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The Lord Norton of Louth
Chair, Statutory Inquiries Committee
House of Lords
London
SW1A 0AA

Our reference: MC2024/01277

1 March 2024

Dear Lord Norton,

Thank you for your letter of 26 January 2024 regarding the House of Lords Committee on Statutory Inquiries. Given the importance of the Inquiries Act 2005, I welcome the establishment of this Committee, and my officials and I are more than happy to assist the Committee in its work.

I would also welcome the chance to discuss the work of your Committee with you in more detail, if that would be of assistance. There has been a significant number of major public inquiries initiated since the work of the 2014 Committee. They represent an important avenue to identify and learn lessons, and they are never established without careful consideration. There is clearly an imperative for inquiries to deliver recommendations in a timely manner, without undue cost and providing value for money. I have no doubt that the work of your Committee in examining the legislative framework around public inquiries will be an important contribution to ensuring that our approach remains fit for the future.

In respect of your letter, I have provided a response to each of your questions below as well as the Government's position on the rejected recommendations. I am responding in relation to inquiries where a UK Minister is the responsible Minister.

Questions

1st Recommendation

1. What are the circumstances where it is better for the Government to hold a non-statutory inquiry?
 - Where a Minister considers that the absence of the Inquiries Act 2005 ('the Act') statutory powers will not impede an inquiry's investigation, a non-statutory inquiry can be viable.

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- A non-statutory inquiry can be held in public or private, so may be able to offer a greater degree of flexibility to meet the wide range of circumstances for which an inquiry might be required. Several completed inquiries have operated on a non-statutory basis, including the Iraq Inquiry and the Hillsborough Independent Panel. The ongoing Angiolini Inquiry was also established as a non-statutory inquiry.
 - Non-statutory inquiries are generally less costly than statutory inquiries and can often be completed more quickly. For example the Independent Medicines and Medical Devices Safety Review, established in 2018, was completed in 25 months and cost approximately £1.7m. The Iraq Inquiry, though it took seven years cost only £13m, while the Independent Inquiry into Child Sexual Abuse, a statutory inquiry cost £191m over a similar time period. Full details are contained in the recent response from Baroness Neville-Rolfe to your Parliamentary Question on the subject (ref. PQ HL2446). There may therefore be such circumstances where a non-statutory model is the better option, where there is confidence that witnesses and bodies will cooperate fully with the inquiry, and/or where vulnerable core participants might be more comfortable with a less formal approach than that generally adopted by a statutory inquiry.
 - The sponsoring minister can also convert a non-statutory inquiry to a statutory inquiry if necessary, such as if there are concerns around individuals or organisations not cooperating fully, and place them on a statutory footing under the Act with all of the relevant powers.
2. Has the Government changed its view on which recommendations from the 2014 report it rejects and accepts?
- The Government has not reviewed the deliberation by the Coalition Government of the 2014 recommendations. We will give careful consideration to the recommendations of your Committee when we receive them.

2nd Recommendation

3. Does the Government routinely (and proactively) inform Parliament that it is rejecting the recommendation of a major public body that an inquiry be held?
- The Government agrees with the position taken by the Coalition Government that Ministers should not be required to give their reasons to Parliament in all cases as there may be unmeritorious calls for inquiries.
4. Has the Government produced guidance on this?
- No.

3rd Recommendation

5. Has the Government produced guidance on this?
- The Government has not produced guidance on this. There is [Coroner guidance](#) from the Chief Coroner (which is not part of HM Government) which notes that "*the judge may conclude that he or she cannot comply with the duty to carry out a proper investigation into the death. In that situation the judge should consider writing to the*

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Lord Chancellor to convert the inquest into a Public Inquiry so that all relevant evidence can be heard”.

- Such decisions are often made to enable sensitive evidence – such as that relating to national security – to be heard in closed hearings. In such cases, giving too much detail about the matter in a public statement could itself cause the type of harm that converting to an inquiry would be attempting to avoid.
- Therefore, some limited information explaining the rationale is usually provided. For example, the Dawn Sturgess Inquiry was established under the Inquiries Act to 'ensure that all relevant evidence can be heard'.

4th Recommendation

6. When will the Government introduce this legislation?

- There are currently no plans to introduce this legislation, proposed by the Coalition Government. We will give careful consideration to the recommendations of your Committee when we receive them.
- It should be noted that the announcement of a public inquiry preceding the announcement of the Chair is a fairly common occurrence. For example, in the case of the UK Covid-19 Inquiry, there were separate Parliamentary statements announcing the Inquiry, the appointment of the Chair and the Inquiry's terms of reference. The same is true of the Infected Blood and Grenfell Tower Inquiries.

