

HOUSE OF LORDS

Select Committee on the Inquiries Act 2005

Report of Session 2013–14

The Inquiries Act 2005: post-legislative scrutiny

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Select Committee on the Inquiries Act 2005

The Committee was appointed by the House of Lords “to consider and report on the law and practice relating to inquiries into matters of public concern, in particular the Inquiries Act 2005”.

Current Membership

The Members of the Committee are:

Baroness Buscombe
Baroness Gould of Potternewton
Baroness Hamwee
Lord King of Bridgwater
Lord Morris of Aberavon
Lord Richard
Lord Shutt of Greetland (Chairman)
Lord Soley
Baroness Stern
Lord Trefgarne
Lord Trimble
Lord Woolf

Declarations of Interests

See Appendix 1

A full list of Members’ interests can be found in the Register of Lords’ Interests:

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CONTENTS

	<i>Paragraph</i>	<i>Page</i>
Summary		7
Chapter 1: Introduction	1	7
Constitution of the Committee	1	7
Inquiries into matters of public concern	7	8
Box 1: The purposes of inquiries		9
Constitutional importance of inquiries	11	10
The Government's approach to our inquiry	14	10
Our working methods	15	11
Our recommendations	18	11
Chapter 2: The background to the Act	20	12
Before 1921	20	12
The Tribunals of Inquiry (Evidence) Act 1921	23	13
The Salmon Royal Commission	27	14
Box 2: The six Salmon Principles		15
Inquiries under specific statutory powers	32	15
Developments after 2000	33	16
The <i>Marchioness</i> report	33	16
The Beldam Review, the Public Administration Select Committee report and the Inquiries Bill	34	16
The Inquiries Act 2005	37	17
Remaining statutory provisions	38	18
Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013	40	19
Chapter 3: When should there be a public inquiry?	44	20
Box 3: Examples of inquiries which investigated failure by a regulatory or investigatory body		23
What type of inquiry? Statutory or non-statutory?	60	24
Compellability of witnesses and evidence on oath	66	26
Hearings in public	76	29
The Committee's view	80	30
Inquests as an alternative	83	31
Who should decide?	93	34
Box 4: Examples of ministerial reasons not to hold an inquiry		35
Giving reasons for not ordering inquiries	107	38
Chapter 4: Setting up an inquiry: the formalities	113	41
Constitution of the inquiry: appointment of the chairman	113	41
Judges as chairmen	115	41
Advantages	116	41
Disadvantages	118	42
The view of the senior judiciary: consultation or consent?	122	43
Panel members and assessors	127	44
Terms of reference	141	47
Consultation with interested parties	147	48

Chapter 5: Setting up an inquiry: the practicalities	153	50
Introduction	153	50
Cabinet Office Guidance	157	50
Lessons Learned papers	160	51
Box 5: Lessons Learned papers		51
A Central Inquiries Unit	165	53
Box 6: A Dedicated Inquiries Unit		53
Procedure protocols	178	56
Cost of inquiries	181	57
Comparisons of costs: Hamill and Rodney	183	57
Initial planning	188	58
Statutory and non-statutory: the cost	191	59
Chapter 6: Independence of inquiries	194	61
The Joint Committee on Human Rights	195	61
Views of judges	197	62
Views of interest groups	199	62
The Government's views	201	63
The Committee's view	202	63
Restrictions on public access	205	64
Withholding material from publication	207	64
Termination of appointment of a member of the panel	208	64
Chapter 7: Inquiry procedure	211	66
Inquisitorial or adversarial	211	66
Counsel to the inquiry	216	67
Appointment of counsel	222	68
Legal representation for core participants and witnesses	226	69
Core participant status	227	70
Powers and duties of legal representatives	229	70
Expenses of legal representation	236	72
Assistance to core participants and witnesses	238	73
Warning letters	243	74
Other amendments to rules	252	76
Rules 2 and 18: inquiry records	253	76
Rule 9: written statements	255	77
Rules 20–34: awards of costs	256	77
The Scottish and Northern Irish Rules	257	77
Freedom of Information Act 2000	259	78
Use of evidence in subsequent proceedings	262	78
Chapter 8: Recommendations of inquiries	266	80
Judicial and non-judicial chairmen	268	80
Serving judges	268	80
Other chairmen	273	82
Overseeing implementation	279	83
Chapter 9: Overview of the Inquiries Act	291	86
Summary of Conclusions and Recommendations		89
Appendix 1: List of Members and Declarations of Interest		96
Appendix 2: List of Witnesses		98

Appendix 3: Call for Evidence	101
Appendix 4: Table of inquiries established under the Inquiries Act 2005 or converted into inquiries under the act	103
Appendix 5: Table of inquiries since 1990 under other legislation and non-statutory inquiries	108
Appendix 6: Abbreviations, acronyms and websites	118

Evidence is published online at <http://www.parliament.uk/inquiries-act-2005> and available for inspection at the Parliamentary Archives (020 7219 5314)

References in footnotes to the Report are as follows:

Q refers to a question in oral evidence.

Witness names without a question reference refer to written evidence.

SUMMARY

Inquiries into matters of major public concern are now an integral feature of the governance of this country. They establish disputed facts, determine accountability, restore public confidence, and make recommendations for preventing recurrence of events and taking forward public policy.

Until the passage of the Inquiries Act 2005, inquiries had a large variety of different statutory bases. The Act replaced them with a single system for the setting up and conduct of public inquiries which, by and large, has worked well. But it was also possible for ministers to set up inquiries without any statutory basis, and this is still the case. Such inquiries have no power to order the production of documents or the attendance of witnesses, or to take evidence on oath. Public confidence in them is not as high, but still ministers persist in setting them up. One reason is that they are supposedly quicker and less expensive than inquiries set up under the Act. We show that this is not necessarily the case.

There is no consistency in ministerial decisions on setting up inquiries. Ministers tend to do so only when there is irresistible public or parliamentary pressure; and when they decline to set an inquiry up, adequate reasons are not always given. We suggest that failures of regulatory and investigatory bodies should at the very least be grounds for considering setting up an inquiry.

A major criticism of the Act has been that it gives ministers powers they did not previously have to limit attendance of the public, restrict the disclosure of documents, withhold material from publication in the report of the inquiry, and even bring the inquiry to a premature conclusion. It was predicted that dire consequences would follow, and public confidence would collapse. This has not happened, but we recommend stronger controls on the powers of ministers.

A major cause of the unnecessary length and cost of inquiries has been that the secretariat of every new inquiry has had to start from scratch working out details of appointment of staff, procurement of office premises and a venue for public hearings, establishing a website, preparing budgets, procurement procedures, arrangements for electronic handling of documents, transcripts of evidence, and many other basic matters. As a result, some inquiries have bought new custom-made IT systems costing millions of pounds more than the systems used by other inquiries of comparable length.

Each inquiry is required to summarise lessons learned for its successors, but this requirement is not followed. One of our major recommendations is that there should be a unit within Her Majesty's Courts and Tribunals Service responsible for all the practical details of setting up an inquiry. This recommendation alone should result in major savings. Other recommendations on procedure could save months at the end of inquiries, with corresponding savings in cost.

The responsibility of an inquiry ends when its report is published; at that stage the responsibility of the Government begins. Its response to recommendations of inquiries is often slow, and its implementation of them slower still. Parliament must do more to hold ministers to account.

No inquiry has been set up under the Act since 2011, but a number of non-statutory inquiries have been established. Ministers have in the Act what should be an effective framework for inquiries. Unless there are strong reasons to the contrary, they should use it.

The Inquiries Act 2005: post-legislative scrutiny

CHAPTER 1: INTRODUCTION

Constitution of the Committee

1. “It is wholly impracticable to attempt to devise a single set of model rules or guidance that will provide for the constitution, procedure and powers of every inquiry.” This advice of the Council on Tribunals, given to the Lord Chancellor in 1996,¹ was followed within nine years by an Act and Rules which together govern in great detail the constitution, procedure and powers of public inquiries. The task of this Committee has been to see whether the Inquiries Act 2005 and the Rules made under it do indeed provide a satisfactory framework for inquiries.²
2. Post-legislative scrutiny of Acts of Parliament is a relatively recent activity, dating from a report of the House of Lords Constitution Committee in 2004.³ The Committee recommended that Government departments should prepare post-legislative scrutiny memoranda in respect of all significant primary legislation, other than Finance Acts, within three years of its entry into force, and deposit a copy of its memorandum with the appropriate Commons Departmental Select Committee. It would be for that Committee to carry out the scrutiny, the purpose being to ensure that the legislation was achieving the objects it was intended to achieve.
3. In their response to that report, the Government asked the Law Commission to consider the proposal and to report on it. The Law Commission did so in October 2006.⁴ Taking their views into account, the Government in March 2008 published their response *Post-legislative scrutiny: the Government’s*

¹ Annual report of the Council on Tribunals for 1995/96, ordered by the House of Commons to be printed on 17 December 1996; paragraphs 1.22 to 1.34 and Appendix A. Lord Mackay of Clashfern had asked for the advice of the Council on Tribunals following criticisms of inquiry procedure and recommendations for changes made by Lord Scott of Foscote in Part 4, Section K of the report of his inquiry into Exports of Defence Equipment to Iraq.

² Where in this report we refer to “the Act”, this is a reference to the Inquiries Act 2005. Section 41 of the Act allows the Lord Chancellor to make rules governing evidence, procedure and other matters in relation to inquiries for which a United Kingdom Minister is responsible, and Scottish Ministers to make similar rules for inquiries for which they are responsible. The Lord Chancellor made the Inquiry Rules 2006 (SI 2006 No 1838) on 11 July 2006; they came into force on 1 August 2006. A Scottish Minister made the Inquiries (Scotland) Rules 2007 (SSI 2007 No 560) on 13 December 2007; they came into force on 19 January 2008. The provisions of the Scottish Rules are very similar to those of the United Kingdom Rules, though there are differences of drafting and numbering. A reference in this report to “the Rules” is a reference to the Inquiry Rules 2006, but what we say about them extends to the equivalent provisions of the Scottish Rules.

³ Constitution Committee, *Parliament and the Legislative Process*, (14th Report, Session 2003–04, HL Paper 173–I).

⁴ Law Commission, *Reforming the law, Post-Legislative Scrutiny*, Law Com No 302, Cm 6945, available at: <http://www.official-documents.gov.uk/document/cm69/6945/6945.pdf>.

approach.⁵ Their conclusion was that scrutiny was not appropriate for all legislation, and that there should be a selective approach. They agreed that in appropriate cases Government departments should prepare a post-legislative scrutiny memorandum.

4. As to the mechanics of scrutiny, they said:

“The Government accordingly considers that the best approach would be for the proposed departmental Memorandum ... to be submitted to the relevant Commons departmental select committee in the first instance. The Memorandum would be published as a Command paper, thereby allowing Lords and other interests to take up points raised in it. But the prime responsibility would rest with the Commons Committee initially to consider the Memorandum ... The Committee would decide whether it wished to conduct a specific post-legislative inquiry into the Act, or perhaps to include it as part of another inquiry within its work programme. It might also be considered whether a Lords Committee, or a Joint Committee of both Houses, might be well suited to carry out such a review (though not ordinarily where the Commons Committee has decided to undertake scrutiny) ... The Government envisages that the initiative for deciding whether a full and specific parliamentary post-legislative scrutiny of an Act should be carried out should rest with the relevant Commons select committee. This would not preclude the possibility of other committees—whether *ad hoc* Lords or Joint Committees or existing committees—conducting an inquiry, potentially as a result of the departmental Memorandum.”⁶

5. We do not understand why an initiative originating with the Lords Constitution Committee should have led the Government to suppose that “the prime responsibility should rest with the Commons Committee,” and that a Lords Committee should not “ordinarily” undertake such scrutiny where a Commons Committee has decided to do so. In the event, when in October 2010 the Ministry of Justice submitted to the Commons Justice Select Committee a memorandum on post-legislative scrutiny of the Inquiries Act 2005, that Committee decided not to carry out a scrutiny, and there has been no scrutiny of the Act until this Committee was set up on 16 May 2013.⁷
6. Post-legislative scrutiny of the Act has not been our only task. Our terms of reference go considerably wider, and require us to consider more generally “the law and practice relating to inquiries into matters of public concern, in particular the Inquiries Act 2005”. We have therefore used the Act as a basis for a broader and more topical inquiry.

