended to deal with broader policy issues rather than specific incidents and have fallen out of use over recent decades, due in part to them wielding limited influence while often taking a considerable time to report.¹¹

The problem with the use of parliamentary committees to investigate matters of public concern is their lack of independence, which became particularly apparent during the inquiry into the Marconi Scandal in 1913, which is often cited as being the defining moment that subsequently led to parliamentary committees being replaced with independent inquiries or tribunals.¹² The select committee that was appointed to investigate allegations of insider trading by a number of government ministers in connection with the Marconi Wireless and Telegraph Company was widely criticised for its lack of independence.¹³

The membership of a Commons select committee reflects the party balance in the House at the time. In line with this, a majority of the members of the select committee inquiring into the Marconi scandal were from the governing party.¹⁴ The ultimate findings of that select committee were divided strictly along party lines, resulting in the government ministers in question being exonerated and opposition ministers, the public, and the media voicing concerns about the motivation and lack of impartiality of the select committee members (Public Administration Select Committee 2005, Blom-Cooper 2017), p. 10).

Another political scandal followed in 1921, in connection with allegations that Ministry of Munitions' officials had been ordered to destroy documents relating to munitions contracts. Rather than convening a select committee to investigate the matter, as was done in the case of the Marconi Scandal, the Government acceded to a request for an independent inquiry into the handling of the munitions contracts, chaired by a judge. This signalled the beginning of the move from the use of parliamentary inquiries to the use of independent inquiries to investigate matters of public concern.

A further problem with the use of parliamentary committees to investigate matters of public concern, which was also identified for the inquiry into the handling of the munitions contracts, is the fact that their powers to require those who are reluctant to

participate to give evidence are weak and uncertain. Following a member of parliament's suggestion that the Inquiry be given clear powers to compel the giving of evidence and take evidence on oath, over a period of less than three weeks, the Tribunals of Inquiry (Evidence) Act (1921) was quickly enacted.¹⁵

This short, rushed, three section Act provided that, following a resolution of both Houses, a tribunal may be convened by a minister, with 'all such powers, rights, and privileges as are vested in the High Court' to compel the production of documents, enforce the attendance of witnesses and take evidence on oath, while making it a criminal offence not to comply (Tribunals of Inquiry (Evidence) Act 1921, s 2). It also provided that a tribunal convened under the Act 'shall not refuse to allow the public or any portion of the public to be present at any of the proceedings of the tribunal unless, in the opinion of the tribunal, it is in the public interest expedient so to do' (Tribunals of Inquiry (Evidence) Act 1921, s 3).

As a result, after very little deliberation or thought about wider consequences, a 'new improved' form of public inquiry process was created. This new form of inquiry/tribunal was independent, chaired by a judge, and had legal powers to make people attend and produce evidence, which made it, in many respects, appear to resemble the court system (thereby creating the potential for misplaced expectations, such as those of binding judgments being delivered and 'justice being achieved'). However, in fact, it remained an inquisitorial process that formed part of the political process, being convened by a minister and reporting to the Government and Parliament. Its findings and recommendations informed policy discussions and political decisions and were not binding.

Over the following few decades, there was a move away from the use of the earlier forms of investigative select committees and royal commissions, in favour of the use of these independent 1921 Act inquiries/tribunals, with their legal powers of compulsion (Public Administration Select Committee 2005). However, by the 1960s, there was increasing concern about the risk of damage to the reputations of individuals, often government ministers and members of parliament, posed by a forum that was granted significant legal powers of compulsion but without the legal safeguards that would have been available had those powers been exercised in the High Court. (Ibid para 21–22).

Criticism of the 1921 Act was summarised during a House of Commons debate in 1965, when the Act was described by Leslie Hale MP as:

[A] bastard Bill, which provides a method of procedure never known in the law in England since we have our present system of justice'.

'We set up by this method, virtually without any discussion at all, a tribunal which can sit in private or public, can hear evidence how it likes and where it likes, can summon witnesses without any preliminary investigation or procedure and can cover an inquiry which may spread over innumerable matters not cognisant to our law and involving the reputations of people who have only a remote connection with the central incidents. (*Hansard*, HC Deb 30 March 1965 vol 709 c1402-4)

In response to these concerns over the lack of legal safeguards, in 1966, a *Royal Commission on Tribunals of Inquiry* was convened under Lord Justice Salmon, 'The Salmon Commission', to review the working of the 1921 Act. The Salmon Commission recommended that the Act should be retained, with amendments, and set out 'six cardinal principles' to address the lack

of legal safeguards and to ensure justice for those involved. These became known as ‘the Salmon Principles’ and were adopted as guiding principles for later 1921 Act tribunals:

- (1) Before any person becomes involved in an inquiry, the tribunal must be satisfied that there are circumstances which affect them and which the tribunal proposes to investigate.
- (2) Before any person who is involved in an inquiry is called as a witness, they should be informed of any allegations made against them and the substance of the evidence in support of them.
- (3) They should be given an adequate opportunity to prepare their case and of being assisted by legal advisers and their legal expenses should normally be met out of public funds.
- (4) They should have the opportunity of being examined by their own solicitor or counsel and of stating their case in public at the inquiry.
- (5) Any material witnesses they wish to call at the inquiry should, if reasonably practicable, be heard.
- (6) They should have the opportunity of testing by cross-examination conducted by their own solicitor or counsel any evidence which may affect them. (Royal Commission on Tribunals of Inquiry 1966)

These safeguards were aimed at providing protection for individuals or companies who were legally compelled to give evidence to an inquiry/tribunal and who might face severe criticism during the course of the inquiry’s proceedings or in its report. However, in doing so, the principles also effectively introduced new roles within the inquiry process for key participants, which were not seen in previous forms of inquiries.¹⁶

Significantly, by enabling participants to suggest witnesses to be called to give evidence to the inquiry, to test evidence presented to the inquiry by cross examination by their own legal representatives, and to advance a particular stance or position and ‘state their case’, the Salmon Principles introduced adversarial elements to what remained an inquisitorial process. The role of legal representatives in the public inquiry process increased, as did the cost and duration of the process, which in turn later became increasingly significant factors in the minister’s decision-making process on how an inquiry was to be set up (see below).

