

## **Written evidence from Frederick Way and Dr Karl Mackie (STI0022)**

### **Background**

We work for CEDR (the Centre for Effective Dispute Resolution), the UK's largest alternative dispute resolution service and are specialists in process design and resolving conflict. Dr Karl Mackie CBE is the Founder President of CEDR and was formerly its CEO. Frederick Way is a Senior Dispute Resolution Consultant for CEDR and trained barrister.

We are the co-authors of ***Setting Up and Running a Public Inquiry: Guidance for Chairs and Commissioning Bodies*** (2015) to assist those in government and running Public Inquiries to be more effective. We wrote this guidance following a years' long project looking at how Public Inquiries worked and in consultation with former Chairs and participants. As well as providing practical guidance, the report made 11 Key Recommendations for change. These are provided in an appendix to this response.

At the time of publication, we spoke with the Cabinet Office and Dr Karl Mackie gave evidence to the House of Lords Committee on Inquiries.

Since publication, the guidance has been used informally by a number of public inquiries teams, including the Independent Inquiry into Child Sexual Abuse, the Independent Jersey Care Inquiry and the Grenfell Tower Inquiry.

The full publication of ***Setting Up and Running a Public Inquiry: Guidance for Chairs and Commissioning Bodies*** can be accessed at this link [https://www.cedr.com/wp-content/uploads/2019/10/CEDR\\_Setting\\_Up\\_and\\_Running\\_a\\_Public\\_Inquiry\\_-\\_Guidance\\_for\\_Chairs\\_and\\_Commissioning\\_Bodies.pdf](https://www.cedr.com/wp-content/uploads/2019/10/CEDR_Setting_Up_and_Running_a_Public_Inquiry_-_Guidance_for_Chairs_and_Commissioning_Bodies.pdf)

We would be delighted to give any further guidance to the Committee as would be helpful.

## **Response to Formal Written Questions**

### **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?*

The Inquiries Act 2005 gives extreme latitude in how Inquiries are set up with the Secretary of State having a broad remit for choosing what justifies an Inquiry and who will chair it.

In practice, we found that Inquiries would practically be set up by the Cabinet Office after it had been decided to run a Public Inquiry and frequently there was a sense that every Inquiry was starting from scratch in how it would function and run. This was inefficient in terms of processes for setting up an Inquiry but it also meant that there was not a clear central knowledge hub within government for the efficient setting up and management of Public Inquiries (and similar processes). One of our recommendations was that an Independent Inquiries Office should be set up within Government to provide best practice support in this area and to facilitate the effective oversight of the act.

We also note that there is a similar issue in the act with the provision of selection of who is an appropriate Inquiry Chair. The Act gives full leeway to the relevant Secretary of State to determine who should be the Inquiry Chair but there is no guidance or indication as to who that person should be, or the qualities they need to have. We have seen Inquiries where issues have arisen in selection of Chair, either due to the person being conflicted or having inappropriate experience for a role of this kind. Additionally, there is often a tendency to use retired judges as a default. This can contradict the inquisitorial nature of the Inquiry process and be problematic in situations where the public impact of the proceedings requires a need for someone who is going to be trusted by the community or where there is a need for a broader professional expertise than a judge would represent. In this regard the

Act works in speaking to having a Panel for an Inquiry (and this can be

done effectively) but we would consider that more emphasis could be given to ensuring that the Inquiry Chair is suitable and that a Panel is used where appropriate. We consider that the Independent Inquiries Office would again have a role to play here.

We consider that Inquiries are generally efficient, but a strong recommendation that we had (and which we have seen implemented) is a need for the Inquiry to set clear Terms of Reference and to also provide interim reports and recommendations throughout the Inquiry process, rather than right at the end. We are seeing an increase in Inquiries which publish reports in stages and also which allow for follow up on actions. This is positive in that it means that recommended actions which will have critical impact (for example, a change in emergency processes) can be taken faster than actions which are important but may not have such a pressing need (for example, actions regarding legacies post Inquiries). We are also seeing an increase in tandem processes (one of our recommendations) so that as well as the Inquiry there may also be tandem community rehabilitation projects for affected families. These processes could be built formally into the Act.

We consider that Inquiries are generally appropriately overseen whilst they are running but again an Independent Inquires Office which was monitoring the Inquiry process would be of benefit here as an internal sounding board for the Inquiry Panel, or to help surface and respond to Public and Press concerns about an ongoing Inquiry or questions as to how Inquiries work.

An ongoing issue that we observe is in ensuring that Inquiry recommendations are appropriately followed up. Within a Public Inquiry process, the Chair of the Inquiry will ultimately make their recommendations to the relevant Secretary of State and it is up to that Department to then respond and follow up on recommendations. There is a tension here as former Inquiry Chairs that we have spoken to have both said that they do not want to be the overseer or enforcer as to whether recommendations have been implemented (and they see that their role ends with the provision of

the report) but they also wish for recommendations to be implemented. Therefore, we think it is appropriate for the Act to reference the need for a clear phase of reviewing of recommendations and what steps are being taken to implement them (or reasons for not doing so). Again, an Inquiries Office would be in a strong position to monitor these.