Inquiries into matters of public concern

7. Inquiries can be held by any persons and bodies, public or private, to look at anything which they are required to investigate or which they believe needs

⁵ Post-legislative scrutiny: the Government’s approach, Cm 7320, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228516/7320.pdf.

⁶ Appendix to the Government response, paragraphs 20, 21 and 28.

⁷ Other Lords *ad hoc* Committees have carried out post-legislative scrutiny of the Adoption and Children Act 2002, the Children and Adoption Act 2006, and the Mental Capacity Act 2005.

investigating. We have been concerned only with the category of inquiries covered by section 1 of the Act, which provides that a minister may cause an inquiry to be held under the Act where it appears to him that “particular events have caused, or are capable of causing, public concern, or there is public concern that particular events may have occurred.” These inquiries into matters of public concern are sometimes referred to as “judicial inquiries” or “public inquiries”. Both of these are misnomers. Inquiries into matters of public concern can be and often are chaired by persons other than judges or retired judges, and they can sit in private where necessary.

8. Nor do such inquiries have to be set up under this Act, or any Act. As a minimum, all that is needed for an inquiry is a suitable person to carry it out, the necessary resources, and witnesses who are willing or required to disclose the relevant documents and to give oral evidence. This is an important issue which we consider in chapter 3.
9. Inquiries always have some at least of the following functions.

BOX 1

The purposes of inquiries⁸

- Establishing the facts, especially where these are disputed or the chain of causation is unclear.
- Determining accountability.
- Learning lessons, and making recommendations to prevent recurrence, often by improving the constitution and powers of regulatory bodies.
- Allaying public disquiet and restoring public confidence.
- Catharsis: an opportunity for reconciliation between those affected by an event and those whose action caused it or whose inaction failed to prevent it.
- Developing public policy.
- Discharging the obligations of the State to satisfy the European Convention on Human Rights (ECHR), by investigating allegations that agents of the State have violated Article 2 of the Convention (the right to life)⁹ or Article 3 (prevention of torture or of inhuman or degrading treatment or punishment).

10. Appendix 4 lists inquiries established under the Act, or established prior to the passing of the Act but converted to inquiries under the Act; Appendix 5 lists inquiries since 1990 set up under other legislation, or with no statutory

⁸ This list is based on the list in the book *Public Inquiries* by Jason Beer QC (OUP, 2011), which in turn follows closely the list in Lord Howe of Aberavon *The Management of Public Inquiries* (1999) 70 Political Quarterly 294. We have found Mr Beer’s book a valuable source of information, analysis and opinion. Mr Beer also gave us oral evidence on the functions of counsel to inquiries.

⁹ ECHR Article 2 protects everyone’s right to life, and this has been interpreted by the European Court of Human Rights as imposing on governments an obligation to conduct an effective official investigation into any death resulting from the use of force and any death resulting from the state’s failure to protect the right to life. See further paragraphs 69 et seq.

basis—non-statutory inquiries. Both lists include the length of the inquiry and, where available, its cost. The longest and most expensive, by a very long way, was the Bloody Sunday Inquiry—over 12 years, and £191.5 million. But many others have been inordinately long, and many—not necessarily the longest—have also been phenomenally expensive. Our report suggests ways in which the purposes of inquiries can be achieved without excessive length or expense.

Constitutional importance of inquiries

11. Inquiries are a major feature of our unwritten constitution and play an important part in the way the executive deals with major crises. Liberty described public inquiries as “a key component of the constitutional and administrative justice system in the UK”, and continued: “Inquiries provide a means for the truth about an event or series of events to be reached by an independent and authoritative body, but in a manner which is more inclusive and restorative than litigation.”¹⁰ Professor Adam Tomkins, Professor of Public Law at Glasgow University, thought public inquiries were “an important component of our system of administrative justice ... capable of playing a very significant role constitutionally in our public law system”, but he stressed that inquiries must be understood as only one of the components of our system of administrative justice, alongside courts, tribunals, the ombudsmen and auditors; a list to which Sir Stephen Sedley added inquests.¹¹
12. Independent public inquiries have sometimes had momentous consequences. The Crichton Down inquiry in 1954 led directly to the resignation of Sir Thomas Dugdale, the Secretary of State for Agriculture, not for any personal wrongdoing but because he took full ministerial responsibility for the ineptitude of his civil servants—the first such case of ministerial resignation since 1917.¹² Sir Stephen Sedley described this as “one of the most effective inquiries in our constitutional history.”¹³ It is regarded as “one of the key events leading to the creation of the post of Ombudsman”.¹⁴
13. Another example of an inquiry with far-reaching consequences was the Macpherson inquiry into the death of Stephen Lawrence, and in particular the conclusion that “institutional racism ... exists both in the Metropolitan Police Service and in other Police Services and other institutions countrywide.”¹⁵ The changes which that finding initiated are still continuing.

The Government’s approach to our inquiry

14. Given the great constitutional importance of inquiries, their contribution to our administrative law, and the major effects they have had in the past and continue to have, we would have hoped that the Ministry of Justice and the Cabinet Office, which together are currently responsible for the Act and for the law, practice and procedure of inquiries, would have regarded this as a

¹⁰ Written evidence, paragraph 1.

¹¹ Q 23.

¹² HC Deb, 20 July 1954, cols 1178–1298.

¹³ Q 37.

¹⁴ Roger Gibbard, *Whose land was it anyway? The Crichton Down Rules and the sale of public land*.

¹⁵ Report, February 1999, Cm 4262, paragraph 6.39.

serious topic meriting a full and careful consideration by this Committee. We would have expected that at least one Cabinet minister would be involved, and would ensure that senior staff gave us full and prompt assistance. We regret to say that, in our view, this did not happen. Moreover the minister who gave evidence to us, Shailesh Vara MP, the Parliamentary Under-Secretary of State at the Ministry of Justice, had been in office for barely two months. We say nothing against him personally; the evidence he gave us was as full and helpful as we might have expected within the limits of his experience. We would however have hoped that the Secretary of State for Justice and Lord Chancellor would have come to give us the benefit of his experience and to demonstrate the importance which he should attach to the subject.

Our working methods

15. On 13 June 2013 we issued a Call for Evidence. We began taking oral evidence in June 2013 with officials from the Ministry of Justice. Our evidence session with the minister was in December 2013. In between we took evidence from six chairmen of inquiries and a panel member, three counsel to inquiries, three secretaries, an inquiry solicitor, assessors, core participants, academics, legal specialists, interest groups and others. To all our witnesses we are most grateful.
16. On 3 July 2013 we visited the Al-Sweady Inquiry to hear it taking evidence from a firearms expert. We found it very valuable to see the inquiry in action and to study the respective roles of chairman and counsel. We are grateful to the staff who helped to arrange this.
17. We are grateful to Professor Carol Harlow, Emeritus Professor of Law at the London School of Economics and our specialist adviser, for her assistance to our inquiry.

Our recommendations

18. We share with the inquiries we have been considering one problem: as an *ad hoc* Committee, set up for a particular purpose, we cease to exist as a Committee on the production of our report, and are therefore unable to oversee the implementation of our own recommendations. The Liaison Committee, which is responsible for reviewing the work of the House's select committees, has decided to follow up the recommendations of former *ad hoc* committees a year after their reports are published. Our recommendations are listed in the Summary of Conclusions and Recommendations at the end of the report, and we have identified those which in our view should be subject to this process and to which others in the House will wish to return once we as a Committee are unable to do so.
19. Some of our recommendations involve the amendment of legislation. The power to make Rules to amend the Inquiry Rules 2006 is already on the statute book,¹⁶ and we see no reason why, with the right approach by the Ministry of Justice, these amendments should not be made within three months. We recommend eleven minor but significant amendments of the Act itself. These will require primary legislation, but they could be included as a Schedule to the next suitable Bill introduced by the Ministry of Justice.

¹⁶ Section 41 of the Act.

CHAPTER 2: THE BACKGROUND TO THE ACT

Before 1921

20. Parliament, “the grand inquest of the nation”,¹⁷ has since the seventeenth century conducted inquiries into alleged maladministration, and alleged misconduct by ministers and officials; and the chosen vehicle has usually been a committee, in particular committees of the Commons. There were occasions when they worked effectively. The tabling on 26 January 1855 of the motion “That a Select Committee be appointed to inquire into the condition of our Army before Sebastopol, and into the conduct of those Departments of the Government whose duty it has been to minister to the wants of that Army” led to the resignation of Lord John Russell, the Lord President of the Council, while the passing of the motion three days later brought down the Government of the Earl of Aberdeen.¹⁸ The Committee reported within five months and its “conclusion was to substantiate to the letter every report that had been circulated concerning the sufferings of our army in the Crimea.”¹⁹
21. But inquiry by Parliamentary select committees also had its drawbacks. The composition of such committees generally reflected the composition of the parties in the Commons. When the committees divided on party lines, as they usually did, their conclusions therefore tended to favour the Government, which made them a far from ideal mechanism for holding the Government to account.²⁰
22. The culmination came with the Marconi scandal in 1912–13. Negotiation of a contract between the Post Office and the British Marconi company resulted in a large increase in the value of the shares of the American Marconi company from which a number of ministers in the Liberal Government made huge profits, chief among them Herbert Samuel, the Postmaster-General, David Lloyd George, the Chancellor of the Exchequer, and Sir Rufus Isaacs, the Attorney General, whose brother happened to be the managing director of the British Marconi company. In 1912 a Select Committee was formed to investigate the contract and the speculation surrounding it. A majority report by the Liberal members cleared ministers of any wrong-doing, while a minority report prepared by the Conservatives labelled the transaction “gravely improper”.²¹ It was clear that after this there would be little public

¹⁷ A phrase probably originating with Lord North, and used by the judge, Patteson J, in the seminal case of *Stockdale v Hansard* [1839] EWHC QB J21, to describe the House of Commons: “it is the grand inquest of the nation, and may enquire into all alleged abuses and misconduct in any quarter”.

¹⁸ HC Deb, 26 January 1855, cols 960–1063, and 29 January 1855 cols 1121–1233.

¹⁹ However when the report was debated on 17 and 19 July 1855 (HC Deb, 17 July 1855 cols 954–1018, and 19 July 1855 cols 1051–1189) the House by a large majority declined to endorse the Resolution of the Committee “that the conduct of the Administration was the first and chief cause of the calamities which befell that Army,” or to “visit with severe reprehension every Member of that Cabinet whose Counsels led to such disastrous results.”

²⁰ When there was a minority Government the converse applied. In 1924 the mere threat by the Conservative opposition of setting up an inquiry into allegedly improper intervention by ministers to halt the prosecution of J.R.Campbell, the editor of the Communist *Workers Weekly*, under the Incitement to Mutiny Act 1797, was enough to bring down the minority Government of Ramsay MacDonald.

²¹ Minority report of the Select Committee on Marconi’s Wireless Telegraph Company, Limited, Agreement, 2 June 1913, page xlvi, paragraph 31.

confidence in inquiries conducted by Parliamentary committees—certainly not in those investigating alleged misconduct by ministers.

