HOUSE OF LORDS

Statutory Inquiries Committee
House of Lords
London
SW1A 0PW

Rt. Hon. Oliver Dowden MP
Cabinet Office
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Friday 26th January 2023

Dear Minister Dowden,

I am the Chair of the House of Lords Committee on Statutory Inquiries and I am writing to you on behalf of the Committee. We are undertaking post-legislative scrutiny into the Inquiries Act 2005. The Committee was established this month and will report by November 2024.

The House of Lords first conducted an inquiry into the operation and effectiveness of the Inquiries Act in 2014. The report made 33 recommendations, of which 19 were accepted or partially accepted by His Majesty's Government.

As we begin our second inquiry into the Act, I write to request an update from the Government on its progress in implementing the recommendations it accepted in 2014. We also wish to solicit the Government's opinion on the rejected recommendations, to see whether it is prepared to reconsider their merits ten years on from the last inquiry.

To assist you and your colleagues, I have tabularised the 2014 report's recommendations, the Government response and our questions, which I enclose electronically. We would be most grateful if the Government to respond to each of these questions individually and within one month.

Yours sincerely,

Lord Norton of Louth

2014 report recommendation	2014 Government response	Questions
1st. We recommend that inquiries into issues of public concern should normally be held under the Act. This is essential where Article 2 of the ECHR is engaged. No inquiry should be set up without the power to compel the attendance of witnesses unless ministers are confident that all potential witnesses will attend. (paragraph 81) We would not however remove the possibility of an inquiry being held otherwise than under the Act, for example where security issues are involved, or other sensitive issues which require evidence to be heard in secret. Ministers should give reasons for any decision to hold an inquiry otherwise than under the Act. (paragraph 82)	Once the Government decides that an inquiry appears desirable, the 2005 Act represents an important starting point when considering how best to deal with an issue which is causing public concern. However, Ministers should not feel constrained from considering other options which may be better suited to the circumstances. The Government therefore rejects this recommendation.	**1.** What are the circumstances where it is better for the Government to hold a non-statutory inquiry? **2.** Has the Government changed its view on which recommendations from the 2014 report it rejects and accepts?
2nd. We recommend that ministers should give reasons to Parliament for a decision not to hold an inquiry particularly in the following circumstances: when invited to hold an inquiry by IPCC, Ofsted, the Information Commissioner, Parliamentary Commissioners for Administration and Health, the Commission for Local Administration, or a body of similar standing; and when an investigation by a regulatory body has been widely criticised. (paragraph 111)	We accept that there should be some explanation of the consideration given to investigating an issue and why ministers have decided against using a statutory inquiry. Nevertheless, this should only be in the circumstances identified and should be limited to domestic bodies of similar standing; it should not extend to international bodies such as the United Nations. We do not consider that ministers should be required to give their reasons to Parliament in all cases as there may be unmeritorious calls for inquiries.	**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? **4.** Has the Government produced guidance on this?
3rd. A decision on a request by a coroner for an inquest to be converted into an inquiry should always be the subject of reasons. (paragraph 112)	We also accept recommendation 3 although these cases will be very rare (to date just the inquest into the death of Azelle Rodney). Schedule 1 to the Coroners and Justice Act 2009 provides the mechanism for converting a coroner's investigation into an inquiry under the	**5.** Has the Government produced guidance on this?

