

Written evidence from The Bar Council (STI0023)

About Us

The Bar Council represents approximately 18,000 barristers in England and Wales. It is also the Approved Regulator for the Bar of England and Wales. A strong and independent Bar exists to serve the public and is crucial to the administration of justice and upholding the rule of law.

Scope of Response

1. This submission addresses the questions the Committee has sought evidence on. The Bar Council's response has been drafted by members who have considerable experience in working on public inquiries on behalf of a range of core participants including victims and their families, companies and government departments, and as Counsel to the Inquiry.
2. The Response is, unfortunately, foreshortened by reason of the short period of time permitted by the Committee.

Executive Summary

3. The Bar Council welcomes the opportunity to respond to this important inquiry and agrees with the UK Government's response to the Report of the House of Lords Select Committee on the Inquiries Act 2005¹ that:

"Public inquiries are well regarded and valued by the people of this country as a means of holding public bodies to account, investigating matters of concern and maintaining confidence in just and transparent government. They are a means of bringing out into the open, and providing answers to, some of the most troubling events."

4. Public inquiries have, in our collective experience, both been able to provide lessons to be learnt which can and do positively improve safety, health, welfare and policies of the government. They also often have a very positive effect of catharsis – both for those who may have been hurt or affected by the tragedy or events, but also our wider society.

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?**

Question 2: How could the following be improved?

¹ <https://assets.publishing.service.gov.uk/media/5a7ede9d40f0b62305b83b21/cm8903-government-response-hl-committee-inquiries-act-2005.pdf>

5. The Bar Council responds to questions 1 and 2 together. One of the most important improvements that could be made to the legislation is to establish a body, independent of government and the civil service, with the function of considering whether a public inquiry should be established and make recommendations to the UK Government or the devolved governments in relation to the same². Such recommendations should be made public, so that members of the public can make use of them in any way they see fit. The Bar Council has considered the evidence given in this regard before the House of Lords Committee on the 12th of February 2024:

"Inquiries Unit: Sir John said the solicitor of his inquiry thought a permanent unit within the cabinet office was a good idea. Ms Eves agreed and added that there were efficiency gains to be made by retaining document management systems, office space, equipment and staff between inquiries. The same unit should sponsor inquiries to avoid issues where a Whitehall department was both an inquiry sponsor and a core participant. Mr Altman said a government legal team to handle inquiries would involve poaching expertise from the private sector, which was not realistic."

6. The creation of a so-called 'Inquiries Unit' would, as suggested, streamline the establishment of an inquiry but is also capable of achieving the following welcome goals:
- i. Making recommendations as to whether or not an inquiry should be established, achieving consistency in approach and providing politically neutral advice on that question.
 - ii. Using established systems and processes for the setting-up and instigation of an inquiry including information handling, appropriate venue and staffing. Possibly maintaining a set of typical directions.
 - iii. Maintaining inquiry evidence and findings in an accessible online library for public access.
 - iv. Monitoring and publicly reporting on the implementation of recommendations.
7. The Bar Council recommends that any body established for these purposes is independent of government even if staffed by the civil service. Any actor within government organisations may have a vested interest in whether an inquiry is held or not, and may influence a decision not to hold an inquiry. Thus, the establishment of an independent body overcomes potential conflicts of interest in the decision-making process, both on the part of the ministers of the day and the civil service. It would be preferable if the body were run independently of any government department and was not staffed solely by those who had worked in the civil service, but it would be a public body.

² Under the Inquiries Act 2005, the devolved governments are responsible for establishing public inquiries that wholly or primarily concern a devolved matter – sections 28 – 30.

8. Turning to another matter, the Bar Council considers that the most significant weakness in the Inquiries Act 2005 is the lack of follow up or ways of ensuring implementation, or at least an explanation of non-implementation of inquiry recommendations. The single onus on a government responding to a report of an inquiry is to explain what recommendations it accepts and which it rejects and why. Even when a government accepts a recommendation, there is no statutory mechanism to enforce the implementation of that recommendation. There is no statutory mechanism for an inquiry chair or any other core participant to compel the implementation of a recommendation, whether accepted by a government or not. It may well be that a chair or core participant could have recourse to the Administrative Court, but any such challenge would be difficult and expensive for the person concerned.
9. One answer to this weakness is providing the suggested 'Inquiries Unit' with the function of follow up. This could be a statutory function of a public body, created by amendment to the Inquiries Act 2005. We recognise that a power of direction may prove too much, as some recommendations would require a fiscal response that can only be approved by HM Treasury. However, public reports identifying recommendations that have been implemented and those that have not provides accountability and transparency and promotes the examination of government actions in the public domain, which is consistent with the statutory purpose of a public inquiry.
10. An alternative to legislating for a public body to be given specific statutory functions in relation to follow-up would be the formation of a standing committee of the House of Lords or the House of Commons to act upon and deliver an inquiry's recommendations unless there is good reason not to implement a particular recommendation or recommendation. This standing committee could function in tandem with the 'Inquiries Unit'. The benefit of this approach is that it would leave the implementation of inquiry recommendations in the political domain. Notwithstanding the effectiveness of the UK and devolved parliaments in holding their respective governments to account, if there are concerns over whether the question of whether to hold a public inquiry in the first place is vulnerable to being influenced by conflicts of interest if left to government on advice from the civil service, those same concerns may also translate into concerns about whether conflicts of interest influence the government response to an inquiry.

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?**
- b. Do any of the rejected recommendations still have merit?**
11. The Bar Council agrees with evidence from Sir John Saunders that as regards recommendation 25 the "warning letter (Rule 13) process was useful but could be trimmed down or made more discretionary". In

particular, we suggest that where potential criticism has been put to a witness during the course of an inquiry and they and/or a core participant has had an opportunity to respond to that criticism during the course of the inquiry, the chair of an inquiry should have a discretion not to follow the warning letter process, where the chair feels it is unnecessary to do so. Thus, we recommend deletion of rule 13(3) of the Inquiry Rules 2006.

12. We would also suggest that all witnesses should be warned before their evidence is given that their evidence is the primary opportunity to answer questions and that the witness should not consider the warning letter process will necessarily occur.
13. The experience of the members of the Bar Council committee is that the warning letter process can cause severe delays in the delivery of inquiry reports, particularly where they contain important criticisms. Such delay has the potential to lead to unfairness to other core participants, in particular victims and their families, particularly those who continue to have their health or well-being impacted by the events in question. There is also concern that the warning letter process is a part of the inquiry that is not conducted in public. There may be good reasons why that should be so in particular cases, but it should not be the normal rule that any person that may be criticised has an opportunity outside of the public process of giving evidence and making submissions of contesting proposed findings to be made against them. This should be a factor that is provided for and to be exercised in the chair's discretion.

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

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

14. Custom and practice has led to the development of successful processes for the giving of human impact evidence in the course of an inquiry. Inquiries are also dealing with the issue of allowing core participant representatives to ask questions without delaying the inquiry timetable. It should be noted that the ability for core participant's representatives to ask some questions within a carefully controlled inquiry environment contributes to the sense of engagement for all core participants.
15. The experience of the membership of the Committee is also that the setting of terms of reference is usually a consensual process between the sponsoring Minister and the Chair. A number of inquiries have also consulted with potential or actual core participants on the terms of reference which is often beneficial in ensuring the inquiry is focused on the right issues. There could be amendment of the legislation to ensure

that the terms of reference are consulted upon with those affected by the incident in question prior to the setting up of the inquiry.

27th March 2024