



Statutory Inquiries Committee

Corrected oral evidence: Statutory inquiries

Monday 19 February 2024

4.10 pm

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Members present: Lord Norton of Louth (The Chair); Lord Aberdare; Lord Addington; Baroness Berridge; Lord Davidson of Glen Cova; Baroness D'Souza; Lord Faulks; Lord Hendy; Baroness Sanderson of Welton; Lord Wallace of Tankerness.

Evidence Session No. 2

Heard in Public

Questions 14 - 26

Witnesses

I: John O'Brien, former secretary to the Independent Inquiry into Child Sexual Abuse (IICSA); Mark Fisher; former secretary to the Grenfell Tower Inquiry; Brian Stanton, former secretary to the Infected Blood Inquiry and Shipman Inquiry.

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on <https://parliamentlive.tv>.

Examination of witnesses

John O'Brien, Mark Fisher and Brian Stanton.

Q14 The Chair: Welcome to the second public evidence-taking session of this committee, looking at the work of the Inquiries Act and at how efficient and effective it is. This afternoon we have three witnesses, two in person and one joining us online. Thank you all very much for being with us. Before we get under way, I invite you each to introduce yourself for the record.

John O'Brien: I was secretary to the independent inquiry into child sexual abuse for its entirety.

Brian Stanton: I am a director of a law firm, Innova Law, which specialises in inquiry work. I was formerly the solicitor to the infected blood inquiry.

Mark Fisher: I am currently chief executive of NHS Greater Manchester, but for five years from June 2017 I was secretary to the Grenfell Tower public inquiry.

Q15 The Chair: I will begin with the first question to the witnesses. Which provisions in the 2005 Act are the most or least helpful in ensuring that a statutory inquiry is effective and efficient?

John O'Brien: I watched the evidence session last week. I agree with all the points that legal colleagues raised last week. From my perspective as a secretary, Sections 17 and 18, which are about open public access, and Section 18, where access might be granted, are very helpful. The reason I say that is that IICSA had a rocky start. There was a real perception issue among survivors and witnesses about how independent it really was from government. Having provisions where you could explain to people, "It is written down. It will be open. This is where exceptions will apply, and we'll take you through the sorts of things where exceptions might apply and we'll give you the reasons", really helped in the first weeks, when a big degree of trust was needed. They helped to build trust with the people whose evidence was essential to making sure we got to the end of the process. From my perspective, those are helpful provisions. Seeing the written word gives people confidence.

The Chair: Were there any unhelpful provisions of the Act?

John O'Brien: I will not say unhelpful. Perhaps Section 11 is not awfully well used, but I would not say that it is unhelpful; it is perhaps just not something that is used. The chair of the Manchester Arena inquiry talked about assessors last week. I tend to agree that, if you need experts, you tend to call them as expert witnesses rather than as assessors because it is less confusing for others taking part.

Brian Stanton: I agree that Sections 17 and 18 are very significant. Sections 17(1) and 17(3) are very well drafted and helpful but are not used to anywhere near their full potential. Properly followed, they ought

to allow an inquiry to develop innovative processes and procedures while having regard for the need to maintain restraint of the finances. That would, and should, help in delivering quicker and more cost-effective inquiries. As I said, I do not think that they are utilised to their fullest potential.

Section 18 is another very significant section. It is often relied on in connection with a justification for oral hearings. In that regard there would be some benefit from considering whether it should be updated to reflect more modern ways of communicating, broadcasting and making information public.

An unhelpful statutory provision in the rules would be Rule 10 in respect of the right that it gives core participants to make application to propose questions. That can have some unhelpful consequences in delay and expense. In my opinion, those questions would be better left to the overall discretion of the chair, although still should be allowed in certain circumstances. Enshrining it within the rules—I can explain this in more detail, but perhaps not at this moment—leads to quite significant onward costs.

Mark Fisher: I very much agree with what my colleagues have already said. There are only two points I want to emphasise. First, our inquiry went online through Covid, which was a lot less cumbersome than we thought it would be. Indeed, the rules never got in the way of our ability to run an inquiry online, which was surprising to people but was the fact.

The other point is about allowing questions from core participants. It was fine as far as the inquiry I was involved in was concerned, but it was very much at the discretion of the chair and the inquiry team. You need a process for working that through. Again, the Act itself did not get in the way of what evolved into sensible practice.

Q16 **Lord Aberdare:** This is a similar question, but it relates to the House of Lords 2014 report on the Act. Which of the conclusions and recommendations of that report are still relevant and important? Are there others that you disagree with or believe should be changed or updated?

John O'Brien: I think recommendations 13, 14, 15 and 16 are all on the same theme of an inquiry unit doing various things within the Cabinet Office, which I will probably talk about in more detail later. Having done eight years in an inquiry, I remain convinced that we need possibly a Cabinet Office unit, or something slightly more independent, to get to grips with questions around start-up.

Without jumping forward, there is a question about how similar inquiries really are once they get going, and at start-up there is a lot that the Cabinet Office or something more independent could do to help you get off the ground. There are simple things like making sure there is a common IT system and a building ready for you to use. Certainly, in the inquiry that I was in, that took six or seven months to wade through and,

of course, you cannot start taking evidence until you have done that. All those things are incredibly helpful and valid. This is not a criticism but, although some efforts have been made, they are patchy and we still do not really have a system where there is a central place to which you can go to get that sort of start-up help.

On the less useful, I think recommendation 7 is a presumption that an inquiry should be chaired by a single person unless there are compelling reasons otherwise. Having been secretary to an inquiry where we had a panel of four members—a proper panel, not assessors—that was very helpful. I am not sure that, right at the start, when those decisions are usually made, we would have known it was going to be helpful. It was not until you got into conversations with legal teams, potential witnesses and survivors that you realise the scale of the challenge facing you and how helpful it would be for the chair to have panel members there.

There needs to be something to say that there should be a balance. The wording makes the presumption that you do it only in exceptional circumstances; I would balance that with leaving more discretion to the chair and the team at the beginning.

Brian Stanton: I have comments about a handful of the recommendations. The first relates to the first recommendation, which, although it was rejected, was to hold inquiries under the Act unless there was good reason not to. In that regard I would like to commend to you the work of non-statutory inquiries, reviews and investigations. I think they come up with quite innovative solutions. They deliver results within much shorter timescales and at very reduced cost. Their recommendations are often excellent, to the extent that, if a review were undertaken, you might not find very much difference at all between the recommendations of a non-statutory inquiry and a statutory one.

I completely take the point about the need to compel witnesses and to compel the provision of information, in certain circumstances. On non-statutory inquiries, I worked reasonably recently on the East Kent maternity services investigation, the subject matter of which could easily have been a statutory inquiry. That inquiry was managed very well without statutory powers: it had excellent engagement with the families who had been impacted by the events in question and I do not think suffered at all from any of the drawbacks around compelling information. It delivered its work at very much lower cost and almost certainly much quicker than it would otherwise have done.

I commend the work of non-statutory inquiries. An effective exercise might be to compare some of the work of non-statutory inquiries with statutory inquiries to see where lessons can be learned. I think there are opportunities there.

I agree on recommendation 7 that there are benefits to panels consisting of more than one member. There should be subject matter expertise, as opposed to process expertise. In most cases a member of the judiciary would be appointed as chair—not always but in most cases—and they are

certainly expert in gathering and considering evidence and producing reports. It is of great benefit, allied to that, to have subject matter expertise, particularly given the complexity of some of the issues that inquiries are tasked with determining. It would also build in diversity. I would be in favour of a panel of more than one member.

