Written evidence from Jason Beer KC (STI0015)

A. Introduction

1. I provide this written evidence pursuant to a request from the Committee dated 11th March 2024. I do so a member of the independent bar, and not on behalf of 5 Essex Chambers or any public inquiry in which I have appeared or am appearing.

2. I was called to the bar in 1992, was a member of the A-G's Panel of Junior Counsel to the Crown (Common Law) between 2000 and 2011, and took silk in 2011. I sit as a Recorder on the South Eastern Circuit and as a Deputy High Court Judge (KBD and ChD).

3. I practise in police and public law, with a specialism in public inquiries. I have acted in over 20 statutory and non-statutory inquiries (in England and Northern Ireland) over the past 25 or so years, for individuals, corporations, public authorities, government ministers and departments, and as counsel to the inquiry – including in:
    a. The Stephen Lawrence Inquiry
    b. The Harold Shipman Inquiry
    c. The Zahid Murbarek Inquiry
    d. The Hutton Inquiry
    e. The Billy Wright Inquiry
    f. The Rosemary Nelson Inquiry
    g. The Baha Mousa Inquiry
    h. The Al Sweady Inquiry
    i. The Azelle Rodney Inquiry
    j. The Leveson Inquiry
    k. The Independent Inquiry into Child Sexual Abuse
    l. The Magnox Inquiry
    m. The Renewable Heat Incentive Inquiry-
    n. The Anthony Grainger Inquiry

4. I am presently instructed in:
    a. The Post Office Horizon IT Inquiry, as Leading Counsel to the Inquiry
    b. The Covid 19 Inquiry, as Leading Counsel for NHS England
    c. The Grenfell Tower Inquiry, as Leading Counsel for the Secretary of State for Levelling Up, Housing and Communities
    d. The Thirlwall Inquiry, as Leading Counsel for NHS England

e. The Andrew Malkinson Inquiry, as Leading Counsel for Greater Manchester Police
f. The Dawn Sturgess Inquiry, as Leading Counsel for Counter Terrorism Policing South East
g. The Jalal Uddin Inquiry, as Leading Counsel to the Inquiry
h. The Undercover Policing Inquiry, as Leading Counsel for a group of undercover police officers.

B. Question 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?

5. In relation to (a): Yes, the Inquiries Act 2005 ("*the 2005 Act*") provides broadly the right framework for ensuring that inquiries are effective. Twenty-two inquiries (in all 4 of the jurisdictions of the United Kingdom) have been initiated under the 2005 Act and have concluded.[1] They provide a substantial body of evidence upon which to judge the effectiveness of the 2005 Act. The 2005 Act has been the instrument of choice for ministers when initiating an inquiry. Inquiries under the 2005 Act have all proceeded to a conclusion which has resulted in the production of a report. Save for a small number of minor issues (addressed below), inquiries have not suggested that the framework of the 2005 Act has given them insufficient or ineffective powers.

6. In relation to (b): Yes, the 2005 Act (and the Inquiry Rules 2006 ("*the 2006 Rules*") provides broadly the right framework for ensuring that inquiries are efficient. Whilst there has been no empirical research comparing the cost of inquiries (i) established under the Tribunals of Inquiry (Evidence) Act 1921/under subject-specific legislation, and (ii) under the 2005 Act, experience suggests that inquiries under the latter instrument conclude on average some 2½ years' after they are set up, that there is a greater degree of active management of the costs of the inquiry and of core participants funded by the inquiry, and that there is more control over the format that the oral hearings of the inquiry take (with consequent savings in the length, and therefore, the cost of hearings).

[1] Eighteen inquiries initiated under the 2005 Act are presently underway.

7. In relation to (c): the extent to which there is appropriate Parliamentary oversight of inquiries (e.g. in determining the form and format of an inquiry; the personnel of an inquiry and / or the terms of reference of an inquiry) is outside my experience and expertise.

8. In relation to (d): No, there is presently not an appropriate framework in place to ensure that the work of statutory inquiries, and in particular their recommendations, is appropriately followed up. As I explain in more detail below, this has been the case for decades – and previous calls for Parliamentary intervention have gone unanswered.

C. Question 2: How could the following be improved: (a) The Inquiries Act 2005 and (b) the Inquiry Rules 2006 and the Inquiries (Scotland) Rules 2007?

9. This is addressed in my responses to questions 3 – 6 below (the operation of the Inquiries (Scotland) Rules 2007 is outside my experience and expertise and is therefore not addressed).