5th Recommendation

7. When will the Government introduce this legislation?

- There are currently no plans to introduce this legislation, proposed by the Coalition Government. We will give careful consideration to the recommendations of your Committee when we receive them.
- It is, of course, already a statutory requirement to *consult* with the relevant senior judges, depending on jurisdiction, before appointing a serving judge as Chair or panel member.¹

6th Recommendation

8. In what circumstances might the Government appoint a panel member against the wishes of the chair?

- The Government considers it highly unlikely that such circumstances would arise. In establishing an inquiry, appointing a Chair, and setting out its Terms of Reference, the responsible Minister always considers such issues at the outset. In any case, Section 4(3) of the Act provides that before appointing a panel member, the Minister must consult the person they have appointed as a Chair. The Government considers this position to provide the appropriate degree of flexibility.

7th Recommendation

¹ s.10 Inquiries Act 2005.

9. Has Government guidance been updated to reflect this?

- The Cabinet Office provides advice to sponsor teams considering appointing panel members. Only one of the current eleven HMG sponsored statutory inquiries has a panel beyond the inquiry chair. The Prime Minister, with the Chair's consent, appointed two panel members to sit alongside the Chair for Phase 2 of the Grenfell Tower Inquiry's work, to provide the necessary diversity of skills and expertise relevant to the broad range of issues under consideration. The Independent Inquiry into Child Sexual Abuse (IICSA) and the Leveson Inquiry were also inquiries under the 2005 Act with appointed panel members. So in total, three of the 22 HMG inquiries established under the Act had panel members appointed to them. There are examples of non-statutory inquiries appointing panels – notably the Iraq Inquiry and the Hillsborough Independent Panel.

8th Recommendation

10. In what circumstances might the Government appoint an assessor against the wishes of the chair?

- The Act allows the Chair to appoint assessors without consulting the Minister, as the Chair of the Grenfell Tower Inquiry did. Section 11(3) of the Act provides that the Minister must consult the Chair before appointing assessors. The Government considers this position to provide the appropriate degree of flexibility.

11th Recommendation

11. Has guidance changed to reflect this?

- Cabinet Office guidance notes that Ministers may, but are not obliged to, consult with interested parties, for example those directly affected by the issue the Inquiry is considering. Recent examples of consultations on an inquiry's proposed terms of reference include the Covid-19 Inquiry² and the Lampard Inquiry³.
- In addition, clause 33 of the Ministry of Justice's (MoJ) Victims and Prisoners Bill will set out the functions of the Independent Public Advocate following a major incident, including cl. 33(4)(c), 'communicating with public authorities on behalf of victims in relation to the incident' and cl. 29(2)(a) regarding the advisory function of the Advocate to a Minister. As a result, if the Bill is passed, there will be a role for the Independent Public Advocate in representing victims' views in supporting ministerial decisions on the format and scope of any Government-sponsored reviews, such as an inquiry and therefore its terms of reference. The Ministry of Justice will publish additional details on the proposed functions of the Independent Public Advocate in due course.

12th Recommendation

12. Is there a specific team within the Cabinet Office focussed on public inquiries?

- The Cabinet Office has established a small unit to provide advice and guidance on

² <https://covid19.public-inquiry.uk/wp-content/uploads/2022/03/Terms-of-Reference-Consultation-Document.pdf>

³ <https://lampardinquiry.org.uk/updates/public-consultation-on-the-inquirys-terms-of-reference/>

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the set-up and delivery of inquiries. It supports inquiries to learn from one another.

13. When was a practitioners' forum established?

- The Cabinet Office inquiries unit convenes quarterly meetings with inquiry secretaries, and separately with departmental inquiry sponsor teams, aiming to share learning and best practice. The first of these meetings took place in October 2020.

14. Given the number of large statutory inquiries open at any one time, would the Government reconsider their response to this recommendation?

- The Cabinet Office inquiries unit meets this requirement, providing advice, support and guidance to inquiry and sponsor teams.

13th Recommendation

15. Have 'lessons learned' papers been produced for recent inquiries? Is this routine?

16. How has the Cabinet Office taken a more "proactive stance"?

- All inquiry secretaries are required to produce lessons learned reports. This does not happen consistently, and the Cabinet Office and departmental sponsor teams continue to encourage their production.
- Since the establishment of the Cabinet Office inquiries unit, inquiries have been sharing their lessons learned in a more dynamic way. The Cabinet Office encourages the production of case studies, in which inquiries explain how they have run a particular stage or process that they have recently completed. These provide useful additional detail and have already shown their value in supporting other inquiries to navigate a similar issue. We also facilitate sharing of best practice through the quarterly meetings with inquiry secretaries and sponsor teams.

17. Please could you share an example of a 'lessons learned' document with the Committee?

- I have enclosed an example case study report by the Grenfell Tower Inquiry entitled, "Operations - Witness familiarisation visits", which the Inquiry has agreed can be disclosed, and potentially published.

14th Recommendation

18. Has the guidance been updated?

- Internal guidance has been shared with inquiries and departmental sponsor teams.

19. When will it be published in final form?

- No decision has yet been made on publication.

15th Recommendation

20. Are contact details collated? If so, by whom?

- The Cabinet Office inquiries unit can contact former secretaries and solicitors through their office addresses, and occasionally does so in order to address any legacy issues that arise. Other departments will retain the details of former secretaries whilst they continue to work in other roles within their departments.