Recommendation 18 refers to the need for scoping exercises to be carried out addressing issues of timescale and cost. I completely support that recommendation; it is a very important area. We have been helpfully provided with advance notice of some of the questions that might be asked, and I think that is an area that we might touch on later.

Lord Aberdare: Presumably, an inquiries unit could help to provide advice on whether a statutory or non-statutory inquiry made sense in a particular situation.

Brian Stanton: Yes, it absolutely could.

Mark Fisher: I have a few thoughts, if I may. I have thought long and hard about the question of a Cabinet Office unit. Reflecting on my experience, similar to John's, of setting up an inquiry in the first place, virtually from scratch, I feel that some help of the type that John identified would have been extremely helpful from some form of central unit. I actually feel that it should be independent of the Cabinet Office. The Cabinet Office has a number of independent offices, and this could easily be one of them. That would have helped a lot.

As it happened, once we were up and running, we found premises. In fact, our premises have been taken over by the Covid inquiry, which shows that we can share things. From the beginning, a bit of help of the sort John set out would be extremely helpful, recognising the fundamental point that every inquiry is different and timetables do not necessarily fit one with another. You cannot be too tidy-minded about this because it does not quite work like that.

I have a couple of other thoughts on recommendations. I do not see any prospect of asking a serving judge to police the implementation of his or her inquiry. I think that should be the job of a Select Committee or some such body. It is important that the Government is held to account, to a degree, for the implementation of recommendations, but then that puts an onus on the inquiry team to produce recommendations that are capable of implementation and not to produce a whole set of hundreds and hundreds of recommendations that are not capable of clean and simple implementation.

In a similar vein, there is a recommendation about terms of reference. What worked for the Grenfell inquiry was allowing the chair to consult on the terms of reference, recognising that ultimately they were for the Prime Minister. That gives a sense of ownership to the inquiry team of the terms of reference. I think that was helpful.

Finally, on the question of panel members, we started off with one for phase 1 and ended up with three for phase 2. Being clear that the panel was the right answer from the beginning might have helped. You probably ought to have panel members rather than assessors, plus expert witnesses. I definitely think you should have an odd number of panel members in case there is a need to produce some form of agreement between the three or five of them—probably three. I think that works better than an even number. As colleagues said, having more than one gives a breadth of expertise and aids diversity and a whole range of other issues. I am a huge supporter of a judge-led inquiry because I think that gives a huge amount of weight, but they need other people to help them too.

Q17 Lord Addington: Since the publication of the 2014 Lords report, how has the use and operation of the 2005 Act changed?

John O'Brien: I have done only one, and it started in 2015. I spoke to several chairs who had come out of inquiries in the preceding five years and, in my view, there has not been any significant change in the way the Act has operated since 2014, if I am honest.

Brian Stanton: Coming back to some of the points I made about Section 18, the volumes of information that inquiries now have to process are simply colossal, particularly the proliferation of evidence as a result of electronic communications. Most recently we have seen, quite prominently, information communicated by social media, messaging apps and things like that.

The volume of information is now so large that no chair or panel could possibly read it all themselves. That poses a real challenge. For example, Section 18(1)(b) requires that an inquiry chair takes steps to make the evidence that it gathers publicly available. That is simply not practical and inquiries do not do it. The amount of information is too great. That has been quite a big change. Of course, it has contributed to cost and to the length of time that inquiries take.

Terms of reference have tended to be framed more widely. It has been helpful that terms of reference are now almost routinely subjected to consultation exercises before they are set in stone. I worked on the Al-Sweady inquiry, which started in 2010. That inquiry was given its terms of reference but, when we came to the infected blood inquiry in 2018, things had changed significantly. I think that was a result of the Grenfell inquiry's experience; a very big consultation was carried out there with impacted families and individuals.

Your recommendations 10 and 11 were around the process and procedure for approving terms of reference. That has largely taken care of itself through more recent practice in this regard, through the consultation process. Core participant engagement has increased. Core participants are very robust, rightly, about the way in which they exercise their rights and seek to engage proactively with an inquiry. That also

needs very careful management and comes with cost and time consequences.

Accessibility to evidence has slightly changed. Evidence that might previously have been broadcast, but might not remain in the public domain, now very much remains in the public domain through being broadcast on YouTube and things like that. That has an impact on witnesses who give evidence. It is a real concern for them. My firm has represented witnesses who have felt that concern very keenly and were very worried and anxious about the experience. Those are some of the ways in which things have changed.

Lord Addington: An emphasis on the general amount of more broadcast information and more channels is something that we should bear in mind.

Brian Stanton: Hearings are the main way in which inquiries seek to discharge their obligation under Section 18(1)(a), but there could be other ways of doing that and other ways of broadcasting information, perhaps broadcasting interviews rather than evidence sessions. There are possibly ways of using more modern means of communication to satisfy the need to be transparent and to put information into the public domain.

Mark Fisher: I am not sure that the use and practice of the Act itself has changed, but inquiries have definitely evolved, particularly in relation to the treatment of core participants—victims, survivors and families, in particular. That features in a whole range of detailed ways. Simple things like the layout of the inquiry room have evolved to put the families front and centre of an inquiry.

The efforts that inquiry teams make to consult and engage with families and victims, not just over matters such as terms of reference but over general handling, have become normal practice, which I think is exactly right. They spend time hearing the stories of families and the bereaved at the beginning of an inquiry and maybe at various other stages through an inquiry. All those things are not prescribed by the Act but are very welcome developments in the practice of public inquiries, building the confidence of victims and families in the way they work. Certainly, in our inquiry, all those things helped very significantly.

Lord Addington: To be clear, much of what you have said is about the way that modern media has expanded, which is having a great effect on this and we should bear that in mind.

Brian Stanton: I definitely think it is having an effect. I also think that those alternative methods of communication could be used by inquiries to satisfy the need to be transparent and to put information into the public domain. That could be done in conjunction with hearings but in ways that are less expensive and less time-consuming than hearings. Hearings are a very effective way to take evidence, but they are slow. You have seen the composition of an inquiry hearing room: they are populated by a very large number of lawyers, there is a lot of duplication of effort and consequently, they are very expensive. I definitely think that hearings

serve a very important purpose, but alongside them you could have alternative means of putting information into the public domain that places a lesser burden on the hearing aspect.

Mark Fisher: In one sense, the Grenfell inquiry has been fairly traditional in having a set of public hearings. They were rather fundamental in building trust with victims and families. As I said, we were able to have them online through Covid. That did not seem to get in the way of business and made the thing a lot cheaper to run. That might be one answer.

In a sense, that is separate from the other important point about the families and victims. We need to put in place a whole range of things to engage them and build their trust, over and above the legal progress of the public inquiry. John O'Brien may have a view on that too; I know that he went through exactly the same sorts of issues that we faced.

John O'Brien: If we are talking about how an inquiry operates differently since 2014, rather than how it applies the Act, I agree with all of that. We certainly, like Mark, did a significant proportion of our hearings online. That worked very well and it cut down cost. I sound a note of caution, though: many of the survivors liked their day in court. They had been waiting 20, 30 or 40 years to hear, or to look in the eye, the person who was speaking for the institution from which they had suffered. I think that is an important thing to bear in mind in inquiries.

On modern ways of communicating, we certainly had Twitter accounts and all sorts of things to communicate with people. They are very important. Without being pedantic, I would say that that is part of the process rather than a different way of applying the Act. You just have to keep up with the modern world in how you do these things.

