

Written submission from Steffan Groch (STI0006)

My submission below is largely to address Questions numbers 1[a] and 2, but it also has relevance to Questions 4 & 6.

Inquiries and candour

Recent times have seen the setting up of many Inquiries, such as the Grenfell Tower Inquiry, COVID Inquiry, Thirlwall Inquiry and the Horizon IT Inquiry, each of which attempt to address matters of national concern and which invariably attract the attention of the media/general public. Each of these high profile Inquiries are testing our Inquiry and justice system. Confidence in our public sector institutions has never before been under so much strain.

The Inquiry Act's provisions, as originally drafted, aimed to restore public confidence in the Statutory Inquiry process particularly given the historical concerns and controversies generated by the conduct of inquiries such as the Bloody Sunday Inquiry and other earlier pre-2005 Act inquiries. As we are continuing to see, Inquiries are high profile and are the subject of considerable criticism for delay, lack of openness and cynicism in terms of how organisations are approaching them.

I am involved in a number of the above Inquiries, most notably for the Royal Borough of Kensington and Chelsea [RBKC] in the Grenfell Tower Inquiry [GTI]. I would like to make my contribution to the work of the Statutory Inquiries Committee specifically on the subject of candour and how my experiences in acting for RBKC in the GTI were positive and undoubtedly assisted the work of the Inquiry legal team. RBKC signed the Hillsborough Charter in early 2018 and as such made their position clear on a number of occasions during the Inquiry that it acted with complete candour and in doing so, RBKC made many and varied acknowledgements of failure and shortcomings.

I would be happy to further share my practical experiences with the Committee as to how this worked in practice. I would like to think there is scope to adapt the 2005 Act and 2006 Rules to encourage other public sector organisations to adopt the Hillsborough Charter and take a more candid approach to Inquiries.

Currently, there is nothing within the Inquiry Act or related codes/guidance documents to endorse the principle of candour or indeed why organisations should adopt the Hillsborough Charter. Our experience in the GTI showed how organisations adopting the Hillsborough Charter can very much assist an Inquiry with its work and to a great extent prevent the "merry go round of blame" in the words of Richard Millett KC Counsel to the GTI.

The 2005 Act provides within section 35 that a person is guilty of an offence if they intentionally suppress or conceal a relevant document. As a foreword to such a section of the Act or as part of explanatory guidance, there is perhaps the opportunity to draft what are regarded as being the expectations of those giving evidence and documents to ensure they act openly and with candour.

Could the duty of candour and associated openness and transparency be further deployed in the context of the recommendations of an Inquiry report, as provided by Section 24 of the 2005 Act? Each Inquiry is rightly expected to come up with relevant recommendations, often as interim and final. The input of Core Participants is critical in this. A stated expectation in the Act or Rules that Core Participants must act with openness, transparency and candour in identifying their shortcomings, such that appropriate recommendations could and should be made is surely useful. I would welcome therefore that the Act or Rules be adapted to express such an expectations in the context of the Inquiry recommendations.

Let me briefly remind the Committee what is meant by the Hillsborough Charter. It arose following the Hillsborough disaster.

A total of 97 people died as a result of the Hillsborough tragedy when Liverpool fans were crushed in the Leppings Lane end of Sheffield Wednesday's stadium in 1989. After a long battle for justice, an inquest into the deaths concluded the victims had been unlawfully killed following a litany of organisational blunders.

In 2017 the Right Reverend James Jones published 25 recommendations for the government, the police and Chief Coroner to prevent the injustices of Hillsborough ever occurring again. However, despite adopting many of the proposals, the Government has fallen short of fully committing to all aspects of a "Hillsborough Law". His report introduced the Hillsborough Charter, encouraging public bodies to act with openness, transparency and candour and not to defend the indefensible.

While new legislation recently announced in the King's Speech will compel police officers to demonstrate a "duty of candour", it will not at this stage be extended to all public bodies and officials. Nor will it extend to those organisations who operate and work 'within' the public sector, something that we have seen more recently in the Grenfell Inquiry and will see within the COVID Inquiry.

Elkan Abrahamson, director of Hillsborough Law Now, has said that: "Only the full reintroduction of the Public Authority [Accountability] Bill, which was introduced by Andy Burnham but fell when the 2017 general election was called, will do; namely making a duty of candour enforceable and ensuring a level playing field between public authorities and those affected by disasters and wrongdoing at inquests and inquiries." However Public Inquiries have the power to adopt the Hillsborough Charter and encourage all public sector organisations to do so. This sets the tone and encourages Core Participants to be open and candid in their opening and closing submissions, ideally setting out acknowledgments of their failures and shortcomings. This speeds up the process, gives a sense of redress to the victims and would doubtless save costs.

Interestingly, the then Home Secretary, James Cleverley said: "The 97 lives taken by the Hillsborough disaster will never be forgotten. So many people were touched by this national tragedy and the Hillsborough families were badly let down. Police dishonesty, lack of accountability and obstruction were all prevalent. That is why we promised the Hillsborough families that we would honour the legacy of their campaigning and deliver lasting change. By signing the Hillsborough Charter and introducing a duty of candour for policing, this government will deliver that change and protect others from similar experiences in the future."

Maria Caulfield Parliamentary Under-Secretary of State for Mental Health has also made a statement to Parliament as follows; "I wish to inform the House that the Department of Health and Social Care will lead a review into the effectiveness of the statutory duty of candour for health and social care providers in England. The review will formally commence early in the New Year." The duty of candour is set out in regulation 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. It has been in place for NHS trusts and NHS foundation trusts since 2014 and for all other providers regulated by the Care Quality Commission since 2015. It means that when something goes wrong during the provision of health and care services, patients and their families have a right to receive explanations for what happened as soon as possible and a meaningful apology.

The duty of candour also applies in the context of judicial review proceedings and some may question why does it apply in these proceedings and not in Statutory Public Inquiries. All public authorities who are respondents to applications for judicial review are subject to what is known as a duty of candour. The effect of this duty is to require the public authority, when presenting its evidence in response to the application for

judicial review to set out fully and fairly all matters that are relevant to the decision that is under challenge, or are otherwise relevant to any issue arising in the proceedings. The duty of candour gives rise to a weighty responsibility. When responding to an application for judicial review public authorities must be open and honest in disclosing the facts and information needed for the fair determination of the issue. The duty extends to documents/information which will assist the claimant's case and/or give rise to additional (and otherwise unknown) grounds of challenge.

So in summary, whilst we are seeing some encouraging signs around the principle of candour and openness, the Inquiry Act and Rules have the opportunity to take a further step forward by adopting/encouraging the adoption of the Hillsborough Charter.

The contradiction between a duty of candour in judicial review proceedings yet not in Statutory Public Inquiries is not insignificant and is worthy of a review in my respectful opinion. At the very least, Inquiries should be given greater scope to encourage/compel public sector Core Participants to adopt the Hillsborough Charter.

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