Written evidence from Peter Skelton (STI0008)

Introduction

By way of background, I am a barrister who has been practising in public inquiries for over 25 years. I have been counsel to the inquiry (in the Independent Inquiry into Child Sexual Abuse and the Rosemary Nelson Inquiry), represented families (in the Thirlwall Inquiry Bristol Royal Infirmary Inquiry, and the Royal Liverpool Children's Inquiry), represented the Government (in the Covid-19 Inquiry and the Infected Blood Inquiry), and represented non-government organisations or individuals (in the Mid Staffordshire NHS Foundation Trust Public Inquiry and the Al-Sweady Inquiry). I am one of the co-authors of *Public Inquiries* (2011) OUP and am the Chair of the newly formed Inquiries and Inquests Bar Association.

1. Does the 2005 Act provide the right framework for ensuring that inquiries are:

a) Effective

b) Efficient

c) Appropriately overseen, and

d) Followed-up?

1. **The 2005 Act** itself is a useful instrument for codifying who inquiries should be set up, how they should be constituted, and the basic procedural requirements for the production and publication of their reports. The Act also provides a helpful, arguably vital, legal framework for inquiries that are investigating sensitive matters, e.g. national security issues or sexual abuse, and so need powers to restrict the disclosure or publication of information or evidence, or to hear from witnesses in private.

2. However, in my view **the 2006 Rules** are not effective or efficient. Some rules are useful, particularly those governing the designation of core participants (CPs) and their funding (rules 5 and 20-34), though the process for the latter is overly complex and can lead to a lack of proper funding for non-state participants compared to fully/limitlessly funded state participants. However, many of the rules lead to substantial and unnecessary increase in procedural complexity and costs – without an equivalent improvement in the Inquiry's ability to fulfil its terms of reference.

3. Most problematic are:

    a. **Rule 9**: This prescribes a process whereby inquiries request evidence, generally in the form of documents and witness statements. Requests for documents are of course essential as the onus must be on organisations and individuals to find and disclose relevant documents to the inquiry. However, requests for statements are not always helpful or appropriate. First, for organisations whose conduct is under investigation by the inquiry, this gives them an opportunity to produce lawyer-written statements that defend or evade the allegations being made against them, as they would in adversarial court proceedings.

    b. These types of statement are unhelpful, because they are not objective, accurate, or comprehensive. They often lead to an increased need to hear from the witness orally, in order to get behind the statements and ascertain the 'real' truth. That is not to say that rule 9 statements are not always useful. For witnesses whose evidence is not contentious, or who require careful handling, such as witnesses or survivors of abuse,

providing their own statements is the usually the best, most sensitive, way of eliciting their evidence.

c. **Rule 10**: This has created a convoluted process for participating in the oral hearings. Its purpose is admirable: to put the onus on counsel to the inquiry (CTI) to conduct all the witness examination and to give CPs the opportunity to participate in that process and (on occasions) to ask questions directly. But inquiries are inquisitorial, so it is for the chair/panel and their counsel to ask the questions. In most cases, there is simply no need for any CPs to do so. Nor is there any need for them to feed their questions to CTI in advance of every witness. This is often a time-consuming distraction from the heavy preparation work that is needed and unless there are issues of which CTI are unaware – which there shouldn't be – there should be a presumption that CTI ask all of the questions.

d. This rule has also been applied in very different ways in different inquiries. In some, e.g. the Covid-19 Inquiry, some direct questioning by CPs has been permitted, leading to issues being pointlessly revisited or lightweight questions being put by advocates who do not have sufficient time to develop their questioning to the point that it produces useful answers. In other inquiries, e.g. the Child Abuse Inquiry, questions were rarely (if ever) allowed, leading initially to frustration on the part of CPs, but eventually to the point where they trust that the job will be properly done by CTI.

e. **Rule 11**: This bakes in the right for CPs to make opening and closing statements at the start and end of the inquiry, usually both in writing and orally. In my experience, many of these

statements are overly long, repetitious, and unbalanced. They are also routinely misused by advocates as a platform for grandstanding; and they can take many days to be delivered, with large numbers of CPs and inquiry representatives sat listening to them, passively, pointlessly, and at great expense.

f. **Warning letters**: These oblige inquiries to write letters to everyone they intend to criticise. This is an immensely time-consuming task. It is also almost always pointless. First, the recipients will have known about the potential criticisms – from the original rule 9 requests by the Inquiry for witness evidence, from the opening statements made by CTI, and again from their (or their staff's) appearance as witnesses during the oral hearings. Second, the recipients will already have had ample opportunity to answer those criticisms, in their written and oral evidence, and in their written and oral opening and closing statements. The warning letter process is therefore a wholly inefficient exercise in repetition for both the inquiry and the recipients. It should be reserved for those exceptional cases where, for whatever reason, the criticism being put to the recipient is a new one which they have not previously had the opportunity to address, so fairness requires that they be given the opportunity to do so.