The Tribunals of Inquiry (Evidence) Act 1921

23. On 22 February 1921 allegations were made in the House of Commons that officials of the Ministry of Munitions had been ordered to destroy documents relating to the entitlements of contractors, so that they would be paid more than they were entitled to. The matter was debated that evening, and Andrew Bonar Law, then Leader of the House, proposed setting up a committee chaired by a judge. Sir Frederick Banbury, the member for the City of London, then asked “whether it would not be necessary to have an Act of Parliament in order to enable the Committee which he is going to set up to take evidence on oath ... I venture to suggest to the Leader of the House that he could without any difficulty, after 11 o’clock on any evening, pass a Bill through all its stages to enable the Committee to take evidence on oath.” Mr Bonar Law replied: “I will consult with my right hon. Friend the Attorney-General as to what difficulties there are in the way, and also as to whether it would not be possible to pass with the same facility a short general statute dealing with the matter.”²² A Bill was introduced on 4 March, and on 24 March the Tribunals of Inquiry (Evidence) Act 1921 received the Royal Assent and came into force.
24. We have set out the background to the 1921 Act in some detail to make clear that it did not require or permit inquiries to be set up for any particular purpose or in any particular way. It provided merely that where a tribunal of inquiry was set up by a Secretary of State following a resolution of both Houses of Parliament to inquire into a matter “of urgent public importance”,²³ the tribunal was to have all the powers of the High Court (or, in Scotland, the Court of Session) for compelling the production of documents, enforcing the attendance of witnesses, and examining them on oath.
25. It is sometimes said that the 1921 Act required inquiries to be set up by Parliament. This disregards the reality of the situation. Inquiries were then, as they are now, set up by ministers. We are not aware of any case where a minister who wished to set up an inquiry with powers to compel the production of documents, enforce the attendance of witnesses, and examine them on oath was unable to obtain the resolutions of both Houses of Parliament which were needed for the 1921 Act to give the inquiry those powers. But it is also the case that, while Parliament did not itself have the power to set up such an inquiry, it could apply political pressure on a minister to do so, as happened in 1959 in relation to allegations that John Walters, a 15 year old boy, had been assaulted by two police officers.²⁴ The Government initially refused an inquiry under the 1921 Act, stating that “This procedure has never been used in such a case”.²⁵ But a week later the Prime Minister moved that an inquiry be set up under the Act.²⁶

²² HC Deb, 22 February 1921, cols 863–86.

²³ Tribunals of Inquiry (Evidence) Act 1921, section 1.

²⁴ Inquiry into the allegation of assault on John Walters.

²⁵ HC Deb, 10 February 1959, col 983.

²⁶ HC Deb, 17 February 1959, cols 204–28.

26. Twenty-four inquiries were held between 1921 and 2005 using the powers of the 1921 Act. Twenty of these were set up between 1921 and 1982. Fourteen years then elapsed without inquiries under that Act until 1996, after which four further inquiries were held under that Act until its repeal in 2005.

The Salmon Royal Commission

27. A major development in the history of inquiries was the setting up in 1966 of a Royal Commission on Tribunals of Inquiry under the chairmanship of Lord Justice Salmon.²⁷ This had its origins in the inquiry by Lord Denning into the Profumo scandal.²⁸ The inquiry procedure was unusual, to say the least. As Lord Denning subsequently wrote: “I did it alone. Just two secretaries and two shorthand writers. I had a room in the Treasury in Whitehall. There I saw Ministers of the Crown, the Security Service, rumour mongers and prostitutes. They all came in by back doors and along corridors secretly so that the newspapers should not spot them. Some of the evidence I heard was so disgusting—even to my sophisticated mind—that I sent the lady shorthand-writers out and had no note of it taken.”²⁹
28. Despite this procedure, where Lord Denning “had to be detective, inquisitor, advocate and judge,”³⁰ the findings of the inquiry were not challenged, but “this was only because of Lord Denning’s rare qualities and high reputation.”³¹ It was clear that such a procedure was unsatisfactory, but it was not clear that the 1921 Act procedure would have been any better. The Royal Commission was appointed “to review the working of the Tribunals of Inquiry (Evidence) Act 1921 and to consider whether it should be retained or replaced by some other procedure, and, if retained, whether any changes are necessary or desirable; and to make recommendations.”³²
29. The Royal Commission concluded that the 1921 Act should be retained, but with amendments, in particular to allow the payment of costs to those appearing, and to grant immunity to the members of the inquiry and counsel. The Government accepted these recommendations for amendment of the 1921 Act but did not in fact implement them, preferring in the case of some future inquiries to rely on a guarantee that costs, and damages awarded against inquiry members, would be met out of public funds.
30. The Salmon Commission set out “six cardinal principles” for the treatment of those taking part in inquiries.

²⁷ Subsequently Lord Salmon.

²⁸ John Profumo, the Secretary of State for War, had a brief liaison with Christine Keeler, a model who was also involved with Colonel Yevgeny Ivanov, a naval attaché at the Soviet Embassy who was an intelligence officer. Lord Denning’s inquiry was primarily concerned with the potential security risk.

²⁹ Lord Denning, *The Due Process of Law*, 1980.

³⁰ Lord Denning’s words in pages 2–3 of his report, quoted in the report of the Royal Commission on Tribunals of Inquiry, Cmnd 3121, paragraph 37.

³¹ Report of the Royal Commission on Tribunals of Inquiry, Cmnd 3121, paragraph 21.

³² *Ibid.*, Royal Warrant.

BOX 2**The six Salmon Principles**

- (1) Before any person becomes involved in an inquiry, the Tribunal must be satisfied that there are circumstances which affect him and which the Tribunal proposes to investigate.
- (2) Before any person who is involved in an inquiry is called as a witness, he should be informed of any allegations which are made against him and the substance of the evidence in support of them.
- (3) (a) He should be given an adequate opportunity of preparing his case and of being assisted by his legal advisers. (b) His legal expenses should normally be met out of public funds.
- (4) He should have the opportunity of being examined by his own solicitor or counsel and of stating his case in public at the inquiry.
- (5) Any material witness he wishes called at the inquiry should, if reasonably practicable, be heard.
- (6) He should have the opportunity of testing by cross-examination conducted by his own solicitor or counsel any evidence which may affect him.

31. For some years these principles were generally accepted and followed by inquiries. However in the report of his inquiry into Exports of Defence Equipment to Iraq, Lord Justice Scott³³ carried out a detailed review of “the factors to be taken into account in deciding what procedures should be adopted for an inquisitorial inquiry.” He stated that “The six Salmon ‘cardinal principles’ carry strong overtones of ordinary adversarial litigation,” and concluded: “In summary, in my opinion, care should be taken lest by an indiscriminate adoption and application of the six ‘cardinal principles’ the inquiry’s inquisitorial procedures become hampered by an unnecessary involvement of adversarial techniques and of lawyers acting for witnesses and others whose interests may lie in delay and obfuscation.”³⁴ Since then the procedure of inquiries has become increasingly inquisitorial and so less reliant on the Salmon principles, particularly principles 4 and 6. We return to this issue in chapter 7.³⁵

Inquiries under specific statutory powers

32. Even before the Salmon Royal Commission reported, other statutory powers had been enacted to allow ministers to set up inquiries with powers of compellability where matters of public concern had arisen in relation to particular topics, and some of these powers included provisions for costs to be awarded out of public funds. Section 143 of the Mental Health Act 1959 provided that “The Minister may cause an inquiry to be held in any case where he thinks it advisable to do so in connection with any matter arising under this Act”. The same wording was used in section 84 of the National

³³ Now Lord Scott of Foscote.

³⁴ Report, Part 4, Section K1.

³⁵ Paragraphs 229–235.

Health Service Act 1977,³⁶ section 125 of the Mental Health Act 1983, section 81 of the Children Act 1981,³⁷ section 49 of the Police Act 1996,³⁸ and other statutes. Some included their own provisions about the compellability of witnesses, some incorporated the provisions of section 250 of the Local Government Act 1972, which provides that “the person appointed to hold the inquiry may by summons require any person to attend, at a time and place stated in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry, and may take evidence on oath, and for that purpose administer oaths”. All these statutes included provisions about the payment of costs of witnesses, though none dealt with immunity for members of an inquiry.

Developments after 2000

The Marchioness report

33. In the years that followed inquiries were set up by ministers under these and other particular statutes, or incorporating the powers of the 1921 Act, or on a non-statutory basis with no specific powers. The Council on Tribunals seemed content that matters should remain thus.³⁹ But in 2000, 34 years after the Salmon Commission reported, Lord Justice Clarke wrote in his Final Report of the *Marchioness* Inquiry: “Finally, it does seem to me that the time has come when it would be desirable to set up a statutory framework for Inquiries generally ... There is at present no generally applicable statute which covers public inquiries.” Lord Justice Clarke went on to express the opinion that it would be desirable to remove the adversarial aspects of inquiries, and to give the inquiry chairman the power to conduct the inquiry as he or she thought fit, subject to an overriding obligation of fairness. The inquiry should have powers, so far as appropriate, to compel witnesses to give evidence and to obtain documents and would be subject to judicial review. He thought that such an approach ought to save time and money.⁴⁰

The Beldam Review, the Public Administration Select Committee report and the Inquiries Bill

34. In 2002 the Lord Chancellor, Lord Irvine of Lairg, asked Sir Roy Beldam, a former Lord Justice of Appeal and former Chairman of the Law Commission, to consider whether there was scope for combining civil or criminal proceedings with a public inquiry. In a preliminary report Sir Roy set out a number of issues of procedure and evidence which would need further investigation. They included:

³⁶ The basis for, among others, the inquiry into the Bristol Royal Infirmary (1998–2001) and (with other statutes) the Victoria Climbié Inquiry.

³⁷ Another statutory basis of the Victoria Climbié Inquiry.

³⁸ Another statutory basis of the Victoria Climbié Inquiry, and also the basis for, among others, the Stephen Lawrence Inquiry (1997–99).

³⁹ See paragraph 1 of this report.

⁴⁰ Thames Safety Report, paragraph 11.60.

- Consideration should be given to the introduction of rules of procedure for public inquiries, to include additional judicial powers to be conferred on the chairman when the inquiry was set up;
 - The “Salmon”⁴¹ procedure should be reviewed and consideration given to the appointment of one counsel to represent all interested parties whose interests did not conflict, and to the greater use of written submissions.
35. Although it was intended that Sir Roy Beldam’s preliminary report should lead to further work, this did not take place. Instead, work began on policy for the Bill which was eventually to become the Inquiries Act 2005. Early in 2004 the Commons Public Administration Select Committee (PASC) began an inquiry into the effectiveness of inquiries. It began by putting out a questions and issues paper. The reply from the Department for Constitutional Affairs⁴² on 6 May 2004 took the form of a paper entitled *Effective Inquiries*, which was in fact a consultation paper for the Inquiries Bill.⁴³ In the paper the Government said it believed that “there is a strong case for considering what steps could be taken to make inquiry procedures faster and more effective, and to contain cost escalation”. It wondered “whether current legislation provides a suitable basis for appropriate and effective inquiries” and thought that “one option would be to create a new statutory framework for ... inquiries set up by Ministers to look into matters that have caused or have potential to cause public concern”.
36. PASC began taking evidence in April 2004, and continued doing so until January 2005. Its report was not published until 3 February 2005.⁴⁴ By then the Government’s Bill for the Inquiries Act 2005 had already completed its report stage in the Lords. It received its third reading on 28 February and was sent to the House of Commons. It received the Royal Assent on 7 April 2005 and came into force on 7 June 2005.⁴⁵

The Inquiries Act 2005

37. The Act is many times longer than any previous statutory enactment on inquiries, but many of its provisions are ancillary. No fewer than 10 sections and a Schedule deal with the position of Scotland, Wales and Northern Ireland,⁴⁶ while there are a number of transitional and transitory provisions. The substantive provisions are the following.
- The Act repeals the Tribunals of Inquiry (Evidence) Act 1921 and a large number of statutory provisions which previously were the bases for statutory inquiries.⁴⁷ From the entry into force of the Act, with the exception of the enactments we refer to in paragraphs 38–43 below, the Act is the sole basis for statutory inquiries set up by ministers.