In practice, as well as providing safeguards and a role for those who were likely to face severe criticism, the adoption of the Salmon Principles also gave participants, such as survivors and the bereaved, a formal role in a process. It is easy to see how the process could thereby appear to be, and might be understood to be, designed to ‘achieve justice’ on such participants’ behalf. However, in fact, the process remained an independent inquisitorial inquiry, sitting within the political process, convened to inform policy decisions and address public concern. This article asserts that the introduction of these roles was a defining moment in: the rise of misplaced and conflicting expectations about the role and function of public inquiries and who is primarily served by a public inquiry, associated challenges to the way in which an inquiry is set up and run, and the undermining of participant and public confidence in the public inquiry process (see below).

The inquiries act 2005 - the impact on conflicting interests and on raising expectations

Ongoing concern, particularly over cost and duration, subsequently resulted in the use of 1921 Act tribunals dropping off by the 1970s and a move to a predominance of ad hoc non-statutory inquiries, convened under the prerogative powers of the executive, as well as subject-specific statutory inquiries, convened under other legislation (Public Administration Select Committee 2005). *The Bloody Sunday Inquiry*, held under the 1921 Act, was the longest running and most expensive public inquiry ever. Costing £192 million and taking 12 years to complete, it acted as a significant catalyst for updating the 1921 legislation. The Inquiries Act 2005, a lengthier and more detailed Act than the 1921 Act, was subsequently introduced to repeal the, by then, numerous pieces of subject-specific legislation relating to public inquiries that had emerged in the interim years and to replace them with a single piece of legislation.¹⁷

The 2005 Act is generally recognised to be ‘good legislation’, in that it provides a suitable framework for public inquiry procedure (House of Lords Select Committee on the Inquiries Act 2005: *post-legislative scrutiny*, para. 214) However, its introduction raised new concerns about a reduction in the independence of public inquiries from the convening minister (which has increased tensions between the interests of the minister and those of the public, participants, and civil society,) and the reinforcement of expectations of participant influence and who is primarily served by a public inquiry (see below).

For the first time, the Act introduced a requirement for the chair to act with regard to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others) (Inquiries Act 2005, ss 18 and 17(3)). It confers on statutory inquiries: the power to compel the giving of evidence,¹⁸ permits the chair to take evidence on oath, and sets out a presumption that hearings will be held in public. Notably, the Act does not exclude the possibility of convening public inquiries outside the legislation. Ministers have continued to convene non-statutory inquiries, under the prerogative powers of the executive, alongside 2005 Act public inquiries. These non-statutory inquiries are often very similar to public inquiries in the way in which they are convened and run. However, they do not have the power to compel the giving of evidence, nor to take evidence on oath; nor is there a presumption that hearings will be held in public.¹⁹

The 2005 Act transferred responsibility for establishing a public inquiry from Parliament to the minister,²⁰ giving rise to new concerns over impeding parliament in its role of scrutinising the actions of government. Further, it is the convening minister who has the power to decide whether or not to convene a public inquiry, to appoint the chair, panel members and assessors,²¹ to set the terms of reference, and restrict public access. In addition, the 2005 Act grants the minister significant additional powers, including: the power to terminate the appointment of panel members and the chair, to bring an inquiry to a conclusion at any stage before the publication of its report, to restrict public access, and to withhold material in the inquiry report from publication (Inquiries Act 2005, ss 12, 14, 19 and 25).

A public inquiry must be, and must be seen to be, independent from the minister and the Government. To date the predicted interference, and an accompanying collapse in public confidence in public inquiries by the exercise of these powers by the convening-

minister, has not materialised.²² However, the potential for interference, not just interference itself, can undermine confidence in the independence of the process and its report. Further, the fact that it is the minister who makes the decisions about the scope of a public inquiry and how it is set up is also very significant in the context of the conflicting interest and expectations that exist between the minister, parliament, the public, civil society, and participants (discussed below).

In addition to concerns over a decrease in the independence of public inquiries from the minister, the Inquiry Rules (2006), which were enacted under the 2005 Act and deal with matters of evidence and procedure, further develop the formal roles that participants may play in the public inquiry process. They introduce the role of ‘core participant’. (A similar role is adopted in non-statutory inquiries, known as ‘interested parties’ or ‘full participants’). The inquiry chair may designate an individual or organisation a core participant where they have a particularly close relationship with the work of the inquiry.²³

Designation as a core participant confers a privileged status and direct access to, and involvement in, the public inquiry process. Core participants have the right to appoint a legal representative, are likely to receive advance notice of evidence, have the right to propose questions for Counsel to the Inquiry to ask witnesses, may apply to ask questions of a witness, and have the right to make opening and closing statements (Inquiry Rules 2006 rr 6, 10, 11).

This further reinforces the apparent resemblance to a court process and raises expectations of participant influence on a public inquiry. However, core participants are emphatically not parties to proceedings designed to achieve justice on their behalf. They are participants in an independent inquisitorial inquiry that sits within the wider political process. Public inquiries must be independent, not only from the Government and the perceived ‘establishment’, but also from all the participants themselves.

Conflicting interests due to different capacities of engagement

Assertions are also made by many (including by participants, ministers, and inquiries themselves) about the crucial importance of putting the needs and interests of participants, particularly survivors and the bereaved, at the heart of the public inquiry process (JUSTICE 2020). However, there is no consensus about what this means in practice and what is achievable within the remit of an inquiry.

It is essential, as part of these discussions, to recognise that the focus of the core function of the public inquiry process, which has evolved from parliamentary inquiries to independent inquisitorial inquiries, overlaid with legal powers to assist them in their role and safeguards for participants, is on informing future policy decisions and addressing public concern. That being said, it is also important to recognise that the public inquiry process has evolved over time to produce quasi-judicial bodies, often chaired by a judge or retired judge, with many of the features and aims of a court process. Examination of past and current inquiries demonstrates that this can, and does give rise to expectations from participants, the public, the media and others that are more akin to those of a legal process, such as the expectation that an opportunity will be given to advance a particular stance or position, or that findings of culpability will be made and ‘justice achieved’.