In engaging victims and survivors, there was a common message sent to me in the first six months of the inquiry, when we were engaging with those who were victims. It is probably worth qualifying that our inquiry was, in some ways, quite different because many of the victims had been traumatised—if I can use that word—for 50, 60 or 70 years, so they had been carrying this with them for quite some time, because of the nature of what we were investigating. What they used to say to me was, "Of course, we want to help you, John, and the others to get recommendations that will help to prevent this in the future, but we would also like the inquiry to do something that recognises us as survivors rather than us as witnesses". It is very important to keep that in mind.

While I think that modern methods like online have their use, we need to be careful that we do not lose some of the other important aspects that inquiries serve, other than just taking evidence. I know that other people touched on the Truth Project last week. We had over 6,200 people come through the Truth Project and nearly every one of them was a survivor who did not want, for various reasons, to engage with the formal process. Some of them had not told their families and employers that they had

suffered abuse. It gave a good way for those people to come along and talk to us more informally, where they would not have been able to engage if the only route had been through formal evidence. A surprising number of them wrote afterwards to say, "I was really surprised that the session that I came to"—some came to more than one—"has helped me to move on in a certain respect with something that has bothered me for some considerable time".

I urge Mark's point that in all this we should not forget that the purpose of an inquiry is not just to take formal evidence. There are other points of an inquiry that we need to take into account. When we balance all of that we need to be careful not to lose sight of that fact.

Q18 Lord Wallace of Tankerness: Much has understandably been said about the importance of building trust and confidence. We got the sense last week that having a statutory inquiry rather than a non-statutory inquiry was part of that. People felt that they were getting the proper works. Mr Stanton, you emphasised the importance of non-statutory inquiries. Obviously, Mr O'Brien, the one you are involved in still gives reassurance to those affected by it. To what extent is that an important part of having a statutory inquiry? Does it give confidence to those who have been victims?

John O'Brien: It depends on the inquiry. IICSA started off as a non-statutory inquiry and fell over quite quickly because victims refused to engage with it. You need to think very carefully at the beginning about the subject matter you are looking at and whether you have engaged with a sufficient number of those who will be affected by the inquiry to form a proper view on whether a non-statutory inquiry would do the job. In some cases it will, but you need to be careful that that decision is not largely led by cost. You need to take the decision on the balance of whether it will do the job and whether it will gain the confidence of those who are engaged with it. If you do that engagement early, and people genuinely feel that way, it will give them confidence to agree that it should be non-statutory.

My experience is that that is not what generally happens. We generally announce a non-statutory inquiry and then have to go through the process of changing it when it does not have people's confidence. IICSA was not the only one. We need to be very careful that, before we make the decision, we have spoken to the right people and not just people like me who exist in Whitehall and then get sent across. We need to make sure that we have engaged with the broader public and those who will be affected.

Lord Addington: That would be the direct client base, in effect, although that is probably not the most eloquent expression. You would speak to the people whom the inquiry is about; they are an important part of it.

John O'Brien: Yes because, if you do not have their confidence, there is no point in making decisions.

Brian Stanton: I completely agree with everything that John said, but I do not think that there is any difference in approach between a statutory and non-statutory inquiry in this regard; it is all about effective engagement with the people who have been impacted and affected. The East Kent maternity services investigation was able to do that very effectively and win the trust of the people involved. There was not a subsequent call to convert to a statutory inquiry. There would probably be some lessons there about how it went about that process.

I do not think that there is very significant cost in that area either. It will cost money, but that is not where the significant cost of inquiries sits. There should be an emphasis on the importance of engaging with families and the people impacted, and finding ways of doing that directly with the families, which I think all successful engagement probably does. It is not to go through legal representatives, which is one route, but to speak to them directly and give them an option to engage directly with the inquiry themselves. That is all really important.

Mark Fisher: I do not have anything to add on this point, mainly because I have really only had experience of working on a statutory inquiry.

Q19 **Baroness D'Souza:** I want to touch on the issue of co-ordination, which all three of you have very helpfully commented on so far. Specifically, do the provisions of the Act and the rules adequately support the processes? I am particularly interested in going back to what you said, Mr O'Brien, about the setting-up of an inquiry needing more guidance and co-ordination than the ongoing logistical operation because, at that stage, they differ considerably.

John O'Brien: We took nearly a year to get going before we took evidence. That was because we ended up with 300 staff. We had to recruit those staff and get the IT system. We had to find the building and then kit it out. There were really simple things, such as that it took 12 weeks for BT to come and fit the wifi. All those things can be anticipated at the beginning so that you do not have delays. Of course, while all the delays are going on, you have a frustrated group of people sitting out there wondering what is happening. The support at the beginning is where we really need to focus. I do not think the Act is either deficient or oversufficient in that respect. The practical support that is offered at the beginning is important.

I have one perhaps controversial point. I have spoken to lots of secretaries about this. At the beginning, there is a tug of war, not in any antagonistic way, between people like me, who have to do all the logistics for setting up and buying IT systems and all those things, and lawyers, who want to get the chair to decide how they are going to take the evidence and when they are going to start sending out calls for evidence. The Act could be clearer. You essentially have three statutory officers—the counsel, the secretary and the solicitor—and perhaps we need to modernise that so that inquiries have a CEO. Then at the beginning, when you are making all the logistical decisions, it is much easier to get

through the process. The start of an inquiry is all about making sure that you do not get going too early and then fall over because you cannot access the evidence properly, or you do not have a way to identify who has already given you evidence. There are lots of pitfalls in getting the start-up wrong. I personally think that is where much more support could be given.

Once an inquiry is up and running, they all do things slightly differently. As you know, we decided that we would publish reports as we went along. There were very good reasons for that, but that would not work for other inquiries. We should not overemphasise how much commonality there is once you are going. There is commonality of framework, but all inquiries operate quite differently. For me, the first six months are crucial and are when we could get that support.

Baroness D'Souza: Do you suggest that that is best done by a CEO rather than an independent unit?

John O'Brien: There could be an independent unit to help with those issues. I see no reason, for example, why the Government cannot procure an IT system that is for use in inquiries and is big enough for inquiries to come in and out of it. It was very important to our survivors that their information was not stored on a government computer system, but that does not preclude you having that, and inquiries can just come in and out of it. Things like that could be done to help. What I was really talking about is making it clear, when you have three statutory officers, whose role it is to do that. Otherwise you have the legal bits happening here, the practical bits happening there and other bits happening over there. Making it clear would be helpful.

Lord Hendy: Would you have the chief executive officer permanently sitting through the inquiry, or just for the first six months to get the show on the road, and then letting the secretary do his work?

John O'Brien: To be very honest, I would cease to call them the secretary and I would have a CEO.

Mark Fisher: Could I build on John's point? I completely agree with him in two dimensions. I remember the first week or so of the Grenfell inquiry. We were all sitting in a room in the Royal Courts of Justice working off mobile phones and dongles to get our wifi. It was like the scene in "The West Wing" when all the phones were ringing. It was not conducive to the good and efficient conduct of public business, to be honest.

Secondly, John is, or was, a very senior Home Office official. I was a Cabinet Office director-general. Undergunning the role of secretary is, in my view, a great mistake. Whether you have a CEO, a director or a director-general is less important than having the weight in the inquiry team to ensure that the right decisions are made at the right point.

