HOUSE OF LORDS

STATUTORY INQUIRIES COMMITTEE

Brian Altman KC - written evidence dated 22 February 2024

I have been asked to respond to the series of questions below which have been asked of me following my evidence given to the Committee on Monday 12 February 2024.

I have read the uncorrected transcript of the proceedings to aide my memory.

My responses appear beneath each question in **bold**.

1. Have you had any involvement in any formal sharing of best practice for running an inquiry? If so, which body coordinated this?

   Response: I have had no involvement in any formal sharing of best practice for running an inquiry.

2. In addition to the use of Restriction Orders, can you list any other situations where a non-legal inquiry chair would require legal advice from the counsel to the inquiry?

   Response: there are myriad situations which arise throughout any statutory inquiry where a non-legal chair would require legal advice from counsel to the inquiry. In addition to restriction orders, other areas of legal advice will include the inquiry's protocols; applications for core participant status; requests for undertakings; the issue of section 21 notices; enforcement under sections 35 and 36; the operation of Rule 10; the issue of warning letters under Rules 13-15; and the risk of judicial review in various circumstances.

3. Please could you briefly summarise the process of devising "question plans", which you referred to in your oral evidence? What is the advantage of this approach and what is it an alternative to?

   Response: as I said in my evidence to the Committee, evidence proposals (or question plans) were employed in the two inquiries to which I was lead counsel.

   The evidence proposal summarises the topics that it is proposed should form the basis of counsel to the inquiry's examination of the

witness. The topics are based on the witness statements and documents provided in response to the inquiry's requests for evidence in respect of the issues under investigation. Evidence proposals are intended to be a guide for core participants and witnesses but are not designed to be inflexible or definitive.

The evidence proposal is prepared in advance of the witness's live evidence and may be communicated to core participants for their input to the topics or questions indicated. The process takes place according to a timetable set by the inquiry.

An index accompanying the evidence proposal identifies the documents that will form the witness's bundle. They will be documents the witness may be asked about during the hearings and/or documents that may assist them in preparing to give evidence. If additional documents are to be referred to during the hearings, witnesses will be informed about them in advance of giving evidence.

The advantage of the evidence proposal is it obliges counsel to the inquiry and core participants to advance their witness preparation, and it ensures that the witness is informed in advance of the topics about which they will be asked and the documents to which they will or may be referred.

It also has the advantage that it allows the chair to read in to, and follow, the evidence, and similarly allows core participants to read in to, follow and engage with the evidence at an earlier stage in the process, and thereby (at least in theory) reduces the nature and volume of questions core participants seek to be put to the witness through counsel to the inquiry and/or the nature and number of formal applications made under Rule 10.

The use of evidence proposals is however not the only way in which the evidence phase of an inquiry may be conducted. Different inquiries adopt different models. However, my personal experience was that evidence proposals were a useful tool to ensure the effectiveness and efficiency of the evidence phases of the inquiries I was involved in as counsel.

4. How can a chair ensure that the inquiry is following an inquisitorial rather than adversarial approach? Does the chair have power over this?

Response: subject to section 17(3) of the Inquiries Act 2005, section 17(1) gives the chair ample power to regulate the conduct of the inquiry. It is therefore open to an inquiry chair to prevent counsel to the inquiry and/or core participants (who may be permitted by the chair to ask oral questions of witnesses under Rule 10) from asking questions in a manner which is unnecessarily adversarial or hostile.

The chair has complete discretion in this regard. Much will depend

on the nature of the inquiry, the particular inquiry model the chair has adopted, the nature and gravity of the allegations witnesses may be facing, as well as public expectation.

5. In your evidence to the Committee, you said that:

> *"The committee's recommendation at the time was the revocation of those rules [13-15], to be substituted by one simple rule. I have looked at that, and I have looked again at Rules 13 to 15. However cumbersome they appear to be, they have an important part to play in identifying not only when a warning letter might be sent by the chair to a particular individual but the information that needs to be sent to the individual so that they individual can properly respond to the explicit or significant criticism that is to appear in the report. If you oversimplify the rule, if I may say so, the opportunity for an individual to respond adequately and, as Sir John said, open the chair's eyes to the possibility that they might have got something wrong or misunderstood the evidence, is something that ought not to be entertained. The rules, however difficult they appear to be, have a proper part to play in the warning letter process in order that everybody understands what the criticism is and what the proper response to be made to it is."*

Please could you elaborate on why Rules 13-15 should remain unchanged?

Response: The rules are designed to protect a person who may be explicitly or significantly criticised by the chair in the published report. They provide for confidentiality (Rule14) and set out the required content of a warning letter (Rule15).

Under Rule 13(3), the inquiry panel "must not" include explicit or significant criticism of a person in a report unless they have been sent a warning letter and the person has been given a reasonable opportunity to respond to it. Thus, the current rules provide a protective scheme for those who may be subject to explicit or significant criticism in the inquiry report.

By way of contrast, the terms of the recommended revision in Recommendation 25 of the Committee's 2014 report provide the inquiry chair need not send a warning letter, unless the chair "believes that that person should have an opportunity to make a submission or further submission." Thus, its operation wholly depends on the chair's subjective assessment whether any person who may be subject to "significant criticism" should have an opportunity to make a submission or further submission. The formulation permits differential treatment of persons who may be subject to "significant criticism" in the report.

This formulation provides little or no procedural certainty at the warning letter stage than is presently the case, and therefore risks unfairness and potential challenge to the chair's individual decisions.

ENDS