



THE RT HON THERESA MAY MP
Member of Parliament for Maidenhead

HOUSE OF COMMONS
LONDON SW1A 0AA

Lord Norton of Louth
House of Lords Statutory Inquiries Committee
Palace of Westminster
London
SW1A 0PW

21 May 2024

Dear Lord Norton,

I was grateful to receive your request for me to submit evidence to your committee. I hope that the following responses to your questions will prove useful.

It is my view that inquiries do positively seek clarity on areas of public concern, not only to find answers, but to ensure lessons are valuably learnt to prevent many tragedies that form the basis of inquiries from happening again.

I believe in the fundamental function of public inquiries. As the Committee will know, I announced several inquiries during my six years as Home Secretary and three years as Prime Minister respectively. I did this because I firmly believe that real and indelible change has been brought about as the result of public inquiries; providing an independent account of the facts, as far as possible closure for victims and their families and a mechanism for recommendations for future policymakers and governing institutions.

I do, however, believe that several factors do impede the effectiveness and efficiency of public inquiries. I hope to be able to outline some of these to the Committee and offer my views on how to strengthen the 2005 Inquiries Act to ensure that inquiries are better overseen and concluded.



Terms of Reference

Firstly, the effectiveness of a public inquiry is contingent on the explicitness of its terms of reference. Increasingly, and perhaps understandably, ministers and inquiry chairs seek to consult all affected individuals and groups on the terms of reference to ensure their pursuit of justice is represented within the scope of the inquiry.

In isolation, I welcome that interested parties, in particular, victims and victims' families should be given an opportunity to make representations about the final terms of reference as outlined in the Inquiries Act 2005 recommendation 11.

I know from my own experience during the Independent Inquiry into Child Sexual Abuse how hugely important it is to ensure interested party input is as broad as possible. While I do recognise the importance of ensuring all those affected feel that their concerns are at the heart of any inquiry, it is a sad reality however that public inquiries rarely satisfy everyone.

I do feel on this occasion that the government was correct to observe that consulting all parties, particularly in cases where there are many concerned groups, is beneficial however could impede the Government's ability to respond swiftly and could protract the inquiry's conclusion.

I am concerned that there is a potential tendency to expand the scope of inquiry terms of reference to broaden expectations on what the inquiry is intended to cover. In order to consult all parties concerned, recent terms of reference have, as a result, grown increasingly both more detailed and broader in scope and *could* risk losing focus on the initial purpose. I could cite various examples, not least the Renewable Heat Incentive (RHI) inquiry which outlined 14 specific questions to address, and 17 further points to cover the inquiry's methodology or the ongoing COVID-19 inquiry. As the Committee may know, the Swedish COVID inquiry has already concluded.

For that reason it is my view that when establishing an inquiry, it is imperative that the Government is very clear publicly about what it is intended to cover. There is of course some scope for the chair of the inquiry to determine what they do and do not want to investigate within the terms of reference, but an inquiry should always have a key purpose to ensure its investigation is not a general overview through a broad subject.



There is naturally a balance to be met however, and I am acutely aware of inquiry terms of reference which have, with retrospect, circumscribed the scope of investigations limiting their conclusive effectiveness. Richard Scorer, the solicitor who represented Stephen Messham at the Waterhouse inquiry noted how the narrow terms of reference constrained members of the inquiry from investigating the wider issue of child exploitation^{1 2}. Messham raised his own concerns that the terms of reference of the Waterhouse inquiry meant he was unable to describe abuses that took part outside the care system (which fell outside the scope of the Waterhouse inquiry terms of reference)³. As a result, the limited terms of reference may have contributed to many abuses being undiscovered.

It is on that basis that I announced in November 2012 a review of investigations into historic child abuse in North Wales.⁴ It is very disappointing that The Waterhouse Inquiry sat for 203 days and heard evidence from more than 650 people, but potentially owing to the tapered inquiry terms of reference, the report found no evidence of a paedophile ring beyond the care system. While the Government found no reason for a further inquiry following investigating the Waterhouse tribunal, as we regrettably now know, most lamentably at the cost of so many victims waiting years for their abuses to be validated, the crimes outlined in the Waterhouse inquiry were clearly not the full extent.