In the Grenfell inquiry, the inquiry solicitor¹ worked for me. I do not know what the practice was in the child sexual abuse inquiry. That actually worked extremely well because it tied the various parts of the inquiry together into a single team. You can do that through a CEO or through simply having a director or calling the role some such name. The title “secretary” is not helpful; it makes everyone think that you just do the administration, but that is not actually how it works. You have a very important role in the middle of the inquiry, tying the whole inquiry together and advising the chairman or the panel on a whole range of matters that are not to do with the administration of the inquiry at all.

I should not really say this as I left the Grenfell inquiry after five years and did not quite see it through to the end, but I think that a degree of continuity from the beginning is really important to the efficient working of a public inquiry.

Brian Stanton: There are now quite long lead-ins from the point at which a statutory inquiry is announced to its actual set-up date. They can easily be as long as six months while consultation takes place on the terms of reference and other things. Various appointments are made. It usually starts with the chair, but then there is the secretary, solicitor, counsel et cetera. That is a period within which a lot of the issues that you are referring to could, or should, take place. Processes and procedures should be drafted in that period. The logistics, as described by Mr O’Brien, need to be put in place, such as IT systems.

You have a ring-fenced period of time prior to actual set-up, which is not currently governed by the Act because there are no powers at that point. It is absolutely essential to the effective workings of an inquiry to set it up and tailor its processes and procedures in the best way possible, having regard to its subject matter, so I think there is a very large requirement at an early stage to have people with real expertise engaged in that and developing processes.

To give you an example from my own experience, I worked as deputy solicitor on the Al-Sweady inquiry in 2010. I was not equipped at that time to develop the processes and procedures of the inquiry. I had had quite a lot of experience by then of prosecution work and investigation work. I had worked for the Serious Fraud Office. I knew what I was doing in that field, but I was not sufficiently experienced and skilled to mould processes and procedures to get the best outcomes.

In 2018, when I was solicitor on the infected blood inquiry, I think I had those skills. I was better able to do it, and I think I would be better able to do it again on another inquiry. You need to bring to bear significant experience and expertise in the early months. I do not think the answer is in the Act.

Baroness D’Souza: That would probably add to shortening the whole

¹ Witness correction – originally said ‘inquiry *secretary*’, but amended to ‘inquiry *solicitor*’ on transcript.

procedure, but all that expertise at the beginning would add considerably to the cost, would it not?

Brian Stanton: Yes, it could. I could envisage a consultancy-type engagement whereby that expertise was made available for a matter of a few months, perhaps, and then the day-to-day running was handed off to others. You could have that sort of arrangement.

Baroness D'Souza: And would all that work if there were a CEO?

Brian Stanton: If the secretary were described as a CEO, that is probably a more modern practice and way of thinking. I certainly see no objection to that.

Lord Hendy: Do you need a central unit to provide those initial services?

Brian Stanton: It is possible. I am not sure how you would make that service available all the time. The obvious place to sit it would be in the Cabinet Office, but there are enough civil servants and lawyers who have gained experience within the last decade to call on for reasonably short periods to provide input. A lot of it is down to experience. Having gone through the process and become aware of how far you can push certain things, where there are cost savings and time savings to be made, is all down to experience. You definitely need to ally that experience with talent, but raw talent right at the outset is probably not enough.

Q20 **Lord Hendy:** How is the cost of an inquiry assessed at the outset, and who determines it, or is it just an open cheque-book?

John O'Brien: I can speak for IICSA. We spoke to the chair to find out her preference for how she wanted to take evidence. At that point, we discussed and agreed 12 strands initially, which expanded slightly because some were split in two. We had an overall idea of the process that would be followed. We knew at that point, because we had been talking to survivors in the way that I described, that we would need what became the Truth Project, so we put a budget together.

I have to say that in the first year we probably did not spend that budget, but that was more for logistical reasons and the amount of the year that we were actually effective. We more or less spent all subsequent budgets. At the beginning, you need to factor in all these things: to be really clear about how you will take evidence, whether you will issue one report, two or more, and to be clear about the level of engagement you will have beyond the statutory evidence-taking and about all the things we talked about, such as whether you will have Twitter channels and those sorts of things. In our case, because we were doing strand reports, we launched each of those as a report and we had press in the building. You need to factor all that in and it is all quite expensive.

I will say one other thing, to preclude a question at the end. I came from the Home Office. I had no idea of the level of trauma that a significant number of people whom I met through the course of the inquiry had suffered. I am precluding a question, but if there is one thing that we

ought to give a key number of staff in inquiries, it is basic training in a trauma-informed approach to dealing with people. You otherwise run the real risk that, at best, you turn them off from talking to you and, at worst, you cause them serious harm. I would include having a better understanding of that from the outset. A significant part of going through the Truth Project was making sure that we did it in a trauma-informed way.

If you can get those four basic things done—how you take evidence; how widely you engage, what channels you use and how significant your survivor-only channel will be, which is the bit that is not evidence—I think you can have a fair crack at it. You have to be really disciplined in how you procure things and what the costs are for legal staff. If you get all the levels set with senior counsel and junior counsel—it all sounds detailed—and get it sorted at the beginning, you do not find yourself in embarrassing conversations with counsel who thought they were going to be on £4,000 a day when your level is £2,000. They are very important things to get right at the beginning.

Brian Stanton: Most inquiries underestimate the time that the processes will take and the cost. There is usually a realisation at about the 18-month point that it will not be delivered in two years and that the timescales will be much longer. I have seen that happen repeatedly.

On disclosure and the way in which information is processed, a piece of information goes through many different processes before it can come out the other side and be made publicly available. It is very expensive and time-consuming. I think that is always underestimated. I would very much be in favour of budgets being set by inquiries right at the outset. That would give an inquiry chair quite a lot of assistance in shaping the processes and procedures, and in exercising Section 17 of the Act.

It would be interesting for this committee to think about ways in which that could be done. Ideas that I have would possibly be sitting a budget within the terms of reference, possibly through Section 40 mechanisms and through the ministerial determination under Section 44. There is a very clear statutory steer under Section 17 that a chair needs to avoid unnecessary cost. I do not see why budgets should not be made publicly known, and why chairs should not seek to adhere to them.

Mark Fisher: First, I agree that we should try to get these things sorted out towards the beginning of the inquiry. That is more challenging than it sounds given the range of uncertainties. We tried to derive a budget from previous inquiry experience, but every inquiry is different. We underestimated two things. One was the amount of legal help the inquiry would actually need and the size of the legal team. One should overestimate rather than underestimate that, because it goes directly to the speed with which the inquiry will be undertaken. It is a false economy to try to restrict that.

The second point is that a vast preponderance of our budget was spent on legal fees for what we term the BSRs—the bereaved and the

survivors. Those are the core participants who could receive their costs from public funds. In my view, the only way to restrict costs there is to move away from paying solicitors' firms a fee for hours and to have a more contractual relationship. I genuinely think that would have helped to restrict the costs to the taxpayer of our inquiry.

John O'Brien: I spoke to the Australian child abuse inquiry, which was coming to an end as we were setting up. They adopted an interesting approach in Australia, which was that they gave the inquiry a half-a-billion dollar budget but said that it must finish in five years. It finished in five years but left a whole broken trail of disappointed people behind it because, although money was not an object, time ran out, if I can put it like that. I know I keep saying this but we need to be careful about assuming that we know too much at the beginning of an inquiry. Much of the learning comes quite significantly into the inquiry. In a way, big inquiries in particular are set up only when there is a feeling that we might have lost control of the situation in the first place, which is why you have an inquiry. Personally, I think we need to be sure that we do not doubly disappoint people by putting on too many restraints at the beginning.