Even where public inquiries are well understood, and despite the fact that individual public inquiries have been increasingly proactive in providing information about their role and procedure on their websites and by direct engagement with participants, the evidence shows that there remains the potential for significant conflicting expectations because of the differing perspectives of those engaging with a public inquiry, depending on the capacity in which they engage. This is exacerbated by the fact that neither the Tribunals of Inquiry (Evidence) Act 1921 nor Inquiries Act 2005 provided a definition of the role of a public inquiry and there is ‘an astonishing absence of any case law defining the justification and philosophy of public inquiries generally’ (Blom-Cooper 2017). These conflicting expectations are often diametrically opposed, so it is often impossible to reconcile them to the satisfaction of all concerned. In such circumstances, it is important to recognise who ultimately is the decision-maker when conflicting interests arise, and what material considerations will be taken into account during the decision-making process. Only then can expectations be more effectively managed from the outset, which in turn may reduce frustration and distress for participants, interruptions and delays, and avoid undermining participant and public confidence in the process (see below).

What is considered to be, or ought to be, the primary role or focus of an inquiry can differ significantly depending on the capacity in which an individual or organisation has an interest in that inquiry. For the minister and the Government, addressing matters of public concern is a function of the executive. A public inquiry provides an independent instrument for finding facts and producing recommendations to inform government decision-making when addressing and assuaging that public concern. It is also one mechanism by which to discharge the State’s investigative obligation where there is an arguable breach of Articles 2 or 3 of the ECHR. Furthermore, many argue that a public inquiry provides an opportunity for a government to avoid political embarrassment and public scrutiny by kicking sensitive issues ‘into the long grass’, hoping that public interest and political criticism will fade by the time the inquiry publishes its report. (However, the 2013–4 House of Lords Select Committee, which carried out post-legislative scrutiny on the Inquiries Act 2005, reported that it had received no evidence of this (House of Lords Select Committee on the Inquiries Act 2005, 2005, para. 143)²⁴ and Sulitzeanu-Kenan (2007) concludes that ‘the attenuation in media salience following the appointment of a public inquiry is not different from that of non-inquired events’.

For members of parliament and select committees, public inquiries are one of several important means by which the executive is held to account. For the general public and some campaign groups, the primary role of a public inquiry may be wider: to learn lessons for the future, address public concern and prevent recurrence. A common priority for the wider public (shared with the minister and government) is for an inquiry to do so in as cost-effective and timely a manner as possible.

For many participants, such as survivors and family members, a primary role of a public inquiry is to provide long sought-after answers about the events under investigation, to hold those in authority to account, and to provide those directly affected by the subject matter of an inquiry with the opportunity for their voice to be heard.²⁵ It is important to bear in mind that subsections of inquiry participants, such as ‘survivors and family members’, are not a single homogenous group. Many of those most closely affected by a public inquiry hold very strong views about the most appropriate way for an inquiry to be conducted, to best serve what they consider to be the public inquiry’s

primary role. There are often diverse and conflicting views on this, even within those groups. It cannot be assumed that the views of some represent the views of all.

Other participants, particularly those who potentially face severe criticism during an inquiry's proceedings or in its report, often adopt a very defensive position towards cooperation with an inquiry, as seen for example from the attitude of the police during the non-statutory *Hillsborough Independent Panel*²⁶ and from the Government and government ministers during the non-statutory *Independent Inquiry into Contaminated Blood and Blood Products*.²⁷ In order for inquiries to learn lessons and make recommendations to prevent recurrence, they need participants to engage with them openly and with candour. That frequently requires participants to put public interest before personal and organisational interests and reputations including, where appropriate, admitting where things went wrong. In practice, however, such participants often come to an inquiry very conscious of the risk of subsequent civil or criminal proceedings, or damage to their reputation. Legal representatives advising those participants tend to adopt a cautionary approach, focusing on protecting the interests of their clients and frequently advising such participants to provide only that information that is directly asked of them and nothing more. There is currently ongoing pressure calling for the introduction of a statutory duty of candour for government departments and public bodies, to address the very serious issue of institutional defensiveness, and the detriment it can cause to the effectiveness of an inquiry and to participation and public confidence (Jones 2017).

The minister in setting up the inquiry, and the chair in conducting the inquiry, must address these conflicting expectations and tensions, which can be very difficult and sometimes impossible to reconcile (see below). Further, whilst the chair of an inquiry is independent (from the Government, ministers, participants, the public and others), the minister approaches the setting up of an inquiry with preconceived ideas on what should be the primary function and focus of a public inquiry, which frequently conflict with the expectations of others, including members of parliament, the general public, campaign groups and participants. What is significant is that, ultimately, it is the minister who has the final say on these matters. This can, and frequently does, give rise to legal and political challenges, which can interrupt and delay the progress of an inquiry and undermine participant and public confidence in the process. It has also, on occasions, led to boycotts or threats of boycotts of all or part of an inquiry by some participants.²⁸

Evidence of conflicting expectations leading to challenges

The subject of an inquiry's terms of reference is an area where conflicting expectations, and tensions leading to challenges, are clearly demonstrated. An inquiry may only investigate those matters that are within the terms of reference set by the minister (Inquiries Act 2005, s 5(5) for statutory inquiries). An inquiry's terms of reference are a crucial factor in determining its scope, complexity, cost and ultimately its success (Public Administration Select Committee 2005).

It is common for those directly affected by the subject matter of an inquiry, including victims, survivors and their families, to demand broader terms of reference than those originally set, as was seen, for example, in the *Independent Inquiry into Child Sexual Abuse* and the *Grenfell Tower Inquiry*.²⁹ This is often driven by a desire for an inquiry to

produce as full an account as possible of the events being investigated and the broader circumstances in which those events took place. Members of Parliament and others may also call for broader terms of reference where they consider it necessary to effectively hold those in authority, including the Government, to account.

However, a broad remit can also give rise to several new issues. Firstly, for victims, survivors and family members, it can raise high expectations of truth and reconciliation that are difficult, if not impossible, to fulfil. Secondly, broader terms of reference generally mean a longer and more protracted inquiry. Where there are lessons to be learned, and changes to be implemented to prevent recurrence, they will be delayed by a lengthy inquiry, possibly to the point where the window of opportunity for change may have closed, with systems and institutions having moved on in the intervening years (see the discussion in Norris and Shephard 2017). Thirdly, broader and more protracted inquiries are more costly for the taxpayer.