It is therefore crucial that future inquiries are provided the focussed but reasonable capacity in their terms of reference to investigate matters fully.

Efficiency

With any public inquiry, there is of course also the issue of the length of time, cost and resources required. I accept that a key focus of the 2005 Act did seek to remedy this criticism following the growing experience of the Bloody Sunday Inquiry which, while representing a pivotal moment for exonerating victims and delivering a damning account of the conduct of soldiers, was both

¹ <https://www.theguardian.com/society/2012/nov/06/welsh-childrens-home-inquiry-abuse>

² <https://www.bbc.co.uk/news/uk-wales-politics-20236345>

³ <https://www.theguardian.com/uk/2012/nov/03/man-claims-sexually-abused-politician>

⁴ <https://www.gov.uk/government/news/historic-allegations-of-child-abuse-in-north-wales-home-secretarys-statement>



extremely long and costly. I believe there are several ways in which the efficiency of inquiries can be reassessed.

One major cause of the unnecessary length and cost of inquiries has been that the secretariat of every new inquiry has had to start from scratch. I therefore fully supported the recommendations made by the House of Lords Select Committee on the Inquiries Act 2005 supporting a central inquiries unit within (then) Her Majesty's Courts and Tribunals Service and I was pleased to see this has since been established within the Cabinet Office.

This, in my view, does now produce a standardised reference point for any future inquiry secretariat to obtain knowledge of best practise from across government and access practical support from senior, more experienced inquiry chairs and members.

Former inquiry secretaries have emphasised how valuable it would be to have full and detailed guidance on setting up and running an inquiry.⁵, and I would be interested to learn if the establishment of the inquiries unit that convenes quarterly, in addition to the pre-existing sponsorship function, has been beneficial.

Although I respect the Government's response 20 to the House of Lords Select Committee report that it would be "more efficient to build on and improve the current system", this has palpably not happened.

I did not agree with the Government's observation that the establishment of a standing unit would not be necessary "given the relative infrequency" of new inquiries. The Institute for Government data demonstrates that there were 69 public inquiries launched between 1990 and 2017, compared with a mere 19 in the previous 30 years.⁶ It is an unfortunate truth that there will likely be further future inquiries and the establishment of a standing unit, in my view, does seem a reasonable measure to increase efficiency. While this would produce an initial financial burden in the establishment of a central inquiries unit, I believe this is cost effective and time efficient in the long term and this rejected recommendation (in addition to recommendations 15 & 16) does still bear merit.

⁵ House of Lords Select Committee on the Inquiries Act 2005 (2014) *The Inquiries Act 2005: Post-legislative scrutiny*, The Stationery Office, p. 52.

⁶ <https://www.instituteforgovernment.org.uk/article/explainer/public-inquiries>



I have read various other recommendations encouraging the use of alternative process techniques to simplify and speed up the process of public inquiries, not least group review as presented by the Centre for Effective Dispute Resolution⁷. At the very least, I do believe that this recommendation could increase the efficiency of public inquiries and therefore does deserve consideration in a future assessment of the 2005 Act.

A group review whereby witnesses or victims can present their evidence together does have merits. Concurrent evidence may trigger an informative exchange of views, recollection of events and could also clarify detail, language and possibly memory together. I believe this ostensibly appears to be a good provision and could be an effective way to increase efficiency, however it would be vital for provisions to remain in place for victims to provide evidence alone should they wish to.

Without this provision, individuals may feel uncomfortable sharing their experiences with a group and therefore not offer a full authentic account to the inquiry. This is one benefit of non-statutory enquiries which in my view can offer more flexibility. As the committee will know, the 2005 Act does allow Ministers the option of a non-statutory inquiry, which could make it easier for the inquiry to take closed evidence, not least on sensitive issues relating to national security. Non statutory inquiries may also capacitate greater cooperation and secure witnesses offering greater candour particularly in military and governmental organisations and victim groups.