D. Question 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; and (b) do any of the rejected recommendations still have merit?

10. I set out below my views on those of the accepted and rejected recommendations that are particularly noteworthy (rather than addressing all 33 recommendations).

Accepted Recommendations

11. Recommendation 3: The Government accepted Recommendation 3 ("The Committee also recommends that a decision on a request by a coroner for an inquest to be converted into an inquiry should always be the subject of reasons"),[2] saying "Schedule 1 to the Coroners and Justice Act 2009 provides the mechanism for converting a coroner's investigation into an inquiry under the 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**

[2] Paragraph 33 of its Report.

and that there was a **seamless move** from one investigation to the other" (emphasis added).[3]

12. In the Anthony Grainger Inquiry, the request to the Home Secretary for conversion from an inquest to an inquiry under the 2005 Act was made by the Coroner on 20th November 2015[4] and the chair was appointed on 17th March 2016,[5] a delay of 4 months.

13. In the Jermaine Baker Inquiry, the request to the Home Secretary for conversion from an inquest to an inquiry under the 2005 Act was by the Coroner on 3rd August 2019[6] and the chair was appointed on 12th February 2020,[7] a delay of 6 ½ months.

14. In the Jalal Uddin Inquiry, the request to the Home Secretary for conversion from an inquest to an inquiry under the 2005 Act was made by the Coroner on 7th November 2022[8] and the chair was appointed on 9th November 2023,[9] a delay of a little over a year.

15. In the period between a decision that the investigation cannot continue as an inquest and the establishment of the inquiry by the minister, no work can be undertaken: The investigation is in limbo.

16. The Committee will judge for itself whether these timescales involve "undue delay" and whether there was a "seamless move" from one investigation to another.

17. Recommendations 4, 5 and 22: The Government accepted these (linked) recommendations, concerning the constitution, and setting up of an inquiry, and said: "Primary legislation will be required to give effect to recommendations 4 and 5 (and to recommendation 22, below, which the Government also accepts).

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[3] Paragraph 36 of the Government's response.
[4] See paragraph 1.24 of the Anthony Grainger Inquiry Report: https://assets.publishing.service.gov.uk/media/5d27151a40f0b611b680982e/Anthony_Grainger_Inquiry.pdf
[5] *Ibid*, para 1.26.
[6] See paragraph 1.11 of the Jermaine Baker Inquiry Report: https://jermaine-baker.public-inquiry.uk/wp-content/uploads/2022/07/Jermaine-Baker-Public-Inquiry-Report-Web-Accessible.pdf
[7] *Ibid.*
[8] https://juiweb-prod.s3.eu-west-2.amazonaws.com/2023/12/Transcript_07.12.23.pdf page 21, line 8.
[9] *Ibid,* line 21.

The Government will legislate when parliamentary time allows, but this is unlikely to be before the end of the current Parliament."[10]

18. No such amending legislation has been brought forward in the 10 years since the Committee made its recommendations and the Government accepted them. Sace for Parliamentary time, there appears to be no good reason why such curative legislation should not be enacted.

Rejected Recommendations

19. Recommendation 12: The Government rejected this recommendation ("The Committee recommends that the Government should make resources available to create a unit within Her Majesty's Courts and Tribunals Service (HMCTS) which would 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 chair and secretary of the inquiry").

20. This is not the first time that such a recommendation had been made. In fact, nearly every person or body looking at the issue of public inquiries has reached the same conclusion – see, for example:

a. Paragraphs 56-57 of the Department for Constitutional Affairs consultation paper *Effective Inquiries* CP 12/04: "The Government believes that there may be more advantage in maintaining a small, dedicated Inquiries Unit…."
b. Paragraphs 12.52-12.53 of *Public Inquiries* (Beer, J. 2011, Oxford University Press).
c. Page 33 of the Institute for Government's December 2017 publication *How public inquiries can lead to change*: "Government should implement the repeated recommendation of Parliament to create a permanent inquiries unit within the Cabinet Office."[11]
d. Many of the witnesses who have given oral evidence to this Committee.

[10] Paragraphs 37 – 41 and 74 of the Government Response.

[11] https://www.instituteforgovernment.org.uk/sites/default/files/publications/Public%20Inquiries%20%28final%29.pdf

21. Recommendation 25: The Government rejected recommendation 25 ("The Committee recommends that rules 13-15 of the Inquiry Rules 2006 should be revoked and a rule to the following effect substituted: "If the chair 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").