	2005 Act where the cause of death is likely to be adequately investigated by an inquiry. The Government would then make every effort to make sure that there was no undue delay and that there was a seamless move from one investigation to the other.	
4th. We believe the fact of the inquiry and the name of the chairman should not necessarily be the subject of the same statement, and we recommend that section 6(2) should be amended accordingly. (paragraph 114	This is a practical suggestion as a minister may decide to announce his/her intention to establish an inquiry before being in a position to announce who should chair it (as with the Home Secretary's recent announcement of a further inquiry into the way the Metropolitan Police handled the investigation into Stephen Lawrence's murder). Primary legislation will be required to give effect to this recommendation. The Government will legislate when parliamentary time allows, but this is unlikely to be before the end of the current Parliament.	**6.** When will the Government introduce this legislation?
5th. We recommend that section 10(1) of the Act should be amended so that a minister who wishes to appoint a serving judge as a chairman or panel member of an inquiry should first obtain the consent of the appropriate senior member of the judiciary. (paragraph 126)	The consent of the Lord Chief Justice is always sought for the nomination of a judge to conduct an inquiry so this would merely put current practice onto a statutory footing. The Lord Chief Justice thinks this would be helpful. The Government will legislate when parliamentary time allows, but this is unlikely to be before the end of the current Parliament.	**7.** When will the Government introduce this legislation?
6th. Section 4(3) of the Act, which requires the minister to consult the chairman before appointing a further member to the inquiry panel, should be amended to provide that the minister can appoint a member to the inquiry panel only with the consent of the chairman. (paragraph 130)	The Government rejects this recommendation because ministers invariably work with the inquiry chair to agree such details. We would wish to retain the current position as there may be occasions when the minister and chair have different views on who should support the chair. Nevertheless, the Government is clear that every effort will be made to make the relationship	**8.** In what circumstances might the Government appoint a panel member against the wishes of the chair?

	between minister and chair work, and there are no recent examples of where it did not.	
7th. We recommend that an inquiry panel should consist of a single member unless there are strong arguments to the contrary. (paragraph 136)	We accept this recommendation: this is invariably the case and an important consideration in controlling the overall costs of inquiries	**9.** Has Government guidance been updated to reflect this?
8th. We recommend that section 11(3) should be amended so that the minister can appoint assessors only with the consent of the chairman. (paragraph 137)	The Government rejects this recommendation because ministers will invariably work with the inquiry chair to agree such details. Whilst, again, the Government is clear that every effort will be made to make the relationship work, and that there are no recent examples where it did not, ministers will wish to retain the flexibility of the current position.	**10.** In what circumstances might the Government appoint an assessor against the wishes of the chair?
9th. We recommend that section 5(4) should be amended so that the consent of the chairman is needed before the minister can set or amend the terms of reference. (paragraph 145)	Terms of reference, and any amendments to them, are invariably discussed and agreed with the chair, but ministers will wish to retain control of the details, in particular those that relate to the budget and length of the inquiry.	
10th. We recommend that section 6(2) should be further amended to allow a minister, in announcing an inquiry, to set out only draft terms of reference, and that the final terms of reference should, when agreed with the chairman, be the subject of a further statement. This, we anticipate, would normally be a written statement, as permitted by section 6(4). (paragraph 146)	Recommendation 10 is rejected because it is neither practical nor sensible for there to be two sets of terms of reference in the public domain. On announcing an inquiry, ministers will invariably set out the broad scope of the inquiry which will then be finessed for the formal announcement of the terms of reference.	
11th. We recommend that interested parties, particularly victims and victims' families, should be given an opportunity to make representations about the final terms of reference. (paragraph 151)	This recommendation is accepted to the extent that it may be helpful in certain instances where engagement with interested parties is felt more likely to lead to an acceptable set of conclusions for those concerned. But this proposal would not be helpful in cases where the Government wished to respond swiftly to an issue or issues of	**11.** Has guidance changed to reflect this?