⁴¹ See Box 2 at paragraph 30.

⁴² Now the Ministry of Justice.

⁴³ Written evidence from the Department for Constitutional Affairs to the Public Administration Select Committee, (Session 2003–04, HC 606–ii), available at: <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmpublicadm/606/4052502.htm>.

⁴⁴ Public Administration Select Committee, *Government by Inquiry* (1st Report, Session 2004–05, HC 51–1)

⁴⁵ Inquiries Act 2005 (Commencement) Order 2005, SI 2005 No. 1432.

⁴⁶ Sections 27–34, 45 and 47, and Schedule 1.

⁴⁷ Sections 48 and 49, and Schedules 2 and 3.

- The Act does not affect the many statutory powers which allow Parliamentary Commissioners, local authorities, regulatory bodies and others to set up inquiries into matters of public concern in particular fields. Most importantly, it expressly preserves “any power of Her Majesty to establish a Royal Commission”, and “any power of a Minister ... to cause an inquiry to be held otherwise than under this Act”.⁴⁸
- The Act sets out in great detail provisions for the constitution of inquiries, and governing inquiry proceedings. These include the power to compel the production of documents and to require witnesses to give oral evidence, including evidence on oath.⁴⁹
- The Act provides for the payment of expenses of witnesses and, as recommended by the Salmon Commission, for the first time gives immunity to the inquiry panel, counsel and staff in respect of acts or omissions during the inquiry.⁵⁰
- Finally, the Act allows the Lord Chancellor to make Rules governing in further detail the procedure of inquiries.⁵¹

Remaining statutory provisions

38. The Act’s object was to repeal all the then current statutory provisions under which ministers could hold inquiries and replace them with a single Act and a single system. The *Inquiries Guidance* produced by the Cabinet Office, to which we refer in greater detail in chapter 5⁵², states that “The majority of inquiries will be held under the Inquiries Act 2005, although some other legislation continues to apply.” At an early stage of our inquiry we asked what that other legislation was, and why it continued to apply rather than being repealed by the Act. The Ministry of Justice’s officials were unable to answer this question. The best answer they could provide at a late stage of our evidence gathering was that the draftsman of the Guidance had not intended to refer to any particular legislation, but had included this phrase out of an abundance of caution.⁵³
39. Our own researches lead us to believe that there are at least two statutory provisions which might qualify. The first of these is section 14 of the Health and Safety at Work etc. Act 1974 which allows the Health and Safety Executive “with the consent of the Secretary of State [to] direct an inquiry to

⁴⁸ Section 44(4).

⁴⁹ Sections 21 and 17.

⁵⁰ Section 37.

⁵¹ Section 41. The Lord Chancellor makes Rules for United Kingdom inquiries, and Scottish ministers for inquiries for which they are responsible (see paragraph 1 and the footnote). No Rules have been made by the National Assembly for Wales. Northern Ireland ministers have not made Rules under this Act, but the First Minister and Deputy First Minister have used their powers under section 21 of the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013 to make Rules which govern only the Inquiry into Historical Institutional Abuse. See paragraphs 40-43.

⁵² Paragraphs 157 *et seq.*

⁵³ The statement we quote comes from page 2 of the Guidance. On page 21 it states: “The majority of statutory inquiries will be held under the Inquiries Act 2005, although some may be held under other legislation such as the Police Act 1996 or the NHS Act 1977.” In fact the relevant provisions of the Police Act 1996 (section 49) and of the National Health Service Act 1977 (section 84) were repealed by the Inquiries Act 2005.

be held into ... any accident, occurrence, situation or other matter whatsoever which the Commission thinks it necessary or expedient to investigate". Given that the consent of the Secretary of State is required, it is arguable that the initiative should lie with the Secretary of State to order an inquiry under the 2005 Act. Similarly sections 68–72 of the Financial Services Act 2012⁵⁴ allow the Treasury (which in practice means ministers), where it appears to them that there may have been a serious failure of the regulatory system, to appoint a person to hold an inquiry. Again, it is arguable that ministers' powers under the 2005 Act would suffice. However these are specialist areas on which we have received little evidence, and we accordingly make no recommendations, but we suggest that the Government consider bringing these inquiries under the 2005 Act in accordance with what appears to have been the purpose of that Act.

Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013

40. On 29 September 2011, following the report of an inter-departmental task force, the Northern Ireland Executive announced that there would be an inquiry into historical institutional abuse. On 12 June 2012 a Bill was introduced in the Assembly which had as its sole purpose the formal constitution of the inquiry. The Bill's Explanatory and Financial Memorandum states that "OFMDFM⁵⁵ considered three options—an amendment to the Inquiries Act 2005 by way of an Assembly Bill, to allow for its application to a Historical Institutional Inquiry; an Assembly Bill which sets out comprehensive provision for an Inquiry into Historical Institutional Abuse; and an Assembly Bill which provides the inquiry panel with powers only to compel witnesses and documentation."
41. There was a fourth option, apparently not considered, which was for the Northern Ireland ministers to set up an inquiry under section 1 of the Inquiries Act 2005 itself. This did not need any amendment. Because the terms of reference required the inquiry to consider matters before 2 December 1999,⁵⁶ under section 30 the consent of the Secretary of State would have been required; we do not doubt that it would have been forthcoming.
42. The Bill was closely modelled on the 2005 Act; many of its provisions are taken from it verbatim. The Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013 received the Royal Assent on 18 January 2013. Rules, again based on the Inquiry Rules 2006, were then made and came into force on 25 July 2013,⁵⁷ nearly two years after the initial announcement of an inquiry.
43. In deciding to introduce legislation into the Assembly, rather than exercising their powers under the 2005 Act, the First Minister and Deputy First Minister were of course entirely within their rights. We merely draw attention to the fact that the 2005 Act was available to them, had they so wished.

⁵⁴ Replacing sections 14–18 of the Financial Services and Markets Act 2000.

⁵⁵ The Office of the First Minister and Deputy First Minister.

⁵⁶ The "appointed day" for the purposes of the Northern Ireland Act 1998.

⁵⁷ The Inquiry into Historical Institutional Abuse Rules (Northern Ireland) 2013, Statutory Rules of Northern Ireland 2013 No. 171.

CHAPTER 3: WHEN SHOULD THERE BE A PUBLIC INQUIRY?

44. As set out in chapter 1, our investigation has been concerned only with the category of inquiries into matters of public concern. This category includes a spectrum of inquiries which range from those concerned with a particular event or chain of events to those involving policy.
45. The question whether and when to hold an inquiry is always problematic. Calls for inquiries are frequent; our own researches have shown that during the few months of our investigation, there have been in excess of 30 calls for “public” inquiries, into matters such as domestic violence, the Supa-Puma helicopter crashes and the baby ashes scandal.⁵⁸ Calls for an inquiry can be made by a single person or group, often victims or victims’ families. Even the support of an interested celebrity or Member of Parliament does not necessarily demonstrate sufficient wider public concern.
46. For an inquiry under the Act, and no doubt also for one not under the Act, “public concern” that events may have occurred, or “public concern” caused by events that have occurred, is a necessary but not a sufficient condition. Ashley Underwood QC explained: “Generally speaking, by the time there is a head of steam for any sort of inquiry there will be a victim support group, there may be NGO support, there may well have been a lot of publicity, lobbying of parliamentarians and so on.”⁵⁹ Without these, it is unlikely that the necessary public concern condition will be satisfied. Even if all these are present, it does not follow that the concern justifies an inquiry.
47. The most important question seems to us to be, as Professor Sir Ian Kennedy put it, “are there circumstances where a public inquiry is an appropriate response and where it is not?”⁶⁰ There are many events which can be said to have caused public concern, but have not been investigated by an inquiry. Examples include the deaths of four young soldiers at Deepcut barracks,⁶¹ the murder of Pat Finucane,⁶² the death of Alexander Litvinenko,⁶³ and the Omagh bombing.⁶⁴ The solicitor for 60 of Jimmy Savile’s victims has requested an inquiry chaired by a High Court judge.⁶⁵ The NHS is currently conducting 33 separate investigations into individual NHS institutions in relation to Savile.

⁵⁸ It emerged recently that the ashes of dead babies had been being buried or disposed off without the knowledge of families.

⁵⁹ Q 249.

⁶⁰ Q 205.

⁶¹ See the review by Nicholas Blake QC into the Circumstances Surrounding the Deaths of Four Soldiers at Princess Royal Barracks, Deepcut between 1995 and 2002, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228930/0795.pdf.

⁶² In fact, the then Northern Ireland Secretary Paul Murphy MP had announced on 23 September 2004 an inquiry to investigate the death of Pat Finucane under “new legislation which will be introduced shortly” (the then Inquiries Bill). But the Finucane family opposed an investigation under the Act, due to concerns about whether information would be released. See Northern Ireland Office, *Statement by Secretary of State Paul Murphy MP on Finucane Inquiry*, News release, 23 September 2004; and *UK: Briefing to the Human Rights Committee, Amnesty International, June 2008*.

⁶³ Litvinenko died in London in November 2006 of radiation poisoning.

⁶⁴ A car bomb attack carried out in Omagh by the Real Irish Republican Army on Saturday 15 August 1998.

⁶⁵ Dame Janet Smith is currently conducting an investigation into Savile on behalf of the BBC.

48. In order to consider when an inquiry is an appropriate response to a matter of public concern the Cabinet Secretary in 2010 issued an Advice Note on the establishment of a judicial inquiry,⁶⁶ which identified certain common characteristics present in previous inquiries. They are:
- Large scale loss of life
 - Serious health and safety issues
 - Failure in regulation
 - Other events of serious concern.⁶⁷
- Again, even if these conditions are present, they may not be sufficient to justify an inquiry.
49. Several of our witnesses⁶⁸ told us that there should be set criteria against which to decide on the establishment of a public inquiry. Julie Bailey CBE,⁶⁹ founder of Cure the NHS⁷⁰ and a core participant⁷¹ in the Leveson Inquiry, was clear on the need for certainty for victims and victims' families,⁷² while Eversheds⁷³ linked the need for criteria to the need for transparency in decision making.⁷⁴
50. The Government echoed the draft Cabinet Office *Inquiries Guidance*,⁷⁵ telling us that in fact “Ministers take a number of factors into account when deciding whether to establish an inquiry, including whether the public interest will be served by an inquiry rather than another form of investigation and whether that public interest will outweigh the costs.”⁷⁶ But again these factors may not be sufficient to justify an inquiry.
51. None of our witnesses was able to suggest useful criteria.⁷⁷ Indeed, as suggested by Robert Francis QC,⁷⁸ there is a danger that fixed criteria may in fact fetter discretion, and so limit the circumstances when an inquiry may be

⁶⁶ The Advice Note explored findings of the Culture, Media and Sport Select Committee into Press Standards. The Committee's subsequent inquiry led to the establishment of the Leveson Inquiry.

⁶⁷ Cabinet Secretary Advice Note, *Public Inquiries*, 19 March 2010, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60808/cabinet-secretary-advice-judicial.pdf.

⁶⁸ Julie Bailey, Q 162; Eversheds, written evidence, paragraph 13; Susan Bryant, Q 236–237.

⁶⁹ An honour Ms Bailey was awarded in the New Year Honours 2014 for her work in the setting up of the Mid Staffordshire Inquiry.