Chairs and Counsel to the Inquiry are generally in favour of narrower terms of reference in order to control the scope, clarity, cost and length of an inquiry, whilst recognising that terms of reference set too narrowly may not achieve the desired aims and may undermine public confidence (see, for example, Gill (2013) Q194 and Francis (2013) para. 36). Precise terms of reference have been described as being often the chair's 'only defence against arguments, all too frequent, that the scope of the inquiry should be widened' (House of Lords Select Committee on the Inquiries Act 2005, para. 141).

Ministers and governments generally prefer narrow terms of reference, for reasons of time, cost and control over the scope of an inquiry. The Institute for Government notes a 'growing focus on detailed and specific questions within terms of reference' instead of vaguer instructions to investigate an event, which had been more common previously (Norris et al. 2017). This may be to assist in resisting anticipated pressure to expand the terms of reference.

The question of how public a public inquiry should be is another area where conflicting expectations and tensions (including between participants, members of parliament and the minister but also between different categories of participants) are evident and have led to numerous challenges (see the discussion in Ireton (2018)). When the non-statutory *Iraq Inquiry*³⁰ was announced, the Government's intention was that it would be held in private for reasons of national security and speed (*Hansard* HC Deb, 15 June 2009, vol 511, cols 23–38). This was opposed by many, including the Public Administration Select Committee on the *Iraq Inquiry*, which stated that 'The need for effective accountability and public confidence demands that the inquiry be conducted as openly and publicly as possible' and the former Head of Defence Intelligence, Air Marshal Sir John Walker, who stated that 'the military want the truth to be out' (Public Administration Select Committee 2009, para. 7 and *Hansard* HC Deb, 24 June 2009, vol 494, col 810 respectively). Ultimately most of the hearings were held in public.

The statutory *Undercover Policing Inquiry* has been severely criticised by some participants and campaign groups for its levels of secrecy, particularly in relation to the Inquiry's application of statutory powers of restrictions on public access and the granting of anonymity to police witnesses.³¹ Many argue that the level of secrecy of the Inquiry prevents it being a public, transparent and accountable process.³² Many applications for anonymity, and challenges to those applications, were made and

contributed significantly to delay in the inquiry. Many of the participants to the Inquiry who had unknowingly entered into a long-term relationship with an undercover police officer were unsuccessful in seeking to persuade the Inquiry to reveal the real and cover names of those officers. The Inquiry accepted opposing submissions on behalf of serving and former police officers, including the assertion, in many cases, that the interference in the right to respect for private and family life under Article 8 ECHR that would be caused by publication by the Inquiry, would not be justified (Mitting 2022).³³

The questions of the primary role of a public inquiry, and who is primarily served by a public inquiry, can come to the fore in connection with the minister's appointment of the inquiry chair and any panel members. When conducting the inquiry, the chair acts independently from the minister who appointed them, from the Government, Parliament and from participants.³⁴ In order to maintain that independence, the chair has a very broad discretion to conduct the inquiry as he or she thinks fit.³⁵ The chair therefore sets the tone and direction of an inquiry and has a broad discretion to determine its procedure.³⁶ Issues arise, for example, where some participants believe that the appointed chair does not have the necessary background and experience to understand many of the issues underpinning the matter of public concern. Further, the fact that the minister appoints the chair can lead to perceptions that the minister will appoint individuals who are unduly sympathetic to the executive.³⁷

The appointment of Sir Martin Moore-Bick, a former Court of Appeal judge, as the Chair of the *Grenfell Tower Inquiry* was met with severe criticism from a number of campaign groups, survivors and members of parliament, based on diversity and equality issues, including the argument that a 'white, upper-middle class man' was not a suitable choice (the fire having disproportionately affected working class and ethnic minority communities).³⁸ Calls for the replacement of Moore-Bick were resisted by the Prime Minister and were met with dismay by others, including senior members of the legal profession, concerned that much of the criticism was politically motivated, asserting that the integrity and independence of the judiciary from government and Parliament should be respected and not impugned by politicians.

There were also calls from some participants, campaign groups, and members of parliament to appoint panel members with representation from the Grenfell community and minority backgrounds, to improve participant and public trust and confidence in the process, representation, and participation.³⁹ The Inquiry was divided into two phases, the first focusing on the factual narrative of the events of the night of the fire and the second on the construction and refurbishment of the Grenfell Tower building and the decisions made leading up to, during and in the immediate aftermath of the fire. The Government accepted Moore-Bick's recommendation that he sit alone for phase 1,⁴⁰ on the basis that it would enable the inquiry to complete the phase more quickly. Moore-Bick also refused a request to appoint a survivor or Grenfell Tower resident as an assessor,⁴¹ stressing the fact that assessors must be independent, or it would 'risk undermining his impartiality in the eyes of others who are also deeply involved in the inquiry'.⁴²

Judicial decisions on conflicting interests and the decision-making process

Judicial decisions have provided some clarification on factors to be taken into account by the minister in their decision-making, the weight to be attached to the maintenance of public confidence in an inquiry (and, in particular, participant confidence) and to the meaningful participation by a particular category of participants, and to addressing the multiplicity of opinions and interests of those affected by a public inquiry. The key question of who, primarily, an inquiry is intended to serve has also been addressed.

An application for permission to apply for judicial review of the minister's decision not to appoint panel members to the *Grenfell Tower Inquiry* was brought by the son of one of the Grenfell residents who lost their life in the fire, *R (Daniels) v May* [2018] EWHC 1090 (Admin) [2018] 5 WLUK 97. The central submission of the application was that the Prime Minister misdirected herself by failing to accept that the maintenance of public confidence is a 'key or prime factor for promoting the statutory purpose of the 2005 Act', which the applicant argued arose from the fact that '[t]he object of the 2005 Act is plainly to ensure that there is public confidence in the outcome of an investigation into matters of public concern'. (Ibid [28]).

Bean LJ, however, noted that the 2005 Act only expressly mandates two factors to be taken into account in the appointment of an inquiry panel, namely suitability and impartiality, under sections 8 and 9 of the 2005 Act respectively. The court made it clear that the weight to be attached to public confidence is a matter for the minister, stating:

I am prepared to assume for the purposes of this application that the wishes of the survivors and of the families of those who died in the fire were a material consideration for her to have taken into account, in the legal as well as the political sense. But it is well established in public law that the weight to be attached to a material factor or consideration is one for the decision-maker. (Ibid [33] with reference to Lord Brown of Eaton-under-Heywood *R Secretary of State for the Home Department v AP (No 1)* [2011] 1 AC 1).