22. I agree that the Government was right to reject this recommendation, for the reasons that it gave.[12]

23. As the 2014 Report noted, "…the only support for these rules came from Jason Beer QC…".

24. My support for rr13-15 of the 2006 Rules remains – in summary, because:
    a. Although the process of undertaking the "warning letter procedure" is undoubtedly time consuming, and administratively burdensome for the Inquiry itself, it is an essential part of the process if the inquiry proceedings as a whole are to be fair.
    b. In my experience the responses by individuals and organisations to warning letters are often valuable sources of information and submissions, to be cherished by the Inquiry as contributions which will add to the reliability and effectiveness of the final report. They should not be regarded as time-consuming bolt-ons that merely delay the race to publication.
    c. The value of the warning letter process if threefold:
        i. First, it really assists in focussing the Inquiry's mind in the formulation of its initial draft of the report – if it has to explain the evidential basis for a conclusion in the report in a warning letter, it acts as a regulating and improving force on the inquiry.
        ii. Second, it is fair to individuals and organisations who are to be significantly or explicitly criticised in the report – even if evidence has been tested by questioning at

[12] Paragraph 80 of the Government's response.

oral hearings, it is often the case that later oral evidence, or disclosure of additional documents, occurs which may put a different gloss on events or even change the picture entirely: there must be an opportunity to point this out to the Inquiry.

iii. Third, an Inquiry sometimes makes mistakes in its draft report, and this is a perfect opportunity to put those right. Additionally, in my experience, some of the *best* information and submissions appear from criticised individuals at this stage of the process – i.e. when they actually know what is to be said about them.

25. An additional issue: There is one additional matter, not addressed in the 2014 Report, that in my view merits attention. It was adverted to as long ago as October 2010, when the Ministry of Justice said this in its *Memorandum to the Justice Select Committee: Post-Legislative Assessment of the Inquiries Act 2005* at [57]:[13]

> We have also been made aware that because public inquiries are not recognised as a legal entity they cannot enter into contractual obligations unless the inquiry chairman enters into such a contract on behalf of the inquiry relying on the immunity provided by section 37. Alternatively, some inquiries have taken the approach of using their sponsor Department's existing contractual arrangements. Although this approach has apparently worked reasonably well, we understand that there may be potential delays especially if an inquiry needs to recruit someone expeditiously or to engage an expert.

26. Thirteen and a half years on, this remains problematic. In practice, inquiries are required to utilise their sponsor Department's contracting mechanisms to procure personnel (including IT and legal support), resources (including IT equipment) and expert witnesses. This is not appropriate. First, the sponsor Department is often very closely connected to the subject matter of the inquiry (indeed, that is *why* it is the sponsor department), and notwithstanding the erection and maintenance of information barriers between the Department acting *qua* sponsor and the Department acting *qua* core participant, it remains inappropriate

[13] https://assets.publishing.service.gov.uk/media/5a756e20ed915d7314959e5c/7943.pdf

that the very Department whose conduct is under scrutiny controls who is appointed to assist the Inquiry in very important aspects of its work. This is particularly inappropriate in the case of the appointment of expert witnesses to assist an Inquiry: the Department should have no role in that process. Second, and relatedly, the use of the Department's contracting mechanisms usually requires that the Department's procurement process must be undertaken in order to, for example, obtain document reviewers or instruct an expert witness. These processes are inapt and inappropriate in the case of an independent statutory inquiry. They cause delay to the work of the Inquiry. They often require re-procurement processes to be undertaken in the course of the Inquiry, risking the continuity of the work of the Inquiry. They involve the disclosure of information about the work of the Inquiry to the Department whose conduct is often under investigation.

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

27. Save for the issue mentioned below, there have been no significant changes in the use and operation of the 2005 Act since the 2014 Lords Report – whether as a result of that Report, or otherwise. In other words, inquiry practice has remained broadly the same.

28. The exception is a greater tendency in inquiries since 2014 for questions to be asked of witnesses by – and only by – Counsel to the Inquiry ("*CTI*"). In my view this tendency ought to stop, and instead be reversed.

29. The approach of CTI asking all (or nearly all) of the questions of witnesses can be seen in:
    a. The Independent Inquiry into Child Sexual Abuse
    b. The Grenfell Tower Inquiry
    c. The Renewable Heat Incentive Inquiry
    d. The Brook House Inquiry
    e. The Covid-19 Inquiry (although Core Participants have asked some questions, this has been very limited in scope).