⁷⁰ A campaign group established in 2007 following the death of Julie Bailey's mother while in the care of Mid Staffordshire NHS Foundation Trust.

⁷¹ Under rule 5 of the Inquiry Rules 2006 the chairman of an inquiry may designate a person as a core participant. In his book *Public Inquiries* (OUP, 2011) Jason Beer QC defines core participant as a term “to denote a person ... who has a particularly close connection to the inquiry's work—known in a non-2005 Act inquiry as an ‘interested party’ or ‘full participant’.” (Page 156, paragraph 4.61)

⁷² Julie Bailey, Q 162.

⁷³ London solicitors who acted as solicitors to the Bloody Sunday, Shipman, Rosemary Nelson and Mid Staffordshire NHS Trust inquiries, and acted for the metropolitan Police in the Leveson inquiry.

⁷⁴ Eversheds, written evidence, paragraph 13.

⁷⁵ We have included details of the guidance at paragraphs 157 *et seq.*

⁷⁶ Government written response, part 2, paragraph 18.

⁷⁷ Rights Watch UK suggested criteria based on the need for compellability; public confidence and “lesser” alternatives. All of these are either provisions under the Act, or in the existing Cabinet Office guidance. Supplementary written evidence, paragraph 1.

⁷⁸ Robert Francis QC, written evidence, paragraph 14.

set up. After some consideration of possible formulae and witnesses' suggestions, **we have concluded that there neither can nor should be fixed criteria regulating the setting up of inquiries.**

52. One thing is clear to us. Establishing an inquiry should not be a matter of politics. But Professor Kennedy told us that an inquiry is usually set up in the context of political controversy⁷⁹ and Dr Karl Mackie, the Chief Executive of the Centre for Effective Dispute Resolution (CEDR), thought that “the major political decision very often is the on/off switch,”⁸⁰ and gave an example of when political considerations had influenced the decision whether to have an inquiry.⁸¹
53. Conversely there are examples of opposition parties promising inquiries into particular matters once they come into power. An inquiry into the *Marchioness* disaster was promised by John Prescott MP,⁸² then Shadow Secretary of State for Transport, in 1991, after the Conservative Government of the time had declined to order an inquiry. When the Labour Party came to power Mr Prescott, then Secretary of State for Environment, Transport and the Regions, set up the first inquiry by Lord Justice Clarke in 1999, and the second in 2000.
54. The then Labour Government refused requests by members of the local community for a statutory inquiry into the Mid Staffordshire NHS Trust in 2009 “given the thoroughness of the reports already produced”;⁸³ instead setting up the non-statutory inquiry. Andrew Lansley MP said that the Conservative Party would order a statutory inquiry if they came to power, and he did so as Secretary of State for Health in 2010.
55. An approach which may help to limit the political nature of the decision making process was suggested by Robert Francis QC: “it might be thought that a better course would be to list factors it is considered Ministers should take into account”.⁸⁴ We have considered the 14 inquiries held under the Act to ascertain whether the characteristics identified by the Cabinet Secretary were present:
 - Five inquiries⁸⁵ involved multiple deaths (five or more people);
 - One inquiry (ICL: 2008) was set up in relation to health and safety concerns;
 - Ten inquiries⁸⁶ involved a previous investigation report and/or regulatory or investigatory body involvement;

⁷⁹ Q 203 and Q 218.

⁸⁰ Q 51.

⁸¹ Into the death of Alexander Litvinenko.

⁸² Now Lord Prescott.

⁸³ HC Deb, 21 July 2009, col 124WS.

⁸⁴ Robert Francis QC, written evidence, paragraph 11.

⁸⁵ Mid Staffordshire, 2010; Vale of Leven Hospital, 2009; *C. difficile*, 2008, Penrose, 2008; ICL, 2008.

⁸⁶ Leveson, 2011 (previous police inquiry); Mid Staffordshire, 2010 (involvement of Healthcare Commission, CQC and the HSE); Azelle Rodney, 2010 (previous IPCC report); Bernard (Sonny) Lodge, 2009 (previous investigation by a prison governor); *C. difficile*, 2008 (involvement of RQIA); Penrose, 2008 (NHS boards); Fingerprint (previous inquiries), *E. coli*, 2006 (food regulatory bodies); Robert Hamill, 2004 (previous investigation/collusion of state agencies); Billy Wright, 2004 (previous investigation/collusion of state agencies).

- Two inquiries (Baha Mousa in 2008 and Al Sweady in 2009) were established in the context of international law or relations. One inquiry (Azelle Rodney, 2010) was established because it was not possible for the death to be adequately investigated by an inquest because there was certain intelligence material which the coroner was not permitted to be privy to;⁸⁷ and one (*E. coli*, 2006) was set up due to the scale of the event.
56. “Failure in regulation”, one of the Cabinet Secretary’s inquiry characteristics, seems to us to be particularly significant.⁸⁸ We agree with Michael Collins, Judi Kemish and Ashley Underwood QC, the secretary, solicitor and counsel of the Rodney Inquiry,⁸⁹ that “The first principle we believe should underlie the use of public inquiries is that a matter of public concern has been identified which cannot be allayed by lesser means such as investigation by an established regulatory body.”⁹⁰ It is generally when concern has arisen about a “lesser investigation” that previous inquiries have been initiated. Where it is the established regulatory or investigatory body which itself is seen to have failed, there is really no way that public concern can be allayed short of an inquiry.

BOX 3

Examples of inquiries which investigated failure by a regulatory or investigatory body

- The Mid Staffordshire Inquiry investigated the failure by the Healthcare Commission, Care Quality Commission (CQC) and the Health and Safety Executive (HSE) to monitor the Mid Staffordshire NHS Trust.
- Inquiries into the deaths of Victoria Climbié and Baby P examined the combined failure of the multi-agency child protection system by the care services, NHS and the police.
- The Bichard Inquiry into the Soham murders examined the failure of police child protection systems.
- The Shipman Inquiry investigated failure by police, the coronial system, the system of death certification, the General Medical Council (GMC) and others.

⁸⁷ Coroners are not able to consider intelligence material gathered under the Regulation of Investigatory Powers Act 2000.

⁸⁸ Even where the principal event involves a private person (such as Dr Harold Shipman) or a private organisation (such as the BCCI), there will often be allegations of regulatory or other failures by organs of the State (eg the Department of Health and the Bank of England). (As explained by Jason Beer, *Public Inquiries* (OUP, 2011), page 269, footnote 8).

⁸⁹ We quote many times from this valuable evidence, referring to it subsequently as Collins, Kemish and Underwood. Ashley Underwood QC was Leading Counsel to the Robert Hamill Inquiry, and to the Azelle Rodney Inquiry, and was subsequently Counsel to the Mark Duggan inquest. Judi Kemish is a solicitor employed by the Government Legal Service who was seconded as the solicitor and secretary to the Robert Hamill Inquiry, then as the solicitor and also junior Counsel to the Azelle Rodney Inquiry, and subsequently as the solicitor to the Mark Duggan inquest. Michael Collins is a civil servant with the Ministry of Justice who was seconded as secretary to the Azelle Rodney Inquiry and subsequently seconded as secretary to the Mark Duggan Inquest.

⁹⁰ Written evidence, paragraph 8.

- The Equitable Life Inquiry examined the failure of the Financial Services Authority (FSA), the Government Actuary's Department (GAD) and the Department of Trade and Industry (DTI).
- The Azelle Rodney Inquiry, set up because there was certain intelligence material which the coroner was not permitted to be privy to, examined the failure by the Independent Police Complaints Commission (IPCC) to identify any significant fault on behalf of the police.

57. **Where deaths, injuries or other incidents have occurred which seemingly need not and would not have occurred if regulatory or investigatory bodies had properly been carrying out their duties, there will be public concern not just at what has happened but at the failure to prevent it happening. In such cases a public inquiry may well be the best and only way of alleviating public concern.**
58. A number of existing statutory bodies have the power to investigate complaints or specific incidents referred to them, for instance the IPCC, Ofsted, the Information Commissioner, the Parliamentary Commissioners for Administration and Health, the Northern Ireland Commissioner for Children and Young People, and the Commission for Local Administration. Some of these bodies already influence national policy and practice.⁹¹ The Children's Commissioner for England's powers go one step further. Under the Children Act 2004 the Commissioner is required to draw national policymakers' and agencies' attention to the particular circumstances of a child or small group of children which should inform both policy and practice.⁹²
59. **We believe that statutory bodies such as the IPCC, Ofsted, the Information Commissioner, the Parliamentary Commissioners for Administration and Health, the Commission for Local Administration, and the Children's Commissioner, can be in a position to recommend full public inquiries when they identify wider areas of concern.**

What type of inquiry? Statutory or non-statutory?

60. The majority of our witnesses found the Act to be a useful framework for conducting inquiries, particularly those witnesses who had chaired or acted as counsel to an inquiry.⁹³ Lord Gill explained in the ICL Inquiry Report in July 2009: "The 2005 Act has introduced a new framework for public

⁹¹ For instance Ofsted conducts in depth surveys and good practice studies to provide unique evidence to national policymakers.

⁹² The Children's Commissioner also has the power to conduct an inquiry, under section 3 of the Children Act 2004, which states "Where the Children's Commissioner considers that the case of an individual child in England raises issues of public policy of relevance to other children, he may hold an inquiry into that case for the purpose of investigating and making recommendations about those issues". See chapter 'About the Office of the Children's Commissioner' in the report of an inquiry of the Office of the Children's Commissioner, *Inquiry into Child Sexual Exploitation in Gangs and Groups*, available at: http://www.childrenscommissioner.gov.uk/content/publications/content_636.

⁹³ Professor Sir Ian Kennedy, Sir Brian Leveson, Mr Justice Jay, Jason Beer QC, and Lord Gill. See paragraph 214.

inquiries that will greatly increase the efficiency with which they are conducted without compromising the thoroughness of the process.”⁹⁴ Human Rights organisations have been generally supportive of the Act overall: “Liberty firmly believes that an inquiry into allegations of human rights violations should be conducted under the Inquiries Act. We believe it provides protection. We do not believe that it goes far enough to guarantee the key features of an inquiry—the publicness and effective independence from the Executive—but we think that it provides useful protections and creates a better situation than the sort of *ad hoc* situation that existed before.”⁹⁵ Rights Watch UK told us: “Our experience is that inquiries under the Act have been efficient and cost effective.”⁹⁶ We conclude that the Act is a useful tool in the administration of effective inquiries.

61. We can see no good reason why the Act should not be used as a matter of course when establishing an inquiry, as suggested by Professor Tomkins, who told us: “The presumption should be that if an inquiry is to be established, it should be established under the legislation ... because otherwise there is a question as to why we have the statute at all”.⁹⁷ Lord Justice Beatson gave concurring evidence, and thought it was “important for there to be careful consideration of the justification for not using the procedure so recently established by Parliament as the appropriate one for inquiries.”⁹⁸
62. The Cabinet Office Guidance, which we consider more fully in chapter 5,⁹⁹ merely states: “Departments should seek advice from the Cabinet Office Propriety and Ethics Team on the different forms of inquiry and the merits of the different options. Possible forms of inquiry include inquiries conducted under the Inquiries Act 2005, statutory public inquiries under other legislation,¹⁰⁰ non-statutory *ad hoc* inquiries (public or private), Committee of Privy Counsellors or Royal Commissions.” No preference is expressed for inquiries to be set up under the Act.
63. We asked Shailesh Vara MP, the Parliamentary Under-Secretary of State for Justice, whether there should not at least be a presumption that if an inquiry was being set up, it should be under the Act. Mr Vara replied: “I see no reason for not having that presumption ... certainly the Act is there and it is there to be used ... it is a first port of call”. But he subsequently corrected himself: “To the extent that I may have led the Committee to believe that there is a presumption, I am saying that I do not know the answer. I am not aware of the word “presumption” being used in the Guidance ... I do not know whether there is a natural presumption or whether the decision that needs to be taken is something for future guidance.”¹⁰¹ This hardly amounts

⁹⁴ *The ICL Inquiry Report*, p.iii, available at:

http://www.theiclinquiry.org/documents/documents/HC838ICL_Inquiry_Report.pdf.

