Written evidence from Dr Emma Ireton (STI0012)

Introduction

1. This is a response to the call for written evidence, made to supplement oral evidence given on 26 February 2024.

2. I am an Associate Professor of Law at Nottingham Law School, Nottingham Trent University, having previously worked on public inquiries as a commercial solicitor. My research specialism is public inquiry law and procedure. My publications include a co-authored a book on public inquiry practice and procedure.

3. I have not sought to answer each of the questions in the call for evidence, but those that I have not previously addressed in the oral evidence.

Question 1. Does the 2005 Act provide the right framework for ensuring that inquiries are:

a) Effective
b) Efficient
c) Appropriately overseen, and
d) Followed-up?

4. The precise role of a public inquiry differs between inquiries, depending on its subject matter and terms of reference. There is rarely consensus over the effectiveness of any public inquiry as there is rarely consensus over what its primary role should be. For many survivors and the bereaved, the primary role might be obtaining long sought after answers to specific questions, having their voice heard, and preventing recurrence. This may require a long and detailed inquiry, and oral hearings and the involvement of survivors and the bereaved will play a very central role. For others, the primary role of the same inquiry might be to publish recommendations to inform future policy decisions in as cost-effective and timely a manner as possible. That might be better achieved by a much more streamlined inquiry process. For the general public, whose priority for that inquiry may be to find out publicly what went wrong and why, it might be different again.

5. An effective inquiry is one that adopts appropriate procedures and conduct to: fulfil its terms of reference, balance the interests of all those involved, and maintain fairness, whilst remaining entirely independent. In general terms, the 2005 Act, and in particular s 17, provides a suitable and sufficiently flexible framework for this. However, the Inquiry Rules, particularly rules 13-15, are overly prescriptive and there are also issues with the Act relating to the independence of public inquiries from the minister (see below).

2. How could the following be improved? a) The Inquiries Act 2005. b) The Inquiry Rules 2006 and the Inquiries (Scotland) Rules 2007. ☐

The 2005 Act –independence from the minister

6. For there to be confidence in the findings and recommendations of a public inquiry, there must be confidence in the independence of a public inquiry. Some of the powers granted to the minister under the 2005 Act have the potential to permit ministerial interference with an individual inquiry and thereby undermine trust and confidence in the public inquiry process. These include the power to:
   - appoint a member to the inquiry panel without the consent of the chair s 4(3);
   - appoint an assessor without the consent of the chair s 11(3);
   - set or amend the inquiry's terms of reference without the consent of the chair s 5(4)
   - issue a restriction notice, restricting public access to an inquiry s 19(2);
   - withhold material from publication in the inquiry report s 25(4);
   - terminate the appointment of a panel member without the chair's consent s 12(3) and (6);
   - terminate the appointment of the chair without notifying Parliament of the intention to do so s 12(3).

7. This is particularly significant where the actions of the minister's own department or the Government may be the subject matter of the inquiry. The recommendations made in the 2014 House of Lords report in this respect, to reduce the powers of the minister, are all still very relevant and important.

Warning letters

8. Rules 13-15 make it mandatory for the chair to send a warning letter before including any explicit or significant criticism of a person in a report. It is widely accepted that a person should be made aware of any proposed criticism in advance of it being published by an inquiry and be given the opportunity to respond. However, that may be achieved in a number of different ways, at different stages of the inquiry process. For example, adverse evidence may be put to a witness when requesting the provision of written evidence or documents, when taking a witness statement, when they give oral evidence, or once the draft report has been prepared. Practice differs significantly between inquiries as to how it is best achieved. Sometimes warning letters sent before publication of the report are necessary, sometimes they merely duplicate work that has already been completed. There is much evidence to show that the mandatory requirement for warning letters has needlessly added months and significant cost to many public inquiries.

9. Rules 13-15 should be revoked and replaced with discretionary provisions. The 2016 review of Maxwellisation for the Treasury Committee carried out an extensive review of the warning letter process and made detailed recommendations in this respect.

6. Does the Act ensure that official core participants and wider stakeholders are sufficiently and appropriately involved in the proceedings?

How can their experience be improved?

Before an inquiry is convened:

10. Core participants and wider stakeholders may play a very key role even before an inquiry is convened. Public inquiries are often convened as a result of sustained campaigns by individuals and groups who subsequently become core participants. Those individuals and groups often also challenge other decisions made by the minister at this early stage, including whether the inquiry will be statutory or non-statutory and the breadth of the terms of reference. Such campaigns and challenges have fallen predominantly to victims, survivors, family members and campaign groups, placing an unreasonable burden on them. Further, the effectiveness of such challenges is affected by factors such as the time, resources, and ability they have to pursue such challenges and the extent to which a campaign happens to capture media and public attention and build momentum. This results in a lack of consistency in decision making between inquiries.

11. The Inquiries Act 2005/Inquiry Rules 2006 need to reflect the importance of effective, early consultation and engagement with potential core participants and wider stakeholders on the nature and form of a public inquiry.

During an inquiry:

12. The Act and Rules alone cannot ensure that core participants and wider stakeholders are sufficiently and appropriately involved in the proceedings. Under s 17 of the Act, the procedure and conduct of an inquiry are determined by the chair. The tone and approach of an inquiry is set predominantly by the chair. It is essential that lessons on best practice are learnt from past inquiries and are used to inform the decision making of subsequent inquiries.

13. There are many examples of good practice that have been adopted by inquiries to support core participants and to ensure core participants and

wider stakeholders are sufficiently and appropriately involved in the proceedings, including:

- Effective consultation;
- The use of local engagement and information events;
- Effective location, design, and configuration of inquiry premises;
- Recognition of the importance of establishing a good working relationship with core participants and wider stakeholders from the outset and of building trust and confidence in the process;
- Strong and direct lines of communication and regular updates;
- Pre-hearing familiarisations visits, videos, and seminars;
- Provision of counselling support for participants;
- Trauma informed practices and related staff training;
- Adaptations and special measures for participants with additional needs;
- Effective use of the chair's discretion under rule 10 to utilise the experience and expertise of core participants, to further the work of the inquiry.

14. However, despite the existence of examples of good practice, issues arise because of a lack of consistency, across inquiries, in adopting such measure. On occasions, good practice is being missed and examples of weaker practice are being repeated. The establishment of a central inquiries unit to act as a repository of examples of best practice would help to address this.

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