Q21 **Lord Davidson of Glen Clova:** Good afternoon, gentlemen. There is a concern that the chair and the staff of a public inquiry may have no experience whatever in doing a public inquiry beforehand. Is that your experience? If it is, apart from employing only experienced people, do you have any suggestions as to how one can deal with that? As an allied issue, we are encouraged not to reinvent the wheel but how does one build institutional memory? Should that be in a Cabinet Office unit or should it simply be in the existing firms of solicitors who deal with inquiries? I would be obliged for your suggestions.

John O'Brien: You probably build institutional memory in two or three different ways. We have all alluded to the fact that there are a number of people around who have been secretaries, solicitors or counsel in an inquiry. I see no co-ordinated way in which that is tapped; I think we need a co-ordinated way, which I will come back to. That is the first thing.

In the set-up that I am talking about, I hesitate with the Cabinet Office. I personally think that it needs to be semi-independent, via an NDPB or something like that. The Cabinet Office is like all government departments: people come and go and move roles relatively quickly. You are doing the opposite of retaining institutional memory if you put it in the Cabinet Office, in my view, but I can see great merit in that.

One thing I would say is that, particularly for the more senior roles that come across on secondment from the Civil Service, my experience—I know that it is the experience of other secretaries—is that there is no ownership from departments of the career path of those people. Many of them come in and, after a year, they are worried about being out of their core department for a year so they go back again. One of the roles that the Cabinet Office could play is to make sure that people who go to

inquiries are looked after. My experience of people who came from the Civil Service is that they thoroughly enjoyed it. It was a new experience for them and they learned new skills. It was tricky, but they enjoyed it. Ultimately, many of them did not stay because they felt that they were being forgotten and that their career path was perhaps not as shiny as it would be if they were back in a core government department. That is a very important point that we could take into account in order to retain institutional memory.

Lord Davidson of Glen Clova: May I interrupt on that point? You seem to be suggesting that the Civil Service is not the best place to put these units. Does it follow that private sector solicitor firms would perhaps be the better place?

John O'Brien: No. I think that it needs to be something at arm's length because you then have the best chance of containing the whole collective learning, not just the legal learning. There is all the learning that comes from being a secretary and from all the other really important roles that people play in an inquiry. Because it is at arm's length but also permanent, if I can call it that, you have the best way of doing it.

There are some really simple ideas. For inquiry secretaries and other senior staff who are going back to Civil Service departments, if there was an NDPB, it could be part of their exit from the inquiry to go into that NDPB for three months to help. There is always another inquiry starting. Your knowledge is really fresh and you have just come out of an inquiry, so it is not going to be old knowledge. Let us recycle that. The learning could then be retained in the NDPB, or whatever it is, learning directly from people who have come out of inquiries.

I could go on and on. There is a whole list of things that we could do to make really efficient use of the institutional memory that has been built up. Eventually, people disperse, and it is hard to get hold of them. I have retired now. I have been contacted several times, but it is very informal. I think that we could make it better. I hesitate to say that you can just lift and shift—inquiries are sufficiently different once they get going—but we need initial knowledge and help during start-up, and to have people coming out of an inquiry going into this semi-autonomous thing before they go back on their route to wherever they are going next. That all needs to be facilitated by the Government themselves so that people are not frightened. As I said earlier, many people are worried about the impact of being in an inquiry for two, three or four years then going back and nobody knows them. That is a shame.

Brian Stanton: In respect of how inquiries can be better supported, it would be helpful to encourage new inquiries to think innovatively about how they can approach what are sometimes very significant tasks that they are charged with; and to think about how they can be supported to realise the full extent of the discretion that an inquiry chair has to build processes and procedures that are tailored to those specific events, rather than just adopting a process that a number of previous inquiries have perhaps adopted and building on it. I am not sure how you achieve

that, but, as mentioned previously, set-up is the absolutely critical point. You can burn into inquiry processes and procedures, if you are not careful, some really unhelpful processes that you then have to live with for a number of years.

I repeat what I said earlier: set-up is absolutely critical. It is also vital that, through the set-up phase, chairs and inquiry teams have the support they need to realise the full potential of the mechanisms in the Inquiries Act so that they can build the best process to deliver effective outcomes.

Lord Davidson of Glen Clova: What source would the chair and the secretariat have? Where can they go to find guidance on set-up?

Brian Stanton: Counsel is often somebody who has conducted a number of previous inquiries; it is similar for the solicitor. It is often the case that they have conducted other inquiries. I cannot really speak to the secretaries. It might be less common for a secretary to have been engaged in a number of different inquiries. I gave the example of having worked on the Al-Sweady inquiry. That prepared me very well for the infected blood inquiry in 2018, when we set up its processes. I needed that prior experience. I definitely think that you would have to have some level of previous experience at the set-up phase. How you contract that is another matter. A consultancy arrangement, where you buy in that expertise for a short period of time, would work quite well.

Mark Fisher: I agree with John O'Brien on the point about having some independence in the unit. The Cabinet Office has a number of arm's-length units such as the Electoral Commission. It may well be that something like that might work very well for an inquiry unit. On Grenfell, when I first started, my deputy had previously worked on Leveson. Amanda was extremely helpful in helping me work through all the issues to do with the set-up of an inquiry. I also very much agree with John about what happens to people who have worked on inquiries and how important it is to look after them and their careers.

On a different point, my personal experience from listening to five years of evidence about what goes wrong in public service is that it is profoundly powerful and useful in your future public service career. In fact, there are few better ways of really understanding what can go wrong. Public inquiry experience should be treasured by the Civil Service and by the wider public service as a profoundly important part of your schooling. Therefore, we should absolutely treasure that experience in people's career paths.

Lord Davidson of Glen Clova: How does one make that explicit? Treasuring experience is obviously a splendid idea but how does one do it?

Mark Fisher: It is the sort of thing that John O'Brien was talking about. It is about the home departments of inquiry staff looking after their career paths. The problem is that, because you are working on an

independent inquiry, you lose touch with your parent department. You can lose touch with your parent department for several years. The Civil Service moves on and people lose connections. Senior people change. A bit of extra effort is needed, maybe through an independent unit or in some other way, in ensuring that that expertise is treasured rather than dissipated.

Q22 Lord Wallace of Tankerness: We have perhaps touched on this to some extent already, but what involvement have you had in sharing best practice for inquiries with other inquiry solicitors or heads of secretariat? It is a two-way thing. Have you been able to tap into the expertise of others and have others sought to tap into your expertise?

John O'Brien: While I was a secretary, the Cabinet Office set up an inquiry secretaries group that used to meet online monthly. There was a degree of sharing but once a month for an hour is not really what is needed. There is a lot of informal ringing up by secretaries, and other people ring each other up. All of that is helpful—none of it is unhelpful—but it is not structured and it is not always at the time when you need it. I keep coming back to the fact that we need to make it more structured and do it at the time we need it.

I spent eight years in IICSA. I can genuinely say that I learned so many new things. It was genuinely one of the best experiences of my life. We need to make sure that we capture that. We were talking about this earlier. Why not have a career path in the Civil Service for people who want to work in inquiries? Why send people back to their home department in the first place if they want to stay? There are so many things you can do.