⁹⁵ Q 230.

⁹⁶ Rights Watch UK, written evidence, paragraph 10.

⁹⁷ Q 38.

⁹⁸ Written evidence, paragraph 23.

⁹⁹ Paragraphs 157 *et seq.*

¹⁰⁰ What that “other legislation” might be is something we have considered in paragraphs 38 *et seq.*

¹⁰¹ QQ 321, 323.

to a ringing endorsement of the Act as the preferred vehicle for conducting inquiries; or even to a coherent policy on the use of the Act.

64. We note moreover that the Act has not been used since the establishment of the Leveson Inquiry in 2011. In that time two non-statutory inquiries have been announced. The first, which began in September 2013, is the Morecambe Bay inquiry into a high number of serious untoward incidents in the maternity and neonatal services provided by the University Hospitals of Morecambe Bay Trust. The Ministry of Justice tell us that this is not an inquiry because the Secretary of State for Health, in his written statement,¹⁰² described it as an investigation and said that evidence sessions would be open to family members but not to the public. We regard this as a distinction without a difference. This inquiry has all the characteristics of the first, non-statutory, inquiry by Robert Francis QC into the NHS Mid Staffordshire Foundation Trust, except that the chairman, Dr Bill Kirkup, intends to exercise his power to exclude the public from evidence sessions.
65. The second non-statutory inquiry is even more recent. On 6 February 2014 Lord Faulks QC, the Minister of State at the Ministry of Justice, announced that the Government had decided to hold “an independent review to learn lessons from self-inflicted deaths of young adults in custody aged between 18 and 24”. In reply to a question whether this was to be an inquiry under the Inquiries Act 2005 he said that he was unable to give a precise answer.¹⁰³ Lord Faulks subsequently wrote to the chairman to say that the review had not been established under the 2005 Act, but gave no reason for this.

Compellability of witnesses and evidence on oath

66. The only significant differences between a statutory and a non-statutory inquiry are, first, that a non-statutory inquiry has to rely on the voluntary compliance of witnesses, or on the coercive power of the press and public opinion; secondly that it cannot take evidence on oath,¹⁰⁴ and thirdly, that a statutory inquiry under the Act contains a presumption that hearings will be held in public.¹⁰⁵
67. Many of our witnesses, including Sir Brian Leveson and Professor Kennedy, have been in favour of the power given by the Act to compel witnesses, at least as a power of last resort. In his report on Bristol Royal Infirmary, Professor Kennedy wrote:

“In conducting our Inquiry we were aided by the fact that we were appointed under a statute and, as a consequence, had powers which that statute conferred on us. In particular, we had the power, if necessary, to compel witnesses to attend hearings and require that documents be produced ... Secondly, we had the power to take evidence on oath or affirmation. We found these powers, particularly the former, essential (if

¹⁰² HC Deb, 12 Sep 2013, col 57WS.

¹⁰³ HL Deb, 6 February 2014, cols 260–264.

¹⁰⁴ Under the Statutory Declarations Act 1835, section 13.

¹⁰⁵ Section 18 of the Inquiries Act 2005 provides that, subject to restrictions, the chairman must reasonably ensure that members of the public are able to attend the hearing; and obtain or view a record of evidence and documents.

only to be held in reserve). Their existence assured us of compliance, without our having to use them.”¹⁰⁶

68. On the other hand Sir John Chilcot, the chairman of the Iraq inquiry,¹⁰⁷ felt that the power of compulsion contributed to an overly formal or court-like adversarial process, commenting on his own non-statutory inquiry: “The absence of legal powers to subpoena witnesses and to take evidence on oath was also the subject of debate when the Inquiry launched ... In my statement on 30 July [2009] I said that the Inquiry is not a court of law and nobody is on trial, and that remains the case.”¹⁰⁸
69. The European Court of Human Rights has determined that Articles 2 and 3 of the European Convention on Human Rights (ECHR) give rise to a duty to investigate certain deaths and ill treatment.¹⁰⁹ Lord Bingham summarised the Article 2 requirements as being:
- The investigation must be independent.
 - The investigation must be effective.
 - The investigation must be reasonably prompt.
 - There must be a “sufficient element of public scrutiny”.
 - The next of kin must be involved to an appropriate extent.¹¹⁰
70. In relation to compellability, the judgment of the European Court of Human Rights in the case of *Edwards v United Kingdom*¹¹¹ is particularly significant. The applicants were the parents of a prisoner killed in his cell by another prisoner who was dangerous and mentally ill. Two prison officers, one of whom had walked past the cell shortly before the death was discovered, had submitted statements to an inquiry but declined to attend it. Their absence prevented the provision of further detail and clarification. The court held that the inquiry had failed to be effective and so was not compliant with Article 2: “The Court finds that the lack of compulsion of witnesses who are either eyewitnesses or have material evidence related to the circumstances of a death must be regarded as diminishing the effectiveness of the inquiry as an investigative mechanism. In this case ... it detracted from its capacity to establish the facts relevant to the death, and thereby to achieve one of the purposes required by Article 2 of the Convention.”¹¹²

¹⁰⁶ Professor Kennedy, *The Report of the Public Inquiry into children’s heart surgery at the Bristol Royal Infirmary 1984–1995*, Chapter 2, available at:

http://www.specialisedservices.nhs.uk/library/30/Learning_from_Bristol_The_Report_of_the_Public_Inquiry_into_childrens_heart_surgery_at_the_Bristol_Royal_Infirmary_1984_1995_The_Kennedy_Report_1.pdf

¹⁰⁷ The Iraq Inquiry investigated the period from the summer of 2001 to the end of July 2009, embracing the run-up to the conflict in Iraq, the military action and its aftermath, the UK’s involvement in Iraq, including the way decisions were made and actions taken.

¹⁰⁸ Sir John Chilcot, written evidence.

¹⁰⁹ For instance: *Osman v United Kingdom* (1998) 29 EHRR 245; *McCann v United Kingdom* (1995) 21 EHRR 97.

¹¹⁰ *R (Amin) v. Secretary of State for the Home Department* [2003] UKHL 51.

¹¹¹ *Edwards v United Kingdom* (2002) 35 EHRR 19.

¹¹² *Ibid.*, paragraph 78.

71. It is only if an inquiry is set up under the Inquiries Act, or another Act giving the inquiry similar powers,¹¹³ that the inquiry will have the power to compel the production of documents and the attendance of witnesses, and to require witnesses to give evidence on oath. We are aware of three instances where those involved in the setting up of inquiries seem either not to be aware of this simple fact, or to be prepared to attempt to devise a way to circumvent it.
72. In the first case, in his letter of 17 June 2009 setting up the inquiry the then Prime Minister, Gordon Brown MP, wrote to Sir John Chilcot on the powers of compulsion: “I hope ... that you will consider whether it is possible for there to be a process whereby they give their contributions on oath.”¹¹⁴ It seems to us extraordinary that the Prime Minister should have been advised to set up a non-statutory inquiry and at the same time to ask the chairman to devise a means for evidence to be given on oath. This was presumably an attempt to ensure that the non-statutory investigation complied with ECHR Article 2.
73. The second example is that of Dr Bill Kirkup CBE, chairman of the current Morecambe Bay Investigation, which is non-statutory, who said in his opening statement: “With the panel and the secretariat, I am determining what evidence I will require them [certain organisations] to supply and the practical arrangements for the safe transfer of that material to the investigation.”¹¹⁵ It is not open to this inquiry to “require” information.
74. Lastly, in 2013 a judgment of the Divisional Court¹¹⁶ required the Ministry of Defence to set up non-statutory inquiries into recent cases involving claims by Iraqi citizens of ill-treatment and unlawful killing by British armed forces in Iraq. It was held that an investigation established by the Secretary of State for Defence was neither independent nor adequately compliant with the investigative duties under ECHR Articles 2 and 3. Further inquiries were deemed necessary, and the Court went on to give detailed directions as to what form these should take. The Court agreed with the decision of the Secretary of State not to order an overarching public inquiry, on grounds including length, cost, the difficulty of finding a judge or retired judge for the necessary length of time, and the different margins of appreciation in different cases.¹¹⁷ Instead, the Court asked for a large number of inquest-like investigations to be conducted by “a suitable person such as a retired judge or possibly a very experienced practitioner” who would need, despite the fact that the inquiry was not to be set up under the 2005 Act, powers to require

¹¹³ For instance the Health and Safety at Work etc. Act 1974; Financial Services Act 2012; or the Inquiry into Historical Institutional Abuse Act (Northern Ireland) Act 2013. See paragraphs 39–43.

¹¹⁴ HC Deb, 13 July 2009, col 106W.

¹¹⁵ Chairman’s statement on the Morecambe Bay investigation, 1 November 2013, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254621/morecambe_bay_method_statement.pdf.

¹¹⁶ The President of the Queen’s Bench Division and Mr Justice Silber. The President at that time was Sir John Thomas P, now Lord Thomas of Cwmgiedd, the Lord Chief Justice.

¹¹⁷ *R (Mousa) v Secretary of State for Defence* and another [2010] EWHC 3304 (Admin); [2011] EWCA Civ 1334; *R (Ali Zaki Mousa and others) v Secretary of State for Defence* [2013] EWHC 1412 (Admin). And see *Al Skeini and others v United Kingdom* (2012) 53 EHRR 18.

witnesses to attend to give evidence and to produce a statement, together with appropriate sanctions for non-compliance.¹¹⁸ The judgment added:

“If the inquiry is not to be set up under the 2005 Act, a way must be found of providing the Inspector with similar powers [powers of compulsion set out in section 21] and appropriate sanction ... Under the Act, a chairman can also compel the production of documents; we would anticipate that the undertaking to which we have referred ... should obviate the need for similar powers, but it would be prudent to make express provision for such powers with appropriate sanctions.”¹¹⁹

The Court’s formal order provides: The Inspector must have a power to compel witness [sic] to attend and to compel the production of documents (with appropriate sanction for failures to comply).¹²⁰ There is no indication as to how this might be achieved. The intention is presumably to secure compliance with ECHR Article 2, following the judgment in *Edwards v United Kingdom*.¹²¹ There is however no suggestion as to how the inspector might acquire such powers of compulsion.

75. Our witness from the Ministry of Defence, Jonathan Duke-Evans, Head of Claims, Judicial Reviews and Public Inquiries, told us how the department was intending to implement the judgment in practice. He thought it might be possible to use the powers under the Civil Procedure Rules (CPR) to summon witnesses or require the production of documents if requested by a tribunal, and added: “We think that may be the answer unless anyone can come up with a reason that says a new creature of this kind cannot be regarded as a tribunal”.¹²² We ourselves doubt whether the CPR were intended to assist a new kind of non-statutory tribunal to compel documents to be produced or witnesses to attend.

Hearings in public

76. We received criticism of non-statutory inquiries from human rights organisations such as Liberty¹²³ and Rights Watch UK¹²⁴, and from Julie Bailey,¹²⁵ because of the lack of rules governing private and public hearings. Rights Watch UK told us: “non-statutory inquiries ... can be the result of political agendas which undermine their credibility, for example ... The Detainee Inquiry (Gibson). When a human rights violation is engaged, either individual or systemic, then a statutory inquiry is required”.¹²⁶ Eversheds reasoned that “The legislative framework under which a public [2005 Act] inquiry operates also makes the inquiry accountable to the public in a way that a non-statutory inquiry cannot.”¹²⁷ Other witnesses were also concerned

¹¹⁸ *R(Mousa) v Secretary of State for Defence* (No 2), 24 May 2013, [2013]EWHC 2941 (Admin).