	public concern and it would potentially be problematic in cases where there are multiple victims.	
12th. We recommend that the Government should make resources available to create a unit within Her Majesty's Courts and Tribunals Service which will be responsible for all the practical details of setting up an inquiry, whether statutory or non-statutory, including but not limited to assistance with premises, infrastructure, IT, procurement and staffing. The unit should work to the chairman and secretary of the inquiry. (paragraph 174)	The Government rejects this recommendation. If there were to be such a unit it would sit within a policy team, rather than within the operational HMCTS, and it would report to the department concerned, not the inquiry chair. We consider however that the issues the Committee have identified can be addressed without such a unit. It makes more sense for Cabinet Office processes to be strengthened (as at our response to recommendation 13 below) and for a practitioners' forum to meet on a regular basis to share best practice from current inquiries, than to devote resources to establishing and maintaining a team that would have a limited role after an inquiry had been established.	**12.** Is there a specific team within the Cabinet Office focussed on public inquiries? **13.** When was a practitioners' forum established? **14.** Given the number of large statutory inquiries open at any one time, would the Government reconsider their response to this recommendation?
13th. The inquiries unit should ensure that on the conclusion of an inquiry the secretary delivers a full Lessons Learned paper from which best practice can be distilled and continuously updated. (paragraph 175)	Recommendation 13 is accepted to the extent that it is Government policy that inquiries should produce a lessons learned document. However, we do not believe that an inquiries unit should be responsible for ensuring that these documents are produced. As the Cabinet Secretary said in his written evidence to the Committee, the Cabinet Office will take a more proactive stance on this in future, making clear to inquiry secretaries that a lessons learned paper must be produced and sent to its Propriety and Ethics Team at the conclusion of the inquiry to ensure that any lessons to be learned can be picked up and best practice shared. The Propriety and Ethics team, which reports directly to the Cabinet Secretary, will be responsible for retaining and acting on these reports.	**15.** Have 'lessons learned' papers been produced for recent inquiries? Is this routine? **16.** How has the Cabinet Office taken a more "proactive stance"? **17.** Please could you share an example of a 'lessons learned' document with the Committee?

14th. The inquiries unit should review and amend the Cabinet Office Guidance in the light of our recommendations and the experiences of inquiry secretaries, and should publish it on the Ministry of Justice website. (paragraph 176)	Recommendation 14 is accepted to the extent that the Government agrees that the Cabinet Office should complete its Inquiries Guidance and it will be published on the 'gov.uk' website. This Guidance has been produced with considerable input from experienced inquiry teams. The Cabinet Office continues to provide effective advice and guidance on best practice before and following the announcement of an inquiry, to assist inquiry teams as much as possible, but also in a way that takes into account the small number of inquiries that are underway at any time. The Cabinet Office will continue to play a central role in providing such guidance.	**18.** Has the guidance been updated? **19.** When will it be published in final form?
15th. The inquiries unit should also retain the contact details of previous secretaries and solicitors, and be prepared to put them in touch with staff of new inquiries. (paragraph 177)	Recommendation 15 is accepted as we agree that such contact details should be retained but this need not be done by an inquiries unit. The Cabinet Office and the Ministry of Justice hold much of this information and regularly share it when providing advice to departments considering establishing an inquiry. We consider that this function should be undertaken by the Cabinet Office's Propriety and Ethics Team.	**20.** Are contact details collated? If so, by whom?
16th. The inquiries unit which we recommend should collate Procedures Protocols and other protocols issued by inquiries and make them available to subsequent inquiries. (paragraph 180)	We accept that Recommendation 16 is a sensible suggestion but do not think that it need be carried out by an inquiries unit. We consider that this function should also be undertaken by the Propriety and Ethics Team.	**21.** Have the Procedures Protocols been collated by the Cabinet Office?
17th. We recommend that the chairman, solicitor and secretary of an inquiry should consult the central inquiries unit and the Treasury Solicitor to ensure that counsel are appointed on terms which give the best value for money. (paragraph 187)	The Government accepts this recommendation but not that it is in any way dependant upon there being an inquiries unit. We consider that this function should be undertaken by the Propriety and Ethics Team.	**22.** Has guidance been updated to reflect this?