Staff we had on secondment from the Civil Service genuinely enjoyed it. There is some sharing that is formal, but it is sparse. That would be my experience. There is lots that is informal, and you are as helpful as you can be, but what you get is a phone call about a particular problem. You really need to go and see the whole thing. If you are asked for help with a new inquiry, you need to go and see it and understand it so that you can apply the learning you have gained over four or five years. If somebody rings up and asks a random question, you do your best but you do not have a concept of where all the different stages in the inquiry are. What you tend to solve is a very specific problem rather than giving out more generic help. The inquiry secretaries forum is a good idea; I just think that it needs to be much more structured, much more formalised and perhaps—I know I keep saying this—handed off to a semi-independent body that could nurture it in a different way.

Lord Wallace of Tankerness: Is that something that is still ongoing, or did it collapse?

John O'Brien: I believe that it still exists but, of course, it grows and shrinks depending on how quickly inquiries are set up or closed. The experience tends to disappear quite quickly. It is good but there are many ways that you could make that best practice.

Brian Stanton: My experience has been informal as well, in speaking with colleagues about particular problems. To my knowledge, there is no formal structure for solicitors. I could be wrong, because I have been outside the Government Legal Department for some time, but I am not currently aware of a forum where solicitors to inquiries share information. That is a shame because I can think of a number of examples of where speaking with my counterparts helped me considerably.

The infected blood inquiry was a year behind the Grenfell inquiry. I can think of a couple of instances when I spoke to my counterpart on the Grenfell inquiry about problems that they had encountered and I was able to make adjustments to our own processes as a result. That sort of engagement is really important; there probably needs to be a better mechanism for sharing that expertise.

Mark Fisher: I agree with what John and Brian said. The only other point I would make is that we, as inquiry secretaries, are required to produce a “lessons learned” report. I have no idea what happens to those reports or whether they are useful or used. I have not seen a bit of process—maybe this is where an independent unit could help—that distils them, makes sense of them and shares them. They seem to go into a bit of a vacuum. That ought to be tightened up as well.

John O’Brien: Let me add one thing to that. We did not produce a traditional report; we produced a series of mini reports that dealt with different aspects of the inquiry in a slightly more detailed way, such as how we set up the Truth Project. Rather than having an end report, as we went through, we produced little modules that we shared with the Cabinet Office as guidance that would be helpful in a particular area. By the time you get to the end, you have forgotten half of what you did at the beginning, so we tended to produce it in small modules as we went along and shared it in that way. I have not heard of anybody using it, so I am not sure whether it was any more effective, but it was certainly easier than waiting until the end and remembering what you did on day one.

Lord Addington: How did victims—the client base—enjoy that? Did it appeal to the people who had been directly affected? What was their reaction to having smaller reports?

John O’Brien: If you mean having strand reports as we went along, they really liked it. I know that we are not talking about recommendations but I will take a bit of licence. It is interesting that well over 80% of all the recommendations we made in strand reports as we went along were accepted and implemented by government. The same cannot be said of the 20 in our final report because, of course, we were not there to follow up on them; that is interesting. Obviously, for victims, survivors and those affected, the key thing from a report for them is that it gets implemented. In that respect, going public as we went along was very helpful.

Q23 **Baroness Sanderson of Welton:** I should declare that I know Mr

O'Brien very well and have worked with him over the years.

My question about the formal or informal way in which everyone communicates has already been answered. You have all talked a lot about the way things have changed, be it the terms of reference consultation or what you, Mr Fisher, were saying about further panel members and being statutory or non-statutory. All these things come about via pressure from those affected. That is different from core participants but is the voice of the bereaved survivors affected.

As you said about something else, the answer may not be in the Act, but what is the answer? That voice has become more powerful. Should it be formalised somewhere and somehow? I would be interested to know your thoughts on that. Mr O'Brien, perhaps I could start with you.

John O'Brien: It is important that you meet those affected right at the beginning to work out how you will make sure that you hear their voice through the inquiry in a number of different ways. I can only talk about IICSA. We had the victims and survivors consultative panel, which was made up of eight survivors who stayed consistently throughout the inquiry to give a survivor's perspective to the chair and the panel. They did that through me so that we did not have conflicts of interest, but it was very helpful to the chair and the panel to get the survivor's perspective on things that had come through evidence and what that might mean in terms of eventual outcomes. That was interesting.

We also set up an online survivors network, which had around 1,500 members. We used to poll them with questions. For example, when we heard overwhelming evidence that most people supported mandatory reporting, we polled that group of 1,500 supporters. We engaged and brought in people in that way. The downside to that, perhaps, is that, once they got used to it, they would send lots of things to us, but it was all helpful.

We had the Truth Project. We also had Twitter accounts and things. The answer to your question is that everybody will do it differently. It will depend on what your survivor base is and how long they have been traumatised, as I said to you before. What you need to do at the beginning is sort that out so that it is embedded from the beginning and does not look to survivors like an afterthought. Does that make sense?

You need to understand your victim base, if I can put it like that, right at the outset, in all sorts of ways, and really engage with them. The one mistake that I wish I could go back and correct is that I should have engaged with victim and survivor groups before I engaged with anybody else, to get their feedback. The one thing I regret is that it took me six months to do that. I had to go back and change so many things as a result.

Baroness Sanderson of Welton: You are right that everybody will do it differently but, if you are somebody who is affected by a public inquiry, that is because something has gone very badly wrong. If something has gone that wrong, there are certain themes, such as lack of trust in the

establishment, that will be the same for all the groups you work with; so, in a sense, there is some continuity. One group may feel that they were particularly looked after in their inquiry but, because it is sort of at the discretion of the chair and the secretariat, another group may feel that they were not so well looked after. How do you provide a service, bearing in mind that people will have more of a voice now, while keeping the neutrality?

John O'Brien: You could perhaps embed something in the Act itself requiring that to be considered.

Can I talk about the sorts of things that people miss at the beginning? There was an overwhelming feeling that none of our survivors wanted to go into a building that was occupied by any organisation that might have been responsible in some way for their abuse—no local authority buildings and no government buildings. That was an interesting piece of feedback. When we were setting up the network of rooms that we used to bring people in for the Truth Project, we engaged with victims and survivors, and there was some really interesting feedback: "Please don't paint the walls red. Please don't have any pictures with people in them in the room, because they may look like or be dressed like somebody who abused us".

That will be different for everybody but you are right that there is a common theme running through it. There will be certain things that survivors expect you to know. As I said earlier, when you come out of a Whitehall department, you simply do not know those things. Those are the common themes. I would just be careful about lift and shift. You need to take those common themes and go away to see how they apply to your particular survivor base. I hope that that answers the question.

Baroness Sanderson of Welton: Yes, thank you.

Brian Stanton: It is important for inquiries to be able to gather information from a very wide range of personality types. You will definitely encounter people who have campaigned for a particular issue, who wish to be involved in an inquiry through the traditional core participant route and who, to their credit, will spend huge amounts of their time on that. There are other people who have been impacted just as much but do not want that publicity. They shy away from it. They would feel daunted, perhaps, by having to provide a witness statement.

I know that John's and Mark's work with their respective inquiries has been very much in this area, which is about different ways of gathering evidence. I think that it is really important to provide mechanisms, perhaps not through the traditional legal route, by which people who have been impacted by the events can tell their story—anonymously if they wish—and ways in which the inquiry can reflect the fact that it has taken account of that information. I do not know whether, for example, a separate document could be produced as a compendium of that sort of information. It would stand apart from the report, as a record of people's experience. It would not try to do anything other than record that

experience. People could see in that their story, perhaps anonymously, and take some comfort from the fact that they had been listened to. A lot of inquiries now do this, but I would be very much in favour of exploring as many different avenues as possible for inquiries to receive information then play it back.