4. **Inquiries are not properly overseen.** Once set up, they are independent and have a life of their own. The only real influence on there is their sponsor departments, but that influence does not extend to the substance of the inquiries work but rather (and sometimes awkwardly) to their administrative arrangements, logistics, budget and duration.

5. **Inquiries can become dysfunctional**, e.g. because the conduct of its senior personal lead to their resignation or a loss of confidence in them. Some make poor decisions that lead to huge duration and cost. But others, e.g. the Mid Staffordshire Inquiry, are run swiftly and effectively. The difference in each case is the quality of the chair, CTI, solicitor to the inquiry, and the inquiry secretary. There is a role for an independent body to oversee inquiries, to provide guidance to them, and (where necessary) to direct them to change tack, e.g. by appointing panel members to redress imbalances or by reversing decisions that have compromised their efficacy.

6. **Inquiries are also not properly followed up**. This is for several reasons. First, once concluded they are de-constituted and the chair, panel, lawyers, and staff all move on to other work. Second, they have no power to follow up and call the Government, or other bodies, to account for not implementing their recommendations, etc. Third, because the Government does not necessarily want to be held to account and it may be politically expedience to ignore certain recommendations that may be difficult or costly to implement. This should change. Inquiries are often a very valuable mechanism for understanding the mistakes of the past and ensuring that they are not repeated. There should be a formal mechanism for ensuring that this happens.

7. The Committee may wish to note that the Thirlwall Inquiry, into the attacks on children by Lucy Letby, is carrying out a comprehensive review of previous healthcare-related inquiries and whether and to what extent their recommendations have been implemented by the Government.

2. How could the following be improved?

a) The Inquiries Act 2005.

b) The Inquiry Rules 2006 and the Inquiries (Scotland) Rules 2007.

8. The 2005 Act generally works fine. However, in my view, building on my answers above, the following reforms should be made to the 2006 Rules:

    a. Streamlining rule 9 so inquiries have discretion as to how they obtain written statements and can proof witnesses directly themselves where necessary.

    b. Rewriting rule 10 to make clear that in all cases CTI will ask all of the questions, but that CPs have the opportunity to feed into that process at the discretion of the inquiry.

    c. Abolishing rule 11 – so that it is for the chair to determine whether, if at all, they should give CPs the opportunity to make written and oral opening and closing statements, which will depend on the circumstances of each inquiry and the usefulness of the exercise to all concerned.

    d. Abolishing rules 13-15, and the associated rule 16, which govern the warning letter process, so that it is for each inquiry to determine whether the interests of fairness require such letters to be written (to a small number of persons or organisations).

3. The 2014 House of Lords report made 33 recommendations to the Government, of which 19 were accepted.

a) How effectively have the accepted recommendations been implemented?

b) Do any of the rejected recommendations still have merit?

9. Others are better placed to address this.

4. Since the publication of the 2014 Lords report, how has the use and operation of the 2005 Act changed?

10. Others are better placed to address this.

5. Ministers have recourse to statutory and non-statutory inquiries. Should the 2005 Act be amended to reflect or change this in any way?

11. No, it is important that ministers retain discretion to initiate statutory or non-statutory inquiries depending on the circumstances of a particular case. The arguments for and against each type are well-know. The former are usually more effective at dealing with major issues, but they are long and expensive. The latter are usually more effective at dealing quickly and less expensively with relatively minor issues, but they lack the powers to compel the production of documentary and witness evidence, so are sometimes unable to do their job effectively.

6. Does the Act ensure that official core participants and wider stakeholders are sufficiently and appropriately involved in the proceedings?

12. Yes, though in my view too much. Inquiries have a valuable, public, performative, almost therapeutic purpose. But that is secondary to their primary task of finding the truth and making recommendations – a task that is often hampered, not helped, by too great a degree of procedural involvement on the part of their CPs (see previous answers).

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