30. Inquiries tend to adopt this approach because – it is said – it leads to less "adversarial" proceedings (and / or it is consistent with an inquisitorial model);[14] because the Inquiry can retain control

over the topics addresses with witnessed, and therefore the length of the hearings; and because it results in shorter, and therefore less costly, hearings.

31. There are a number of reasons why CTI asking all (or nearly all) of the questions may not be appropriate:

a. First, it may give the impression that the Inquiry (because CTI *is* the Inquiry/is the voice most heard in the Inquiry) is pursuing a single narrative – i.e. it is seeking to prove a case, or has made its mind up before the evidence has been heard and wishes only to hear evidence that is consistent with the views that it has already formed.

b. Second, it is very often the case that Core Participants have very different perspectives on issues in the Inquiry – if only CTI is to ask the questions, then s/he must choose which perspective they wish to pursue (they cannot ask questions in a Jekyll and Hyde fashion – one moment seeking to establish a point, and then next moment seeking to undermine it).

c. Third, Core Participants often bring a fresh and interesting perspective to the asking of questions, informed by their own experience of the events in question or the subject matter of the Inquiry: they can add real value to the process of obtaining and testing the evidence.

d. Fourth, if CTI ask all or nearly all of the questions, then Core Participants (especially those who may be significantly or explicitly criticised in an inquiry report) may feel as it the proceedings have not been fair, in particular because they have not had a reasonable opportunity to ask questions through their own counsel.

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[14] Note what the Chief Coroner said to the Justice Select Committee on this issue, in the context of inquests: "One of the problems in the past has been imprecise use of terminology, which has led to misunderstanding and an unnecessarily polarised debate. You hear people say that inquests are adversarial. Very often, they use the word "adversarial" in a sense that is very different from the sense in which I would use it. They may mean "contentious" or "controversial". There is no doubt that some inquests are controversial and contentious; we all know that, although I would say it is a clear minority. When I use the word "adversarial" I am talking about who controls the process, and that is why it is an important distinction. In adversarial proceedings, in the strict legal sense of the word, it is the parties who control the proceedings. The prosecution in a criminal case decides what charges to bring and what evidence to adduce; the defendant decides whether to give evidence and call witnesses, and does not have to do either. The same goes for civil proceedings, so the parties are in charge. In inquisitorial proceedings it is the judge who is in charge. We talk about "the coroner's inquest" in a way you would never talk about "the judge's trial". The coroner is there not to adjudicate but investigate. It is a public judicial investigation, and the difference matters in all sorts of practical ways": Q19 of https://committees.parliament.uk/oralevidence/14214/pdf/

32. I strongly favour a "hybrid" approach,[15] in which CTI asks many of the questions, but CPs have the facility to ask questions of their own (by their own advocate, in the way that they wish to ask them, and by reference to the material to which they wish to refer). This can be perfectly well managed, consistently with r10 of the 2006 Rules, without adding to the length or cost of the Inquiry. The system requires legal representatives for Core Participants to send proposed topics, questions and document references to CTI in advance of a witness giving evidence. CTI marks the requests up (they are usually contained on a pro-forma designed for the purpose), "CTI" – in which case CTI will ask the questions; "CP" – in which case the legal representative for that Core Participant will ask the question; or "No" – in which case no permission to pursue that line of questioning is given, unless and until the CP applies to the Chair for permission (in my experience no such applications are ever made, because CPs realise that the question ought not properly to be asked – e.g. there is not a proper evidential foundation for it, or it has been adequately covered by other evidence, or it is best asked of a more appropriate witness). This model has been deployed in, for example, the Baha Mousa Inquiry, the Al Sweady Inquiry, the Anhtony Grainger Inquiry, and is being used in the Post Office Horizon IT Inquiry.

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

33. No, because the 2005 Act governs the stage *after* such a decision has been made. There is no warrant for an instrument concerning statutory inquiries to seek to regulate non-statutory inquiries.

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

[15] By "hybrid approach" I do not mean the approach, suggested in some of the evidence to the Committee, of providing Core Participants a draft "evidence proposal" – which sets out the topics which it is proposed that CTI will address with the witness, and the documents to which s/he will be referred – and inviting the comments of Core Participants on that proposal, and then amending it in the light of any comments received. This approach does not engage with any of the points made in paragraph 31 above. It is instead about what issues should be covered with a witness, not *how* they will be covered, or *who* will ask the questions.

34. Yes, save for the issue mentioned in paragraphs 30 – 34 above.

22nd March 2024