The court concluded that 'The wishes of the survivors and the bereaved, however tragic the case, as to who should constitute a tribunal to investigate how the tragedy occurred cannot be conclusive' and that the appointment of Moore-Bick without a panel was not outside the range of rational decisions.

The court also noted that:

Provided the court is satisfied that there has been rigorous consideration of the duty,⁴³ so that there is a proper appreciation of the potential impact of the decision on equality objectives and the desirability of promoting them, it is for the decision-maker to decide how much weight should be given to the various factors informing the decision. The court cannot interfere with the decision simply because it would have given greater weight to the equality implications of the decision than did the decision-maker.

The court found that the Prime Minister was entitled to take into account, as an important consideration, the need for the Inquiry to complete its initial report (for phase 1) as quickly as reasonably practicable (*R (Daniels) v May* [2018] EWHC 1090 (Admin) [2018] 5 WLUK 97)).

Public confidence and, more specifically, the confidence of victims, was also considered in a subsequent application for judicial review of the refusal to reconsider the decision not to appoint panel members to the *Undercover Policing Inquiry*, by three non-

police non-state core participants ('NPNSCPs') (*R (Da Silva) v Secretary of State for the Home Department* [2018] EWHC 3001 (Admin) [2018] 11 WLUK 82).⁴⁴ It too was unsuccessful. One of the grounds of challenge advanced was that the Prime Minister failed to have regard to relevant considerations: the importance of ensuring public confidence in the conduct and outcome of the Inquiry; the importance of the meaningful participation of the NPNSCPs and lack of confidence in the chair on their part; and that the issue of discrimination, whether by an individual or at an institutional level, was an issue at the heart of the Inquiry and an area of expertise.

It was contended that public confidence in an inquiry convened under the Act is an important factor in any decision concerning the functioning of the inquiry, including the composition of the panel, and that it was irrational not to give weight to the need to maintain public confidence in the Inquiry when considering whether to appoint additional panel members (*Ibid* [53]). The court dismissed this argument, referring to the statement in *Daniels*, that only two factors are mandated by the Act to be taken into account in the appointment of a panel, namely suitability and impartiality (*Inquiries Act 2005*, ss 8 and 9). It added that the Act does not require regard to be had to public confidence. It is for the minister to identify the matters he or she regards as relevant to the decision (*R (Khatun) v Newham LBC* (2005) [35]) and the weight to be attached to those matters, (*Secretary of State for the Home Department v AP* (2011)) subject only to a challenge on *Wednesbury* grounds (*R (Da Silva) v Secretary of State for the Home Department* (2018); *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1948).

The applicants argued that failing to secure confidence in the Inquiry's ability to arrive at the truth on the part of the NPNSCPs, among whom were the victims of wrongdoing by undercover policing, was failing those who, 'in particular, the inquiry was intended to serve'. Further it was argued that the NPNSCPs' participation was essential to the Inquiry's ability to get to the truth (*Ibid* [49]). However, the court stressed the need to address the full range of interests affected by a public inquiry, as well as wider considerations, such as delay to the publication of the inquiry's recommendations, stating:

The breadth of the terms of the Inquiry and the multiplicity of interests represented in it requires the Secretary of State to treat with caution opinions or representations submitted by any one core participant or group of core participants about the Inquiry or its Chair . . . That being so, if additional panel members were to be appointed, the Secretary of State would need to ensure that the appointments reflect the range of interests in the Inquiry and not just those identified by the NSNPCPs. I agree . . . that when considering 'public confidence' in an inquiry the Secretary of State cannot consider it solely through the perspective of certain core participants. Regard must be had to all of the interests at stake and to wider considerations material to public confidence, such as the delay in making final recommendations that bear upon future practice. This inquiry is distinct in the very wide range of interests represented by some 200 or so Core Participants involved in it. (*Ibid* [53].

It is clear, therefore, that the minister must have regard to the multiplicity of interests represented at a public inquiry. It is right that those most directly affected by the subject matter of an inquiry play a significant role in a public inquiry and are properly listened to, particularly where the state is said to be at fault. However, it is also clear that a balance must be found. A public inquiry is not primarily intended to serve survivors and the bereaved, nor any other specific group or groups of participants.⁴⁵ Further, public confidence is not a determining factor in decisions concerning the functioning of a public inquiry.

What is also clear, and of particular significance, is that, where there are significant conflicting expectations between the minister themselves and others, including participants, members of parliament and select committees, campaign groups and the wider public, about what should be the primary focus of a public inquiry (as discussed above), it is the minister who has the power to determine the weight to be given to the various factors that inform those decisions and who makes the key decisions about the setting up and running of a public inquiry and ultimately its primary role and focus.

Conclusion

The reactive way in which public inquiries have evolved from parliamentary inquiries to independent public inquiries, by importing powers of compulsion from the High Court, by introducing adversarial elements to the inquisitorial process, and creating significant formal roles for some participants, has blurred the lines between a political and a legal process and has created confusion over whom an inquiry is intended to serve. There is an absence of any clear deliberation on, or definition of, the overarching justification or primary role of a public inquiry. These factors combined have raised expectations about the extent to which participants can exert influence over an inquiry's scope and approach, and the extent to which an inquiry can and will deliver the outcomes sought by different participants. This, in turn, has created challenges for the running of individual inquiries and the risk of undermining participant and public confidence in the public inquiry process.

Public inquiries rarely satisfy everyone. Conflicting expectations and tensions frequently arise between individuals and organisations due to the different capacities in which they engage with a public inquiry, and these are often difficult or impossible to reconcile. There are also often conflicting expectations between the minister, members of parliament, the public, campaign groups and participants. Significantly, the minister has the final say on decisions that determine the primary function and focus of a public inquiry.

The nature and frequency of challenges brought in response to such decisions of the minister, and decisions of the chair affecting the focus and approach of an inquiry, demonstrate the dissatisfaction, frustration and disappointment felt by many participants who engage with the public inquiry process, with many complaining of feeling marginalised and excluded. Lack of candour and institutional defensiveness increase the frustration and distress felt by many participants, while creating barriers to accountability (JUSTICE 2020).