¹¹⁹ *R (Ali Zaki Mousa) v Secretary of State for Defence* [2013] EWHC 1412 (Admin), paragraphs 16 and 17.

¹²⁰ *Ali Zaki Mousa* (No. 2): Order paragraph (vii).

¹²¹ *Edwards v United Kingdom* (2002) 35 EHRR 19, paragraph 70.

¹²² Q 278.

¹²³ Liberty, written evidence, paragraphs 16–21.

¹²⁴ Rights Watch UK, written evidence, paragraph 12.

¹²⁵ Q 173, Q 178.

¹²⁶ Rights Watch UK, written evidence, paragraph 12.

¹²⁷ Eversheds, written evidence, paragraph 35.

that the practice of holding all or part of an inquiry in private might not satisfy the Article 2 obligations.¹²⁸ Non-statutory inquiries are therefore more likely to be non-compliant with Article 2 than inquiries held under the Act. As the cases of *Edwards* and *Ali Zaki Mousa* demonstrate, non-statutory inquiries are particularly likely to be non-compliant if witnesses fail or refuse to attend.

77. The reasons given to hold non-statutory inquiries often include that they are cheaper and quicker.¹²⁹ We explain later in our report why we do not agree that this is necessarily so.¹³⁰
78. Another reason given is that matters of intelligence may make it impossible to hold an inquiry under the Act for reasons of national security. Professor Tomkins cautioned there “would never have been an Iraq inquiry and there would never have been a Detainee inquiry at all”¹³¹ if the non-statutory route had not been available, or that in such cases important evidence might have had to be heard in closed session. Peter Riddell told us that had the non-statutory Detainee Inquiry commenced hearing evidence, evidence from security agencies on operational issues would have had to be heard in secret.¹³²
79. We note that security issues can sometimes be managed under the Act, as demonstrated by the pragmatic solution in the Azelle Rodney Inquiry. The inquiry team told us: “the majority of Metropolitan Police Officer statements [were] re-drafted to reveal the intelligence gathered as part of covert operations without revealing the source of that information. This meant that statements contained minor redactions and did not compromise existing legislation.”¹³³ This approach fits with the Act’s intent. During the Second Reading of the Inquiries Bill in the Commons, Christopher Leslie MP, then Parliamentary Under-Secretary of State for Constitutional Affairs, said: “The Bill would [put] on a proper, more comprehensive footing our ability to conduct an effective public inquiry in circumstances where national security issues may well arise.”¹³⁴

The Committee’s view

80. Nevertheless even those of our witnesses who had chaired statutory inquiries—Lord Cullen of Whitekirk,¹³⁵ Lord Gill,¹³⁶ and Robert Francis QC¹³⁷—supported retention of the non-statutory route as a means of conducting a less formal investigation. Lord Bichard felt that the non-

¹²⁸ Robert Francis QC, first written evidence, paragraphs 8–9; Liberty, written evidence, paragraph 24; Rights Watch UK, written evidence, paragraph 12; Ashley Underwood QC, Q 252.

¹²⁹ Robert Francis Q 211 and Q 217, Jonathan Duke-Evans Q 279, Robert Francis QC Q 211, Lord Bichard Q 211, Alun Evans Q 132.

¹³⁰ Paragraphs 191 *et seq.*

¹³¹ Q 91.

¹³² Q 57.

¹³³ Collins, Kemish and Underwood, written evidence, footnote 20.

¹³⁴ HC Deb, 15 March 2005, col 150.

¹³⁵ Q 193.

¹³⁶ Q 193.

¹³⁷ Q 217.

statutory nature of his inquiry helped to keep proceedings as informal as possible for the victims' families.¹³⁸

81. **We recommend that inquiries into issues of public concern should normally be held under the Act. This is essential where Article 2 of the ECHR is engaged. No inquiry should be set up without the power to compel the attendance of witnesses unless ministers are confident that all potential witnesses will attend.**
82. **We would not however remove the possibility of an inquiry being held otherwise than under the Act, for example where security issues are involved, or other sensitive issues which require evidence to be heard in secret. Ministers should give reasons for any decision to hold an inquiry otherwise than under the Act.**

Inquests as an alternative

83. As a matter of course certain deaths¹³⁹ in the United Kingdom are investigated by means of an inquest. Where it appears that agents of the State may be implicated in some way in the circumstances of the death, the subsequent investigation, whether that be by inquest or not, must satisfy the minimum requirements imposed by Article 2 of the European Convention on Human Rights.¹⁴⁰ An inquest is limited to examining who the deceased was; and how, when and where the deceased came by his or her death.¹⁴¹ An inquiry's scope is determined by its terms of reference and so can be much wider. We say more about this in chapter 4. The other chief distinctions are that inquests cannot hear evidence in private, cannot make recommendations, and may in certain circumstances have a jury. Juries do not give reasons for their decisions.
84. Witnesses gave different views about the usefulness and independence of inquests and inquiries. Some witnesses told us that in some instances the coronial system had not worked. Eversheds thought that "On occasion, Article 2 inquests have been established where the public interest in our view might have been better served by public inquiries."¹⁴² For Collins, Kemish and Underwood the recent investigations and inquests into the Hillsborough football disaster could be said to be "an example of a lengthy investigation which led to a further investigation (in this instance new inquests) when it would have been swifter and more economical to move straight to a public inquiry."¹⁴³ Disaster Action believed "Failures in the inquest process have been important in other disasters, including the Marchioness disaster".¹⁴⁴
85. Other witnesses favoured inquests as the preferred Article 2 compliant investigation to establish the truth of a death. Helen Shaw of INQUEST told

¹³⁸ Q 211.

¹³⁹ If the coroner has reason to suspect that the deceased died a violent or unnatural death; the cause of death is unknown; the deceased died while in custody or otherwise in state detention. Section 1 of the Coroners and Justice Act 2009.

¹⁴⁰ See paragraph 69.

¹⁴¹ Section 5(1) Coroners and Justice Act 2009.

¹⁴² Eversheds, written evidence, paragraph 14.

¹⁴³ Collins, Kemish and Underwood, written evidence, paragraph 27.

¹⁴⁴ Disaster Action, written evidence, paragraph 13.1.

us: “I think everybody who represents people at inquests is very keen that we continue to have inquests as the primary method of investigating any kind of contentious death”.¹⁴⁵ Liberty were concerned that “there are problems with the ability of an inquiry to get to the truth in the same way as an inquest can,”¹⁴⁶ and that “The Coroners and Justice Act 2009 radically changed the role played by inquiries under the 2005 Act, as it allowed them to be used as a substitute for an inquest.”¹⁴⁷ The 2009 Act was in fact only re-enacting a provision already on the statute book¹⁴⁸ which was used by the then Lord Chancellor, Lord Falconer of Thoroton, to suspend the inquest into the death of Dr David Kelly when the Hutton Inquiry was set up.

86. Those working with family groups seemed to favour an inquest over an inquiry because of a preference for a jury-led decision. Ashley Underwood QC explained: “Ministers think there is a great driver to having a jury, if they can possibly have one, to investigate a death, because the popular perception is that unless you have a jury, somehow it is being swept under the carpet ... I think there was a great deal of pushing for [the Mark Duggan inquest] to remain a jury matter and the Ministers took that on.”¹⁴⁹ Helen Shaw of INQUEST agreed: “We lost the jury in the [Azelle Rodney] inquiry, and that is very important in these kinds of deaths.”¹⁵⁰
87. The circumstances surrounding the deaths of Mark Duggan and Azelle Rodney contained many similarities,¹⁵¹ but were investigated by different means. The Azelle Rodney Inquiry replaced the earlier inquest which could not proceed because there was certain intelligence material which the coroner was not permitted to be privy to. The death of Mark Duggan in 2011, which led to serious riots in London and beyond, was investigated by way of an inquest. This unquestionably was a matter of public concern which could have justified an inquiry; the inquest could look only at the

¹⁴⁵ Q 233.

¹⁴⁶ Rachel Robinson, Q 233.

¹⁴⁷ Liberty, written evidence, paragraph 22.

¹⁴⁸ The Coroners Act 1988 had a section inserted, section 17A, allowing the Lord Chancellor to order the suspension of an inquest if an inquiry was opened which was likely to look at the cause of death. That section was repealed when Part 1 of the Coroners and Justice Act 2009 came into force in 2013, and was replaced by Schedule 1 to the Act, which requires a senior coroner to suspend an investigation (which includes an inquest) “if (a) the Lord Chancellor requests the coroner to do so on the ground that the cause of death is likely to be adequately investigated by an inquiry under the Inquiries Act 2005 that is being or is to be held, (b) a senior judge has been appointed under that Act as chairman of the inquiry, and (c) the Lord Chief Justice has indicated approval to the Lord Chancellor, for the purposes of this paragraph, of the appointment of that judge.” “Senior judge” does not include a retired judge.

¹⁴⁹ Q 258.

¹⁵⁰ Q 233.

¹⁵¹ Azelle Rodney was shot and killed by a police firearms officer after the car he was travelling in was forced to a stop by the police, in April 2005, in Mill Hill, North West London. Guns were found in the car and there was credible intelligence to the effect that Rodney and his companions were on their way to commit an armed robbery at the time. The IPCC investigation into the death did not make any findings of significant fault on the part of the Metropolitan Police Service and its officers. Sir Christopher Holland’s inquiry report found that none of the shooting by the police was necessary.

Mark Duggan was shot and killed by a police firearms officer after the taxi he was travelling in was forced to a stop by the police, in August 2011, in Tottenham, North London. A gun was found near the car. The IPCC investigation into the death has not, to date, published its report, although the Guardian reported in August 2013 that the IPCC had found no evidence of criminality at that stage. The inquest verdict in January 2014 was that the shooting was lawful.

circumstances of the death. A jury verdict cannot provide any reasons for the conclusions.

88. In fact the Mark Duggan inquest “was the subject of considerable debate about whether it should have been an inquiry under the 2005 Act.”¹⁵² Ashley Underwood QC explained: “the question is whether there is something more than just the death. For example, let us look at allaying the public concern. In the inquest we have into Mark Duggan ... we are only exercised by the death, but it is idle to forget that the riots took place as a result of that death. Now, the public concern that surrounds the death does not just deal with how it is that Mark Duggan came to die. There is an argument for the allaying of public concern to deal with it rather wider than the inquest would ordinarily do.”¹⁵³
89. The investigation of a death by an inquest can also be compromised by the presence of intelligence issues which the inquest cannot investigate, but which could be considered by an inquiry, using if necessary its power to restrict disclosure of evidence. Sir Robert Owen, the Assistant Deputy Coroner of the inquest into the death of Alexander Litvinenko, wrote to ministers asking for the inquest to be converted into an inquiry under the Act. The letter said: “if I were to remove certain [intelligence] issues from scope, that would be likely to lead to the inquest failing to discharge its duty to undertake a full, fair and fearless investigation.”¹⁵⁴ His request was refused by the Home Secretary, but following an application for judicial review¹⁵⁵ a three-judge court decided on 11 February 2014 that her decision could not stand and must be re-considered,¹⁵⁶ albeit stressing that the judgment did not of itself mandate any particular outcome. The Home Secretary did not appeal the Court’s decision.
90. The Government’s 2011 *Justice and Security* Green Paper¹⁵⁷ put forward a proposal to amend the Coroners Rules to allow for a closed material procedure where sensitive material is required for consideration. The Green Paper detailed inquiries as an alternative to the coronial system. It is relevant to our investigation that the Government define inquiries as “an exceptional means of last resort to investigate deaths of significant public interest”,¹⁵⁸ citing complexity and cost as justification for this view. We do not agree with this definition, nor is it in line with the circumstances when an inquiry into public concern may be suitable as specified in section 1 of the Act.
91. We received evidence from Liberty supporting the need for a statutory inquiry in instances where the coronial system is not engaged: “wherever there are human rights allegations involved there should always be a statutory inquiry if there is not an inquest.”¹⁵⁹ The most important contributory factor

¹⁵² Collins, Kemish and Underwood, written evidence, paragraph 5.