Baroness Sanderson of Welton: I suppose that lots of inquiries do it but it is all a bit ad hoc, is it not? In the context of this, how do you share it? How do you make sure that your interested group gets the sort of attention that it deserves? Where does that sit? Would it be in an arm's-length body, for instance? Where does the learning sit? Where does the equality of arms, almost, go for each group per each inquiry?

John O'Brien: The arm's-length body, if it were set up, would be a good place for the explanation of what is expected of inquiries in that sphere and helping them to work out how to engage with their survivor groups. You then need to leave it to that inquiry's core group—the chair and others—to decide exactly how they will do it. Something that makes it clear to inquiries that this is now a requirement, not just an expectation, is important.

I forgot to mention that we published anonymised volumes of feedback from the Truth Project as we went through. That was very well received by survivors, but it would not work for everybody. Many of the people who came to speak to us were so nervous that they did not want their accounts to be included, even in anonymised settings. That goes back to what has been said about exploring the huge number of ways you can achieve that. It would be dangerous in a modern inquiry to think that you can get away with not doing that. A level of compulsion, if I can use that word in the nicest possible way, would be something to consider.

Baroness Sanderson of Welton: I have a lot of sympathy with that view. Mr Fisher, what is your experience? How would that work in relation to the requirement within the Act to treat all participants in the inquiry the same?

Mark Fisher: It is interesting. It goes to the point that every inquiry is different. Grenfell has three constituencies: the victims and the families; the state; and a whole set of corporate interests. That makes it slightly different from one or two of the other inquiries we have been discussing and makes the neutrality of the panel and the chairman even more important than it might be in some of the other inquiries.

We did a number of things to engage and discuss with families. In retrospect, as John said, we should have done more. The first inquiry session was taking their testimonies; we spent a lot of time in Kensington talking to them but there were some decisions that we made where, in retrospect, we should have listened to them earlier. The composition of the panel and the location of the inquiry were decisions that, in retrospect, we could have made earlier. The bottom line was that we also had to respect the fact that they were only one among a set of core participants in the inquiry. This meant that the chairman, in particular,

had and has to be studiously neutral. The fundamentals of the inquiry itself had to be studiously neutral, so there was a limit to the extent that we could favour them over other participants. In our inquiry, it has been particularly difficult to triangulate the various parties involved.

Baroness Sanderson of Welton: But you would agree that it is essential that their voices are heard.

Mark Fisher: Completely; I absolutely agree. You just need to be quite imaginative about how you do it in a way that does not alter the fundamental dynamics of that relationship.

Q24 **Lord Faulks:** Good afternoon. My question is about why inquiries are so long and why they cost so much. You have already given some indication of why that might be. I will ask you in due course to say whether you think that improvements can be made and, if so, how.

Can I ask you to consider it particularly in this context? The way that inquiries are conducted has developed. In practice, of course, all inquiries are different, but they tend, if they are public inquiries, to be judge-led. Evidence is almost like a court hearing, with serried ranks of lawyers. The inquiry is a lengthy process, resulting in a judgment. Is that always the best way to inquire into events? Have we just got into a habit of doing it that way? Is there a case for doing it differently? For example, the Covid inquiry is following very much in that vein. Other countries have adopted a completely different approach that is much quicker and involves experts, not the same core participant approach. Could you bear that in mind when answering the question?

John O'Brien: There are things that you could do to make them shorter and less expensive. Both Mark and I had to move our hearings online during Covid. That did not change the basic premise that you have described but it dramatically altered the costs of the legal teams that were supporting victims and survivors and others because there was no travelling around the country. It dramatically reduced our costs. Because we were doing it online, we did not have people travelling to hearing centres in London. There are a number of ways that you could reduce costs.

I will give you my view, from my experience with people we have spoken to. I hesitate to say this but, since I retired, I have gone to work for a consultancy. We polled the public on this; I am happy to share that with you, if you want. There was an overwhelming feeling that people like the fact that inquiries hold powerful institutions and others to account, perhaps in a way that they have no other way of achieving. There was broad support for the way inquiries do that.

You could make the process more efficient by thinking about whether you have to bring 30 people, or 100 people, to a hearing centre in London, or wherever it is based. My experience is that you would quickly get people complaining, very much in the way we have talked about with regard to statutory and non-statutory, if you dramatically altered the way in which

you take evidence. Many people said to me, "We have waited 30, 40 or 50 years for this. We really want to see this evidence being taken".

The way you take that evidence, in a modern world, could change. In order to move our hearings online, we had to get the agreement of every single core participant. Not one of them wanted further delay. They all wanted it to go online. There are many ways to build in efficiency without changing the core principles that an inquiry operates under.

Brian Stanton: It is interesting that, in the public perception, it is often thought that an inquiry has not started until its hearings have started. Of course, that is not the case. By that point, many years of work may have gone into an inquiry. Also, inquiry hearings consider only a small percentage of the evidence provided to an inquiry. It is logistically not possible to do more. The vast majority of information provided to an inquiry is not considered in a hearing. Bearing that in mind, there is probably scope to reduce reliance on hearings, while still maintaining them, and to take account of evidence in other, perhaps more efficient and cost-effective, ways. That is commenting specifically on hearings. We could have fewer of them while still maintaining them as a focal point.

Another area where huge amounts of resource and time are taken is processing information. Inquiries typically gather millions of documents. They process the majority of that information but the majority of it will not be given in hearings. It will not even be referred to in the inquiry report. Ways need to be found of streamlining that process and perhaps emboldening inquiries to be more selective about the evidence they take. That needs confidence, of course. It would need the trust of core participants to be able to operate in that way but, in some way, a message needs to be sent that gathering huge quantities of information that you then need to put small armies of paralegals and lawyers to work on is not a sustainable way of doing this work.

There could be ways of changing the approach to those tasks. For example, at the moment, one of the first steps that you take is gathering in the information. You might think about taking statements first then asking witnesses, "Where do you think the key information sits?" You could take a step back to make progress going forward. I think that there are ways of tackling those two key features of inquiry work, which are very costly and take quite a lot of time. If you could find a way to do that, you would speed up the process.

Mark Fisher: I very much endorse John's point about going online. That definitely reduced our costs significantly. The main cost of our public inquiry was, and remains, fees for the support given to core participants. I think that there are ways of reducing those fees, perhaps by moving to a more contractual arrangement.

I would worry about doing something that altered the fundamental characteristic of a public inquiry. I know that there are other ways of running these things. There were the Gosport hearings, which were not a formal public inquiry, and there is practice from abroad, as you say, but

one of the fundamental purposes of an inquiry is the truth-telling and truth-exposing part of it—in our case, that has certainly been extremely powerful—in addition to the process of producing recommendations. In fact, in some ways, it is the most powerful part of any public inquiry. It is quite difficult to work out how that might be done other than through a fundamental judicial or legal process; that is what adds to cost. The trick to reducing cost is to be really selective about when you choose to run a public inquiry in the first place and then to try to be really efficient in the running of the public inquiry, perhaps by going online, certainly in the fees paid to lawyers and in the ways Brian has just gone through.

Lord Faulks: We are quite short of time but my colleague has suggested to me that AI may have a role. If any of you has any views on that, perhaps you can write to the Chair to say what they are.

Lord Henty: Can I ask a supplementary question about delay? It concerns the impact of criminal investigations. I know of one inquiry where the start was held up for two years while people were investigated by the police. Is that an issue?

John O'Brien: It can be.