It is increasingly common for statements to be made, including by ministers and inquiry chairs, about the importance of 'putting participants at the heart of the public inquiry process'. Unfortunately, there is no clarity or consensus about what exactly they mean by this in practice and there is a risk that this too will create misunderstandings, and misplaced and conflicting expectations, that may fuel dissatisfaction and further undermine trust in the public inquiry process.⁴⁶

The reality is that the public inquiry process that has evolved from parliamentary committee inquiries to independent public inquiries to inform policy discussions and political decisions and to address public concern, is never going to constitute a process

whose primary focus is providing long sought-after answers or justice for survivors and the bereaved, or the opportunity for their voices to be heard. However, that in no way prevents an inquiry, while fulfilling its terms of reference and producing a report to inform policy discussions and political decisions, from doing so while also putting the needs and interests of survivors and the bereaved at the heart of the process. This could be done, for example, by engaging in effective consultation processes, the introduction of a statutory duty of candour, recognising the importance of establishing a good working relationship with participants and their legal advisers from the outset, improving transparency, ensuring timely and effective communication of key information, and offering specialist sources of support to witnesses).⁴⁷ It is apparent from the frequency and nature of challenges brought, that approaches, procedures and practices vary significantly between public inquiries, as does the experience of participants. It is important that lessons learned from past inquiries, on best practice for addressing the needs and interests of participants, are adopted and implemented consistently by current and future inquiries.

The ongoing, frequent calls for a public inquiry by survivors, the bereaved, and family members suggest that often the outcomes and resolution that they seek are not being found through other accountability mechanisms, so they are looking to public inquiries instead (including, in many cases, in the hope that the inquiry process might prove ultimately to be a route to achieving sanctions thus far denied through other accountability mechanisms). The dissatisfaction, frustration and disappointment expressed during the course of public inquiries indicates the outcomes and resolution that they seek are often not being met by the public inquiry process either. Further research needs to be undertaken to examine how additional processes might address these issues.⁴⁸

The success or otherwise of a public inquiry must be assessed in the context of an accurate understanding of: what a public inquiry is and what it is not, the specific task the inquiry has been set, and what it does and does not have the power to deliver. Inquiries are unique, ad hoc bodies with a key role to play. This research demonstrates that it is vital that the Government, ministers, inquiries personnel, participants' legal representatives, the media, academics, and others better articulate the role and function of a public inquiry, what it can and cannot deliver, and its distinct role alongside other accountability mechanisms. There is a pressing need for better management of the expectations of both the public and participants, throughout the inquiry, from the time an inquiry is announced until it publishes its report.

Notes

1. For example, the recent consultation exercises undertaken by the *UK COVID-19 Inquiry*. Available from: <https://covid19.public-inquiry.uk/wp-content/uploads/2022/03/Terms-of-Reference-Consultation-Document.pdf> [Accessed 23 November 2022] and the *Scottish COVID-19 Inquiry*. Available from: <https://covid19.public-inquiry.uk/wp-content/uploads/2022/03/Terms-of-Reference-Consultation-Document.pdf> [Accessed 31 March 2023].
2. particularly in the fields of criminology and political sciences.
3. The UK model is reflected elsewhere, including the Republic of Ireland, Australia, New Zealand and Canada, see Beer et al, *Public Inquiries* (OUP 2011) ch 12.
4. Following the *Public Inquiry into the shootings at Dunblane Primary School*.
5. Following the *Public Inquiry into the Piper Alpha Disaster*.

6. Following the *Bichard Inquiry* into child protection following the Soham murders.
7. Following the *Southall Rail Accident Inquiry Report*, the *Ladbroke Grove Rail Inquiries* and the *Joint Inquiry into Train Protection Systems*.
8. Inquiry into the export of defence equipment and dual use goods to Iraq between December 1984 and August 1990.
9. Finding that ‘institutional racism . . . exists both in the Metropolitan Police Service and in other Police Services and other institutions countrywide’.
10. ‘An inquiry panel is not to rule on, and has no power to determine, any person’s civil or criminal liability’.
11. Examples include issues such as the criminal justice system, legal services, and care of the elderly, and the most recent, convened in 2000, on reform of the House of Lords (Barlow 2013). Royal commissions continue to be used for investigatory or inquiry purposes elsewhere, for example in Australia and New Zealand, but with additional, statutory powers similar to those under the UK Inquiries Act 2005.
12. Note, in this context ‘tribunals’ refers to ad hoc independent inquiries rather than the current tribunals system under the Tribunals, Courts and Enforcement Act 2007, which form part of the legal system.
13. The scandal centred around three Liberal ministers: Rufus Isaacs, Alexander Murray and David Lloyd George, who allegedly profited from an impending government tender for a contract between the Post Office and the British Marconi wireless company.
14. The Liberals.
15. The Bill was introduced on 4 March and the (Tribunals of Inquiry Evidence Act 1921) came into force on 24 March 1921.
16. Particularly principles 3 to 6.
17. (House of Lords Select Committee on the Inquiries Act 2005) (2014), para 31 identifies arguably two statutory provisions, relating to Health and Safety at Work and Financial Services, that might continue to apply independently of the (Inquiries Act 2005).
18. Including compelling witnesses to attend to give oral evidence, produce documents and provide a written statement (Inquiries Act 2005), s 21.
19. One justification for establishing non-statutory inquiries is that matters of national security may need to be examined in private and, unlike statutory inquiries, there is no presumption that a non-statutory inquiry will be held in public.
20. In practice, the minister of the department most relevant to the matter of public concern.
21. Assessors are experts in their particular field who may be called upon to provide advice and assistance to the chair.
22. See the discussion at (House of Lords Select Committee on the Inquiries Act 2005) (2014) para 6.
23. They may, for example, have campaigned for an inquiry to be convened, be a survivor of the events under investigation, a bereaved family member, or a NGO. They may they have played a significant role in the events in question and be likely to face severe criticism during the inquiry’s proceedings or in its report. They may have a significant interest in the outcome of an inquiry and perhaps in trying to persuade the inquiry to reach a particular outcome.
24. See also, for example, Liberty (2013) para. 18.
25. See also the research on the exclusion of the Grenfell community’s knowledge on the causes that led to the fire during the *Grenfell Tower Inquiry* (Ohana 2021).
26. An independent panel inquiry, and a narrower and more limited process than a full public inquiry. However, the lessons learned report following the completion of the independent panel (Jones 2017) also supports calls for the introduction of a statutory duty of candour in full statutory and non-statutory public inquiries.
27. The independent panel inquiry into overcrowding at a football stadium that led to fatalities and injuries at an FA cup match in 1989 and inquiry to investigate the circumstances surrounding the supply of contaminated NHS blood and blood products to patients respectively.