18th. We recommend that a scoping exercise should be carried out by the staff involved in planning a new inquiry to examine all the key issues, in particular to address matters of timescale and cost. (paragraph 189)	The Government accepts this recommendation. It is particularly important in the current financial environment and should be a key piece of work when establishing an inquiry so it can be the basis of the work plan throughout the lifetime of the inquiry.	**23.** Has guidance been updated to reflect this?
19th. We recommend that the power of the minister to issue a restriction notice under section 19, restricting public access to an inquiry, should be abrogated. The chairman's power to issue a restriction order is sufficient. (paragraph 206)	The Government rejects recommendation 19. Ministers must have the power to issue notices imposing restrictions on attendance at an inquiry and/or on the disclosure or publication of any evidence or documents provided to an inquiry. They will understand the nature of national security and other sensitive material. It is not appropriate that this power is ceded to the inquiry chair alone.	**24.** Have any recent inquiries had national security implications? **25.** Have ministers restricted public access to any recent inquiries? Why?
20th. We recommend that, whoever is responsible for publication of the inquiry report, section 25(4) should be amended so that, save in matters of national security, only the chairman has the power to withhold material from publication. (paragraph 207)	Recommendation 20 is also rejected because the Government does not consider that the inquiry chair should be responsible for judging any risks to national security or international relations. The executive is best placed to assess that risk and the potential damage that might be caused. Further, section 19(1)(b) gives ministers the power to impose restrictions at any time on the disclosure and publication of any evidence or documents provided to an inquiry.	**26.** When and why have Ministers withheld material from publication?
21st. We recommend that where the minister wishes to terminate the appointment of a panel member other than the chairman, section 12(6) should be amended to require the chairman's consent. (paragraph 209)	This recommendation is rejected as ministers will invariably work with the inquiry chair to agree such a termination. As noted above, every effort will be made to make the relationship between minister and inquiry chair work – and there are no recent examples where it did not – but ministers would wish to retain the flexibility the current position gives.	
22nd. We recommend that section 12 should be amended to provide that where the	This recommendation is accepted but will require primary legislation.	**27.** When will the Government introduce this legislation?

minister wishes to terminate the appointment of the chairman of an inquiry, he should be required to lay before Parliament a notice of his intention, with the reasons. (paragraph 210)		
23rd. A provision should be added to the Act stating that the chairman, and only the chairman, may appoint one or more barristers or advocates in private practice to act as counsel to the inquiry. (paragraph 224)	The Government rejects this recommendation because ministers will want to retain control of such issues which affect departmental budgets and the terms of reference of an inquiry.	
24th. The fourth and sixth Salmon principles, which allow a person the opportunity of being examined by his own solicitor or counsel, and of testing by cross-examination any evidence which may affect him, are over-prescriptive and have the effect of imposing an adversarial procedure on proceedings which should be inquisitorial. They should no longer be followed. Reliance should be placed on the chairman who has a duty to ensure that the inquiry is conducted fairly. (paragraph 235)	The Government rejects this recommendation because it is unnecessary: the fourth and sixth Salmon principles are effectively already excluded in relation to 2005 Act inquiries by Rule 10 of the Inquiry Rules 2006. This Rule sets out the limited scope for allowing a person involved with an inquiry the opportunity to be asked questions by his or her own legal representative, and to test by cross-examination evidence which may affect that person. Rule 10 also provides the chair with wide discretion to ensure that an inquiry is conducted fairly.	
25th. We recommend that rules 13-15 of the Inquiry Rules 2006 should be revoked and a rule to the following effect substituted: "If the chairman is considering including in the report significant criticism of a person, and he believes that that person should have an opportunity to make a submission or further submission, he should send that person a warning letter and give him a reasonable opportunity to respond." (paragraph 251)	The Government rejects this recommendation because rule 13 encapsulates what was the practice of most pre-2005 Act inquiries (and is still the practice of many nonstatutory investigations) in (i) sending a 'Salmon letter' giving notice of potential criticism to a person before he or she is called to give evidence, and (ii) giving a participant who is to be criticised in an interim or final report the opportunity to comment on a proposed criticism before publication. The power to send a warning letter contained in rule 13(1) is discretionary, although in the Treasury Solicitor's Department's	