## **2. How could the following be improved?**

*a) The Inquiries Act 2005.*

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

Our guidance is generally practical and we would recommend that it is read in conjunction with a formal Act of Parliament, rather than practical guidance itself becoming law. We view therefore the critical feature of any legislation is that it provides a legal framework which allows for flexibility for more pragmatic approaches to Inquiries.

However, we would state that the Inquiries Act 2005 should:

- (a) Make reference to the Secretary of State having consideration of the process needs of an Inquiry within selection of the Chair and encouraging the use of a panel for an Inquiry.
- (b) Allow a period of time for the Terms of Reference to be discussed with the appointed Inquiry Chair (and Panel) before they become finalised
- (c) Allow the Secretary of State to enable/require a tandem process to take place within the Inquiry for victim reconciliation
- (d) Establish an office to provide guidance on Inquiries; oversee central admin and resources and monitor recommendations
- (e) Provide clear guidance on the option to have some recommendations be provided sooner, and enable a review of implementation of recommendations.

We have no comment specifically on the Inquiry Rules beyond saying that they should establish the same principles.

**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?*

Please see our answers above. We think that the majority of recommendations that have been implemented have been done effectively, although there is still a default to use former judges (as detailed above) which can have negative consequences.

Our main recommendation that we think should be implemented is the centralised Inquiries Unit for the reasoning outlined above.

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

As outlined above, we have seen a number of significant improvements since the publication of the Lords' report. In particular, the use of parallel processes to work with communities (as performed effectively in the Independent Inquiry into Child Sexual Abuse; the Grenfell Inquiry; and the Covid Inquiry) as well as the increased use of more effective process techniques for devising recommendations and the use of panels.

We still feel that more could be done on the setting up of Public Inquiries and their monitoring and reporting of recommendations to bring maximum process effectiveness and public benefit.

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

In our view, best practice in how an Inquiry is run does not differ on whether it is a statutory or non-statutory inquiry. Therefore, any independent unit that is established should have the basis for being able to support both statutory and non-statutory Inquiries.

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

The act does not necessarily indicate the ability of wider stakeholders to become involved in the Inquiry which can cause issues, especially for those who perceive themselves as victims (or loved ones of affected people). There is also wider public criticism of the cost involved for members of the public to participate in Inquiry processes (for example for a campaign group to engage lawyers) and this is something that the Act may need to reflect so that participation is effective

More simply, guidance as to how to involve appropriately core participants and wider stakeholders which can be shared across Inquiries would be useful. A criticism of Inquiries is that the public engagement in one Inquiry is not performed in a similar way in another Inquiry. This discrepancy can provide a perception of unfairness.

Finally, since the creation of the Act and the guidance from both CEDR and the Lords' reports, the use of 24-hour news reporting and social media has only increased, which can make the Public Inquiry process seem more disconnected from how the public expects to see action happen. The use therefore of multiple reporting check points within an Inquiry helps with this engagement as well as appropriate press and media offices.

## **Appendix A – List of Key Recommendations from CEDR’s Guide *Setting Up and Running a Public Inquiry: Guidance for Chairs and Commissioning Bodies***

**Recommendation One:** Enhance the Capabilities of likely Inquiry Chairs and Panels before the Inquiry.

**Recommendation Two:** Align Inquiry Process with Intelligent Methodology

**Recommendation Three:** Manage Terms of Reference through the use of provisional and final Terms of Reference

**Recommendation Four:** Separate Investigations and Recommendations Phases

**Recommendation Five:** Move Beyond a Default Inquisitorial System and use other process tools

**Recommendation Six:** Increase the recognition and use of Parallel Track Processes

**Recommendation Seven:** Bring the Public Into the Public Inquiry process through the use of Public engagement tools

**Recommendation Eight:** Set Parameters – Use the “First Pass” Model to give earlier interim reports

**Recommendation Nine:** Create Implementation Action Plans for Recommendations

**Recommendation Ten:** Build on Know-How through the establishment of an Independent Inquiries Office

**Recommendation Eleven:** Enhancing Public Awareness of the Public Inquiry Process.

Full details of the above recommendations are found at pp86-90 of the Guide, accessible here [https://www.cedr.com/wp-content/uploads/2019/10/CEDR\\_Setting\\_Up\\_and\\_Running\\_a\\_Public\\_Inquiry\\_-\\_Guidance\\_for\\_Chairs\\_and\\_Commissioning\\_Bodies.pdf](https://www.cedr.com/wp-content/uploads/2019/10/CEDR_Setting_Up_and_Running_a_Public_Inquiry_-_Guidance_for_Chairs_and_Commissioning_Bodies.pdf)

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