As the committee will well know however, since the 2005 Act passed non-statutory inquiries are less frequent not least because they cannot compel witnesses to give evidence under oath. In my view therefore a review into better practices on providing evidence in statutory inquiries, whereby inquiries can both compel witnesses to attend, but also ensure individuals concerned can offer a full and candid account of events in a comfortable setting is important.

Maxwellisation and warning letters

Another area of interest previously raised in the House of Lords Report and wider academic study in regard to the efficiency of public inquiries is the process of warning letters.

I do believe that warning letters are a fundamentally decent practice, but I would be interested to see a further assessment of whether the deliverability of warning letters can be improved.

⁷ https://www.cedr.com/wp-content/uploads/2019/10/CEDR_Setting_Up_and_Running_a_Public_Inquiry_-_Guidance_for_Chairs_and_Commissioning_Bodies.pdf



As it has been previously and succinctly explained by the House of Lords report, there will be cases where a warning letter seems demonstrably more appropriate than others. There are various cases whereby from the outset of an inquiry, it is clear that its subject (basis for which the inquiry was established) or the requirement of integral evidence to establish basic facts is concerned with one or a limited set of individuals. In these cases, it is reasonably obvious that they may or will feature in the interim or final report and therefore a warning letter notice seems unnecessarily procedural at the expense of efficiency. The committee will know that it was estimated that the Mid Staffordshire Inquiry was extended by at least six months by the warning letter process⁸.

On the contrary, some individuals may be cited or criticised in the inquiry conclusion where cogent evidence may be given, yet have previously not featured in the inquiry either as witness or as subject. This may come as a great shock or cause distress to individuals and their families as a result. In my view it is only fair and good practice that these individuals are given the opportunity to provide a response to the inquiry's report should they wish to.

I do not believe there is a pressing need for this practice to expand beyond the current provisions. While I am sympathetic to the Lords report's concerns regarding the limited discretionary power 13(1) of sending a warning letter, I believe the mandatory nature of permitting an opportunity to respond if an individual is criticised in an inquiry contained within 13(3) does suffice and supersede 13(1).

Needless to say it is important for a balance to be struck between offering warning letters where appropriate and exceeding what is necessary.

As Robert Francis QC rightly outlines, any assumed process of sending warning letters and advanced copies of publications to all concerned individuals could create a virtually endless exchange of drafts and submissions, increasing the Inquiry process. This leads me to my final observation I would like to make.

Independent Public Advocate

As the Committee will know I initially adopted the idea of an independent public advocate in the Conservative Party manifesto in 2017.

⁸ Robert Francis QC *Inquiries Act: post-legislative scrutiny – Evidence* (HL) 30 October 2013 Q216



It was my view that a new advocate would ensure that the voices of victims and their families were heard, right from the immediate aftermath of a tragedy.

This is important, not only to procedurally help relay victims' views directly to the Government when deciding whether answers needed to be sought, but also to ensure resources are readily available for victims to access help and advice whenever they may need it.

It is possible that an independent public advocate with the ability to access the information victims and their families need in order to understand why a public tragedy occurs could obviate the need for some public inquiries.

In the event of an inquiry, the advocate could serve as a useful support mechanism for victims and their families throughout the inquiry process. I note however that the need for ongoing support via a public advocate, could be reduced if inquiries were concluded in a more timely manner or victims had greater confidence in the process.

The effectiveness of the independent public advocate will depend on the final terms in which it is introduced in the Victims and Prisoners Bill.

I would be interested to see this investigated further to see how an independent public advocate can work in tandem with a more effective public inquiries process which represents better outcomes for victims and value for taxpayers.

I trust that the submission of evidence I have provided to your committee will prove insightful.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'T. May'.

The Rt Hon Theresa May MP