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16th Recommendation

21. Have the Procedures Protocols been collated by the Cabinet Office?

- Yes. The Cabinet Office Inquiries unit collates inquiry protocols. These are also available on inquiry websites and through The National Archives.

17th Recommendation

22. Has guidance been updated to reflect this?

- Under the Act, inquiry Chairs are obliged to have regard to the need to avoid any unnecessary cost to public funds. The inquiry secretary is the budget holder for the inquiry and must comply with procedures in line with HM Treasury's Managing Public Money, and the requirements of the sponsor's financial delegation letter. This includes ensuring that the inquiry's expenditure represents value for money. This is reflected in Cabinet Office guidance.

18th Recommendation

23. Has guidance been updated to reflect this?

- The potential cost and length of an inquiry is an important factor in deciding whether establishing one is within the public interest. It is not always easy to determine potential cost and length until an inquiry's terms of reference are finalised, but Chairs are under a statutory obligation to have regard to the need to avoid unnecessary costs. The inquiry secretary, in their role as budget holder, must comply with procedures in line with HM Treasury's Managing Public Money, and the requirements of the sponsor's financial delegation letter. This includes ensuring that the inquiry's expenditure represents value for money. This is reflected in Cabinet Office guidance.

19th Recommendation

24. Have any recent inquiries had national security implications?

- Yes. Since the last report in 2014, there have been inquiries that have national security implications, including the Litvinenko Inquiry (concluded 2016), the Manchester Arena Inquiry (concluded 2023) and the Dawn Sturgess Inquiry (ongoing).

25. Have ministers restricted public access to any recent inquiries? Why?

- Yes. For example the Home Secretary issued restriction notices in the Litvinenko and Dawn Sturgess Inquiries because the Home Secretary considered them to be conducive to the Inquiry fulfilling its terms of reference or because the Home Secretary considered it necessary in the public interest. In each case, the assessment of the Home Secretary was that the public interest in avoiding risk of harm to national security or international relations that would result from disclosure outweighed the interest in the public being informed of the material covered in the restriction notice. As each of the restriction notices are still in force, it is not possible to provide any further specific detail.
- The terms of reference of the Omagh Bombing Inquiry, published on 21 February, confirm that the Inquiry will hear some evidence in closed session, and that the Chair

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will take account of the need to protect national security interests.

20th Recommendation

26. When and why have Ministers withheld material from publication?

- A restriction notice enables the Minister to place restrictions on public access to the material identified in the notice. The examples of restriction notices mentioned in the response to Q25 include restrictions on publication of the material under the restriction notice, for the same reasons as set out above.

22nd Recommendation

27. When will the Government introduce this legislation?

- There are currently no plans to introduce this legislation, proposed by the Coalition Government. We will give careful consideration to the recommendations of your Committee when we receive them.

26th, 27th and 28th Recommendations (questions 28, 29 and 30)

When does the Government plan to amend the rules?

- There are currently no plans to make changes to the Rules. We will give careful consideration to the recommendations of your Committee when we receive them.
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30th Recommendation

31. Have there been recent cases where the Government has not adequately responded to a report?

- There have been no recent cases of Government failing to provide any necessary response to the report of an inquiry.

31st Recommendation

32. Has any guidance been updated to reflect this?

- Cabinet Office guidance does not prescribe how government departments or public bodies should respond to an inquiry's recommendations, as circumstances will be different from inquiry to inquiry. But each department with policy responsibility for matters under consideration by an inquiry understands that it should publish a response to any recommendations.

33rd Recommendation

33. Has the Government taken any steps to amend the Act or Rules? Why? What is the progress with this?

- The Government believes the 2005 Act provides a good framework for setting up Inquiries where they are deemed necessary. Ministers will consider the recommendations of your committee relating to the 2005 Act, but will also want to look at whether other options may be preferable in the interests of justice and where it considers it appropriate to do so, that those alternative options are utilised. Section

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1 of the Act provides ministers with discretion which shows Parliament was mindful of the suitability of other options/approaches when considering the scope and format of government sponsored reviews.

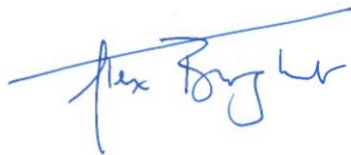
Government Position on Rejected Recommendations

The Government does not currently have plans to take forward further reforms in relation to any of the recommendations that the Coalition Government rejected in 2014. However, we recognise the importance of reassessment in the light of a changing and developing inquiries landscape, and the opportunity that your committee provides in that regard. We will carefully consider your recommendations, including any that relate to those previously rejected.

In preparing this response we have sought input from the Ministry of Justice and a copy of this letter has been shared with Parliamentary Under Secretary of State for the Ministry of Justice Mike Freer MP.

I am grateful to you for writing.

Kind regards,

A handwritten signature in blue ink that reads "Alex Burghart". The signature is written in a cursive style and is positioned above the printed name.

**Alex Burghart MP
Parliamentary Secretary**

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