28. For example, during the *Infected Blood Inquiry*, the *Independent Inquiry into Child Sexual Abuse*, the *Grenfell Tower Inquiry* and the *Undercover Policing Inquiry*.
29. See, for example, calls for a broad inquiry on the Grenfell Tower Fire (Anon 2017b).
30. To identify lessons that could be learned from the Iraq conflict from the summer of 2001 to the end of July 2009, embracing the run-up to the conflict in Iraq, the military action and its aftermath.
31. An inquiry into undercover police operations conducted by English and Welsh police forces in England and Wales.
32. See, for example, Evans (2018).
33. For example, UCPI Ruling 21 (Mitling 2022).
34. Subject only to the right of a person affected by a decision of the chair to challenge that decision in the courts *R v Lord Saville of Newdigate, ex p A* [2000]. See also oral evidence of Sir Brian Leveson to the (House of Lords Select Committee on the Inquiries Act 2005, Leveson 2013).
35. Subject to monitoring and oversight of progressions and a duty to avoid any unnecessary costs, see National Audit Office (2018) para. 3.11.
36. Subject to a small number of provisions of the 2005 Act for statutory inquiries: 2005 Act, ss 17, 18 and 21.
37. See, for example, Committee on the Administration of Justice (2013).
38. See for example Hughes (2017).and Anon (2017a).
39. For example, letter from Jeremy Corbyn, as Leader of the Opposition, to Corbyn (2022) and letter from Sir Michael Mansfield QC to Theresa May and Sir Martin Moore-Bick (2017).
40. Drawing on the advice of assessors (see below) and expert witnesses, rather than panel members.
41. Experts in their particular field who may be called upon to provide advice and assistance to the chair. However, it is the chair or panel alone who determine what goes into an inquiry report.
42. See Agerholm (2017).
43. The public sector equality duty to have due regard to the relevant matters in Section 149 of the (Equality Act 2010).
44. (Being out of time to challenge the original decision).
45. A public inquiry must comply with the common law duty to act with fairness (and, for statutory inquiries, the statutory duty of fairness under the Inquiries Act, (2005), s 17(3).
46. Reflected in the observations in Ohana (2021).
47. See JUSTICE (2020) and Mitchell *et al.* (2020).
48. Additional processes such as listening or truth projects, held in parallel to a public inquiry and designed to give victims, survivors and family members the opportunity for their voice to be heard in a less formal setting than a public inquiry, or truth and reconciliation processes.

Acknowledgments

I am very grateful to Robert Lee and Jonathan Doak for much valuable insight into the development of this article and to Nicholas Griffin KC for very helpful comments on the draft.

Disclosure statement

No potential conflict of interest was reported by the author(s).

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References

- Agerholm, H., 2017. Grenfell tower inquiry chairman refuses to let residents who survived fire help assess evidence. *Independent* [online], 14 September. Available from: <https://www.independent.co.uk/news/uk/home-news/grenfell-tower-inquiry-chairman-fire-survivors-victims-help-sir-martin-moore-bick-a7946286.html> [Accessed 31 March 2023].
- Anon, 2017a. Grenfell fire: MP calls for inquiry chairman to quit. *BBC News* [online], 4 July. Available from: <https://www.bbc.co.uk/news/uk-40491449> [Accessed 31 March 2023].
- Anon, 2017b. Grenfell tower fire campaigners call for broad inquiry. *BBC News* [online], 4 August. Available from: www.bbc.co.uk/news/uk-40828638 [Accessed 17 October 2022]. *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1948) 1 KB 223.
- Barlow, P., 2013. The lost world of royal commissions. *Institute for Government* [online], 19 June. Available from: www.instituteforgovernment.org.uk/blog/lost-world-royal-commissions [Accessed 23 October 2022].
- Beatson, J., 2005. Should judges chair public inquiries? 121 LQR 221 based on his 2004 Lionel Cohen lecture.
- Beer, J., Dingemans, J., and Lissack, R., 2011. *Public inquiries*. Oxford: Oxford University Press.
- Blom-Cooper, L., 2017. *Public inquiries: wrong route on bloody Sunday*. Oxford: Oxford Hart Bloomsbury.
- Committee on the Administration of Justice, 2013. Written evidence to the house of lords select committee on the inquiries act 2005. The inquiries act 2005: post-legislative scrutiny (2014), 'written and corrected oral evidence'. Available at www.parliament.uk/documents/lords-committees/Inquiries-Act-2005/IA_Written_Oral_evidencevol.pdf [Accessed 1 November 2022].
- Corbyn, J., As leader of the opposition, 2017. Letter to Theresa May, 17 July. Available at: <https://labour.org.uk/press/jeremy-corbyn-asks-prime-minister-to-broaden/> [Accessed 24 October 2022].
- Equality Act, 2010 (c. 15).
- Evans, R., 2018. Campaigners stage walkout of 'secretive' police spying inquiry. *The Guardian* [online], 21 March. Available from: <https://www.theguardian.com/uk-news/2018/mar/21/campaigners-stage-walkout-of-secretive-police-spying-inquiry> [Accessed 20 October 2022].
- Francis, R., 2013. Written evidence to the house of lords select committee on the inquiries act 2005. The inquiries act 2005: post-legislative scrutiny (2014), 'Written and corrected oral evidence'. Available at www.parliament.uk/documents/lords-committees/Inquiries-Act-2005/IA.Written_Oral_evidencevol.pdf [Accessed 1 November 2022].
- Gill, B., 2013. Oral evidence to the house of lords select committee on the inquiries act 2005. The inquiries act 2005: post-legislative scrutiny (2014), 'Written and corrected oral evidence'. Available at www.parliament.uk/documents/lords-committees/Inquiries-Act-2005/IA.Written_Oral_evidencevol.pdf [Accessed 1 November 2022].
- Hansard HC Deb., 15 June 2009. 511, cols 23–38.
- House of Commons, 2011. Select committees. *House of commons information office* [online], undated. Available from: www.parliament.uk/documents/commons-information-office/brief-guides/select-committees.pdf [Accessed 17 October 2022].
- House of Lords Select Committee on the Inquiries Act, 2005. The inquiries act 2005: post-legislative scrutiny (*HL 2013–2014 143*). London: The Stationery Office Limited.
- Hughes, L., 2017. Grenfell row as labour MP suggests 'white, upper-middle class man' should not have been hired to lead inquiry. *The Telegraph* [online], 2 July. Available from: <https://www.telegraph.co.uk/news/2017/07/02/labour-mp-suggests-white-upper-middle-class-grenfell-judge-has/> [Accessed 24 October 2022].
- Inquiries Act, 2005 (c. 12).
- Inquiry Rules, 2006 SI 2006/1838
- Ireton, E., 2018. How public is a public inquiry? *Public law*, (April), 277–298.
- Jones, J., 2017. The patronising disposition of unaccountable power. A report to ensure the pain and suffering of the Hillsborough families is not repeated. In: *House of Commons*. London: HMSO (HC 511).