Mark Fisher: Can I come in on that? This was absolutely an issue that we faced with the Grenfell inquiry. In fact, we did an MoU with the Metropolitan Police Service that enabled us to progress in parallel with Operation Northleigh, which is the police investigation. We have relied a lot on collecting each other's evidence and that sort of thing. There are ways of running these things in parallel; they are just legally complicated. As I said, we managed to produce an MoU with the Met that allowed us to do that. Otherwise, one or other of us would have been delayed even more, which was clearly unacceptable.

John O'Brien: I was going to say a similar thing. You need to be clear about what it stops you doing. Unless it is a very small inquiry, I suspect that there are always things you can do in the way that Mark described. What you cannot necessarily do is question witnesses, but you can do a lot of the gathering. In our case, we could simply juggle around and do something different while we were waiting for a particular police investigation. We had a couple of instances where active police investigations were started after we had started looking at a strand. You just rejuggle your timetable.

Mark's point is really important. You need to engage with the police and work out what the boundaries are, then work out what you as the inquiry can do. There is sometimes a presumption that, if the police are investigating, we cannot do anything. Actually, what you cannot do is sometimes quite specific.

Brian Stanton: It is probably a more recent development that it has become more acceptable for a police investigation to run in tandem with an inquiry. Ten years ago, it would probably would have been thought a very bad idea, but there are a couple of inquiries ongoing at the moment

that are dealing with those challenges and seem to be coping quite well. There are obviously some drawbacks—there will be occasions when you cannot exercise your powers fully because of rights against self-incrimination, et cetera—but there are quite a few examples of where inquiries are able to work effectively alongside police investigations.

John O'Brien: It is probably worth adding that, sometimes, the police investigation itself gives the people who were expecting information from the inquiry the information they were hoping for anyway. It can work in tandem with what you do as an inquiry.

Q25 **The Chair:** You have stressed clearly that inquiries serve a very important role before you ever reach your recommendations, so you have fulfilled important functions already. Clearly, your recommendations are core to what you are about, but we have already heard that there are problems around follow-up to recommendations. Recommendations may simply not be responded to, never mind acted on. You feel that more could be done, but what can be done to ensure that recommendations are followed up?

John O'Brien: It is very important that recommendations are followed up but I do not think that that is the job of an inquiry, once it has come to an end. An inquiry's job is to inquire and issue recommendations. It muddies the water if you then expect it to go on and find some way to deliver them. Ultimately, it is for the Government to make sure that they respond properly to recommendations.

Increasingly, we operate in an environment where three or four inquiries might be reporting in a 12 to 18-month period. We need to be practical and honest about the fact that it will sometimes not be possible for a Government to accept and deliver all those recommendations. The important point is to be honest and explain that.

I keep going back to my NDPB or Select Committees. There needs to be a body that says, "We've had four inquiries reporting in the last year. They've issued these recommendations. We've gone through a process of looking at those and talking to the survivor groups who are represented across all of them. We think that, in each case, if you do these two from here and those two from there in this parliamentary Session, you will satisfy quite a significant proportion of the people who were affected by those things. We will keep coming back to you with what might be done".

The other limiting factor is that the majority of what inquiries recommend requires primary legislation. That will inevitably be affected by the parliamentary timetable and what else is on the Government's agenda. We need to be careful that we do not overpromise to people right at the beginning that every inquiry recommendation will always be implemented. We need to be really clear with people about how they find out where recommendation progress has got to and what is going to happen, and we need to be honest when there is a decision to reject. There is an important role for Select Committees in that but the NDPB that we keep talking about could play a role in helping with the co-

ordination of multiple recommendations coming out from multiple inquiries. The landscape is becoming very complex.

The Chair: It is about building in a mechanism to ensure that there is a response to the recommendations.

John O'Brien: Yes.

Baroness D'Souza: I have a quick complementary. Sorry, I mean supplementary—although it may be complementary too. I wonder whether complainants feeling that justice has been done is dependent on recommendations being implemented. Is there any work that you have done showing that simply taking part in the inquiry, as well as the public attention to that inquiry, gives those people the feeling that justice has been partly done?

John O'Brien: It definitely does but they all still want the recommendations to be done. In the nearly two years subsequent to the inquiry, I have stayed in touch with most of the main survivor groups through IICSA. Just explaining to people that there is such a thing as a parliamentary timetable and that primary legislation uses up precious resource, and giving people an understanding that no progress does not necessarily mean rejection, has really helped them to get their heads around that. We all understand all of that. The average person who engages with an inquiry thinks that you can make your recommendations happen at a click of your fingers. This is what we bring back: just be honest and open, and explain. Somebody also needs to hold government to account for implementing the recommendations that everybody agrees should be implemented. Somebody needs to help prioritise.

Brian Stanton: A preliminary point is that delay is quite heavily linked to the effectiveness of recommendations. If an inquiry has taken a long time to deliver its recommendations, the chances are that the relevance of those recommendations might be diminished. Solutions might have been found to the problems already. That is another area where delay is linked in. Serious consideration needs to be given to avoiding delay.

The terms of reference might be able to give an inquiry some assistance in this area. In Section 5(6), it is specified that terms of reference should indicate whether recommendations are to be made; however, to my knowledge, nothing other than a simple one-liner that the inquiry is to make recommendations is ever included in terms of reference. Without limiting the scope of an inquiry to make recommendations, the terms of reference could give an inquiry some help and a steer about areas where recommendations would be of particular assistance. Those are a couple of reflections.

Mark Fisher: I have a few thoughts. Part of the legitimacy of a public inquiry has to be its recommendations. Their implementation is fundamentally important to that. That puts an onus on the inquiry team. There is a role for the secretary or CEO—whatever we wish to describe him or her as—in helping the whole inquiry team and the legal side of the

inquiry both to think about the implementability of the things they recommend and to keep the number of recommendations within bounds. It is all too easy to produce far too many detailed recommendations; that dramatically reduces the power of the inquiry, in my view.

Secondly, it has to be a job for Select Committees to hold the Government to account for the implementation of recommendations suggested by a public inquiry. I am not quite sure who else could do that. There is the example of Lord Bichard in the Soham inquiry, who came back and reviewed the recommendations of his inquiry, but that is quite unusual. As many have said, I am not sure that we could persuade a senior judge or an inquiry panel to do that. That has to be a job for a Select Committee but there is an onus on the inquiry team as well to focus hard on what can and cannot be implemented relatively easily.

Q26 The Chair: Fine. You have picked up on an important point. I often remind my students that it is important to distinguish between what is desirable and what is achievable. That is sometimes missed.

This is the final question. You have already come up with many ideas that are extremely helpful but I will put you on the spot. If there is one recommendation that you could make to improve the Inquiries Act, what would it be?

John O'Brien: It would be to give people basic trauma-informed training before they start an inquiry.

Brian Stanton: I would find a way of making public the budget that an inquiry is working against, so that an inquiry chair can properly exercise Section 17 of the Act with that in mind.

The Chair: The last word goes to Mr Fisher.

Mark Fisher: I would put a greater onus on Select Committees to police the implementation of inquiry recommendations.

The Chair: Thank you very much. I thank all three witnesses for their evidence this afternoon. It has been extremely valuable. We have greatly benefited both from the experience on which you have been able to draw and from the lessons that you have drawn from it in making recommendations as to how we should go forward in improving the inquiries that are undertaken—be they statutory or non-statutory, to pick up Mr Stanton's point about the value of non-statutory inquiries. I thank all three of our witnesses most warmly for being with us and for what they have presented us with this afternoon. This session has been extremely valuable.