	experience is almost universally adopted by inquiry chairs; only the requirement to give an opportunity to respond to criticism contained in rule 13(3) is mandatory. The Treasury Solicitor's Department has advised that the drafting of rule 13 is not defective	
26th. We recommend that rules 2 and 18 be amended to give the inquiry secretariat some discretion as to which documents created by the inquiry should be part of the permanently archived inquiry record. (paragraph 254)	In its written evidence to the Committee the Government took a similar view.	**28.** When does the Government plan to amend the rules?
27th. We recommend that rule 9 should be amended to allow the inquiry's own legal team to take written statements from witnesses. (paragraph 255)	In its written evidence to the Committee the Government took a similar view.	**29.** When does the Government plan to amend the rules?
28th. Rules 20 to 34 are over-prescriptive; we recommend that the procedure for awarding costs should be simplified. (paragraph 256)	We accept but any change in the costs regime should be considered on the basis of whether it increases or reduces costs.	**30.** When does the Government plan to amend the rules?
29th. We recommend that section 18(3) and (4) of the Inquiries Act 2005 be repealed, and section 20(6) amended, so that after the inquiry is concluded the inquiry record continues to have the same exemption from disclosure under the Freedom of Information Act as previously, and disclosure restrictions continue to apply. (paragraph 261)	The Government rejects this recommendation. Repealing these provisions would create an anomaly because the papers of non-statutory inquiries do not have the protection of section 32 of the FOIA. We consider that there should be transparency with regard to the papers of a 2005 Act inquiry after it has concluded, subject to the usual protections provided by the FOIA on sensitive information.	
30th. In the case of many inquiries, publication of the formal Government response is accompanied by a statement to both Houses. We recommend that this should be the invariable practice. If a second, more detailed, written response is produced, as if often the case, it should also be published. It	The Government accepts this recommendation insofar as a formal Government response can be agreed. However, there are cases where this will conflict with other security related legislation and where, therefore, the Government will be unable to meet the requirements of this recommendation.	**31.** Have there been recent cases where the Government has not adequately responded to a report?

should say exactly which recommendations are accepted. (paragraph 287)		
31st. If the inquiry specifies that particular recommendations are for implementation by particular public bodies, those bodies should have a statutory duty to say within a specified time whether they accept the recommendations, and if so, what plans they have for implementation. (paragraph 288)	The Government accepts recommendation 31 but does not consider that there needs to be a statutory duty.	**32.** Has any guidance been updated to reflect a this?
32nd. We recommend that in all cases, the response should be published not more than three months after receipt of an inquiry report. Reasons should be given for not accepting recommendations. For those which are accepted, details of when and how they will be implemented are essential. The report should include an implementation plan, and a commitment to issue further reports to Parliament at 12-monthly intervals. (paragraph 289)	The Government accepts Recommendation 32 in principle but with a more realistic timeframe given the clearances that will be required and the need to cost fully those recommendations it is considering accepting. We consider that a six month timeframe for publication of the Government's response would be more achievable	
33rd. Ministers have at their disposal on the statute book an Act and Rules which, subject to the reservations we have set out, in our view constitute a good framework for such inquiries. Ministers should be ready to make better use of these powers, and should set up inquiries under the Inquiries Act unless there are overriding reasons of security or sensitivity for doing otherwise. (paragraph 300)	The Government agrees that the Act and Rules provide ministers with an important framework and point of departure when determining how to hold an inquiry. However, in line with our response to recommendation 1, ministers will want to make sure, at all times, that the most suitable approach is adopted in light of the circumstances of the issue under consideration, and that there may be a variety of reasons why an alternative approach is preferable to holding an inquiry under the Act. As such the Government rejects this recommendation.	**33.** Has the Government taken any steps to amend the Act or Rules? Why? What is the progress with this?