- JUSTICE, 2020. When things go wrong the response of the justice system. *JUSTICE* [online] 24 August. Available from: <https://justice.org.uk/our-work/system-wide-reform/when-things-go-wrong/> [Accessed 5 October 2022].
- Kennedy, I., 2002. Public inquiries: experiences from the bristol public inquiry lecture. In: L. Woolf, eds., et al. 2007. *Law, medicine and ethics: essays in honour of lord jakobovits*. London: Cancerkin, 30–36.
- Leveson, B., 2013. Oral evidence to the house of lords select committee on the inquiries act 2005. The inquiries act 2005: post-legislative scrutiny (2014), ‘written and corrected oral evidence’. Available at www.parliament.uk/documents/lords-committees/Inquiries-Act-2005/IA_Written.Oral_evidence_vol.pdf [Accessed 1 November 2022].
- Liberty, 2013. Written evidence to the house of lords select committee on the inquiries act 2005. The inquiries act 2005: post-legislative scrutiny (2014), ‘written and corrected oral evidence’. Available at www.parliament.uk/documents/lords-committees/Inquiries-Act-2005/IA_Written_Oral.evidence_vol.pdf [Accessed 1 November 2022].
- Maclean, M., 2001. How does an inquiry inquire? A brief note on the working methods of the bristol royal infirmary inquiry. *Journal of law and society*, 28 (4), 590–601. doi:10.1111/1467-6478.00204.
- Mahon, D., O’Rourke, M., and Scraton, P., 2021. *Mother and baby institutions, magdalene laundries and workhouses in northern ireland. truth, acknowledgement and accountability*. Belfast: Truth Recovery Design Panel, NI Executive.
- Mansfield, M., 2017. Letter to Theresa May and Sir Martin Moore-Bick (26th July) reproduced in *R (Daniels) V Rt Hon May, the Prime Minister V Sir Martin Moore-Bick* [2018] EWHC 1090 (Admin) [2018] 5 WLUK 97.
- Mitchell, I., et al., 2020. *The practical guide to public inquiries*. Bloomsbury Publishing. 10.5040/9781509928316.
- Mitting, J., 2022. Undercover policing inquiry ruling 21. Available from: https://www.ucpi.org.uk/wp-content/uploads/2022/09/20220927-sds_anonymity-ruling_21.pdf [Accessed 2 November 2022].
- National Audit Office, 2018. Investigation into government-funded inquiries. *Cabinet Office. Session 2017-201*. London: HMSO (HC 836).
- Norris, E. and Shephard, M., 2017. How public inquiries can lead to change. *Institute for Government* [online] Available from: www.instituteforgovernment.org.uk/publications/how-public-inquiries-can-lead-change [Accessed 20 October 2022].
- Ohana, N., 2021. The politics of the production of knowledge on trauma: the grenfell tower inquiry. *Journal of law and society*, 48 (4), 497–523. doi:10.1111/jols.12326.
- Public Administration Select Committee, 2005. *Government by inquiry, first report of session 2004–05*. London: The Stationery Office. (HC 51-I).
- Public Administration Select Committee, 2009. *The Iraq inquiry. session 2008-2009*. London: The Stationery Office. (HC 721).
- R (Daniels) v Rt Hon May, the Prime Minister v Sir Martin Moore-Bick* [2018] EWHC 1090 (Admin) [2018] 5 WLUK 97.
- R (Da Silva) v Secretary of State for the Home Department* [2018] EWHC 3001 (Admin) [2018] 11 WLUK 82.
- R v Lord Saville of Newdigate, ex p A* [2000] 1 WLR 1855 (‘Saville 1’).
- R (Khatun) v Newham LBC* [2005] QB 37 [35]. 2005.
- Riddell, P., 2016. The role of public inquiries. *Institute for Government* [online blog], 26 July. Available at: www.instituteforgovernment.org.uk/blog/role-public-inquiries [Accessed 20 October 2022].
- Royal Commission on Tribunals of Inquiry, Royal commission on tribunals of inquiry, 1966: report of the commission under the chairmanship of the Rt Hon Lord Justice Salmon (Cmnd 3121, 1966).
- Scraton, P. and McNaul, G., 2021. *Death investigation, coroners’ inquests and the rights of the bereaved*. Dublin: Irish Council for Civil Liberties.

- Stark, A., 2018. *Public inquiries, policy learning, and the threat of future crises*. Oxford: Oxford University Press.
- Steele, I., 2006. *Judging judicial inquiries*. PL, (Win), 738–749.
- Sulitzeanu-Kenan, R., 2007. Scything the grass: agenda-setting consequences of appointing public inquiries in the UK. A longitudinal analysis. *Policy & politics*, 35 (4), 629–650. doi:[10.1332/030557307782452985](https://doi.org/10.1332/030557307782452985).
- Thomas of Cwmgiedd, Lord, 2015. The Future of Public Inquiries. Public Law, (April) p.225–240.
- Tribunals of Inquiry (Evidence) Act, 1921 (c. 7).