¹⁵³ Q 258.

¹⁵⁴ Letter 4 June 2013.

¹⁵⁵ Litvinenko’s widow judicially reviewed the refusal by the Secretary of State for the Home Department to order the setting up of a statutory inquiry under section 1(1) of the Inquiries Act 2005 (“the 2005 Act”) into the circumstances of the death.

¹⁵⁶ *R v Secretary of State for the Home Department* [2014] EWHC 194 (Admin).

¹⁵⁷ Justice and Security Green Paper, Cm 8194, October 2011, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228860/8194.pdf.

¹⁵⁸ *Ibid.* paragraph 1.49.

¹⁵⁹ Q 244.

when deciding whether to hold an inquest or an inquiry into the circumstances of a particular death seems to us to be whether wider areas of public concern are present, or policy issues which require examination.

92. **Where public concern extends significantly beyond a death itself to wider related issues, an inquiry may be preferable to an inquest. If such issues emerge in the course of an inquest, consideration should be given to suspending the inquest and appointing a senior judge as chairman of an inquiry under the Inquiries Act 2005.**

Who should decide?

93. The question who should decide whether to hold or not to hold an inquiry, and what type of inquiry to hold, is a delicate one on which we heard differing views.
94. Section 1 of the Act provides that the minister “may cause an inquiry to be held” where “it appears to him” that public concern about particular events is present. There is no legal duty to establish an inquiry under the Act—it is a matter of discretion for the minister. Inquiries may also be established otherwise than under the Act, as discussed earlier in this chapter.
95. The proposed ministerial powers in the draft Inquiries Bill were subject to much criticism at the time about the perceived effect the powers would have on the independence of inquiries. Specifically, there was criticism of a “shift in emphasis towards inquiries established and largely controlled by government Ministers.”¹⁶⁰ Many of our witnesses thought one of the most significant changes made by the Act was to set out in statute that the power to establish an inquiry into matters of public concern rested with a minister.
96. Criticism varied from that of Disaster Action, who felt the discretionary nature of the power “is vague and, in our view, leaves too wide a discretion to the minister concerned”¹⁶¹ and claimed there was an “arbitrary and inconsistent approach to decision making”,¹⁶² to that of Dr Mackie, who thought it possible for unnecessary inquiries to be set up “as a way of kicking issues into the long grass”.¹⁶³
97. Many of our witnesses, including Eversheds, Disaster Action, Liberty, the (Northern Ireland) Committee on the Administration of Justice (CAJ), and Collins, Kemish and Underwood gave examples of matters which they believed should have been investigated under the Act but which were not.¹⁶⁴

¹⁶⁰ *The Inquiries Bill—the Wrong Answer*, A Joint Statement by Amnesty International; British Irish Rights Watch (now Rights Watch UK); The Committee on the Administration of Justice; Human Rights First; The Human Rights Institute of the International Bar Association; INQUEST; JUSTICE; Lawyers’ Rights Watch Canada; The Law Society of England and Wales; Pat Finucane Centre; and Scottish Human Rights Centre, available at: <http://www.amnesty.org/en/library/asset/EUR45/008/2005/en/54771d67-d508-11dd-8a23-d58a49c0d652/eur450082005en.html>.

¹⁶¹ Disaster Action, written evidence, paragraph 2.1.

¹⁶² *Ibid.*

¹⁶³ Q 58.

¹⁶⁴ Examples detailed earlier in the chapter are the initial Mid Staffordshire Inquiry, Deepcut, the murder of Pat Finucane, the death of Alexander Litvinenko, Hillsborough, the recent banking crisis and the Omagh bombing.

Some witnesses, for instance CAJ¹⁶⁵ and Liberty,¹⁶⁶ told us that this called into question the independence of ministerial decision making. We do not agree. An analysis of ministerial decisions shows that while it is true that the case for holding a statutory inquiry has often been argued by family members and interest groups to no avail, in many cases, ministers have given comprehensive reasons for the decision not to hold an inquiry. In the recent case of Litvinenko, the Home Secretary's reasons, while comprehensive, were found by the High Court "not [to] provide a rational basis for the decision not to set up a statutory inquiry".¹⁶⁷

BOX 4

Examples of ministerial reasons not to hold an inquiry

- The then Secretary of State for Defence (Geoffrey Hoon MP) opposed an inquiry into the deaths of four young soldiers at Deepcut Barracks in a debate in the House of Commons on 27 April 2004,¹⁶⁸ arguing that the matter been "subject to thorough and detailed examination" by Surrey Police.
- The then Parliamentary Under-Secretary of State for the Home Department (Caroline Flint) set out three reasons for not holding an inquiry into the murder of Daniel Morgan. They were, in summary, that there was insufficient public concern; Government did not consider there be a realistic prospect of uncovering new evidence following previous investigations; and previous investigations found no police involvement in the murder.¹⁶⁹
- The then Secretary of State for Health, Andy Burnham MP, opposed a "full public inquiry" into the failings at Mid Staffordshire NHS Foundation Trust "given the thoroughness of the reports already produced."¹⁷⁰
- The Prime Minister (David Cameron MP) set out reasons for not holding an inquiry into the death of Pat Finucane on 12 December 2012: "if we look at the other inquiries ... we see that some of them took five or six years or longer and cost tens of millions of pounds, and I do not believe that they got closer to the truth than de Silva¹⁷¹ has in his excellent and full report."¹⁷²
- In the case of the inquest into the death of Alexander Litvinenko, in a letter to the Coroner of 17 July 2013 the Home Secretary (Theresa May MP) set out her detailed reasons for her decision not to convert the inquest into an inquiry. The six reasons included, in summary, that an inquiry was likely to be more costly of time, money and

¹⁶⁵ Written evidence, paragraph 5.

¹⁶⁶ Written evidence, paragraph 16.

¹⁶⁷ *R v Secretary of State for the Home Department* [2014] EWHC 194 (Admin).

¹⁶⁸ HC Deb, 27 April 2004, col 204 WH.

¹⁶⁹ HC Deb 6 July 2004, cols 234–236.

¹⁷⁰ HC Deb, 21 July 2009, col 124WS.

¹⁷¹ The Rt Hon Sir Desmond de Silva QC conducted a non-statutory review into the death.

¹⁷² HC Deb, 12 December 2012, col 300.

resources, and that international relations would be better served by an inquest.¹⁷³ This decision was later overturned by the High Court, which expressed concern about each of the reasons.

- In September 2013 the Secretary of State for Northern Ireland (Theresa Villiers MP) decided not to initiate a public inquiry into the circumstances surrounding the bombing in Omagh on 15 August 1998, as: “I do not believe there are sufficient grounds to justify a further review or inquiry above and beyond those that have already taken place or are ongoing. The current investigation by the Office of the Police Ombudsman for Northern Ireland is the best way to address any outstanding issues relating to the police investigation of the Omagh attack.”¹⁷⁴

98. Where the Act has not been used, it seems that this has been primarily due to cost and logistical concerns, particularly in relation to security and intelligence issues. We received no evidence of a minister failing to establish an inquiry under the Act into his or her department in order to avoid criticism; or of a minister establishing a statutory inquiry to “kick an issue into the long grass”¹⁷⁵.
99. Sir Stephen Sedley however felt the scarcity of inquiries under the Act might be because of reluctance by the Government to establish an inquiry due to the perceived lack of independence from the executive: “It does not look good if you set up an independent inquiry and retain the power to interfere with its proceedings.”¹⁷⁶ This was the reason given by the Home Secretary in her letter of July 2013, refusing a public inquiry into the death of Alexander Litvinenko. She wrote: “An inquest managed and run by an independent coroner is more readily explainable to some of our foreign partners, and the integrity of the process more readily grasped, than an inquiry, established by the Government, under a Chairman appointed by the Government which has the power to see Government material, potentially relevant to their interests, in secret.”¹⁷⁷ But this reason was not accepted by the High Court, which overturned the decision.
100. Conversely, there has been one instance where the Government tried unsuccessfully to set up an inquiry under the Act: the family of Pat Finucane refused to take part in an inquiry under the Act due to their concerns about its independence.¹⁷⁸

¹⁷³ See paragraph 99.

¹⁷⁴ Written Ministerial Statement by the Secretary of State for Northern Ireland on the Call for an inquiry into the Omagh Bomb, 12 September 2013, available at: http://www.parliament.uk/documents/commons-vote-office/September_2013/12-9-13/14-NIO-OmaghBomb.PDF.

¹⁷⁵ We received evidence from Liberty that the purpose of the non-statutory Detainee Inquiry was “a cynical public relations exercise, to diffuse political criticism, and ensure that potentially embarrassing events or issues are kicked into the long grass until an anodyne or inconclusive report is produced.” (written evidence, paragraph 21).

¹⁷⁶ Q 41.

¹⁷⁷ Letter of 17 July 2013 from the Home Secretary to Sir Robert Owen, Assistant Coroner of the Litvinenko Inquest.

¹⁷⁸ *Amnesty International urges judiciary not to partake in inquiry sham*, Pat Finucane Centre, available at: <http://www.patfinucanecentre.org/pf/inqubill/ai050420.html>.

101. Witnesses who remained unconvinced about the impartiality of ministerial decision-making suggested alternatives. Rights Watch UK suggested that a new independent body be established to take the decision: “A statutory authority such as a Permanent Commission of Inquiry ... A quasi statutory authority such [as] a Public Truth Commission”,¹⁷⁹ amongst others. This is not a new proposal—the families of the Lockerbie victims suggested: “the creation of an independent “disasters ombudsman”.”¹⁸⁰ While we do not view this as necessary, for reasons explained above, there is nothing within the Act which prohibits the minister from establishing a committee to consider whether an inquiry should be held—the National Assembly for Wales set up a cross-party committee to consider the need for an inquiry into the *E. coli* outbreak. The Committee recommended an inquiry under the Inquiries Act which was duly held.
102. Some of our witnesses, including Rights Watch UK, Eversheds, and Peter Riddell, favoured transferring the power to set up an inquiry to Parliament, for instance via a motion in either House.¹⁸¹
103. Many of our witnesses felt that the power to establish inquiries was best left with a minister, who is accountable to Parliament. In written evidence Collins, Kemish and Underwood told us: “In the final analysis, the recognition, and response to, public concern, is a matter for the executive, subject as it is to oversight by the legislature and by the courts.”¹⁸² Peter Riddell,¹⁸³ Professor Tomkins¹⁸⁴ and Dr Mackie¹⁸⁵ all described the effectiveness of parliamentary oversight, for instance parliamentary questions. On the other hand Robert Francis QC cautioned: “While Parliament can hold ministers to account for not holding an inquiry it cannot force them to do so.”¹⁸⁶ This is true as a matter of law, but in practice a minister would be unlikely to decline to comply with a motion carried by either House calling for an inquiry to be set up.
104. Eversheds told us that concerns about independence could be addressed by the way the inquiry is established, in ensuring openness, transparency and fairness: “we believe the issue is not about whether or not Ministers should have the power or discretion to set up, or not set up, an inquiry, but rather ensuring that there is transparency in the way that an inquiry is created and

And *Investigatory Inquiries and Tribunals of Inquiry (Evidence) Act 1921*, Commons Library Standard Note, 3 September 2012, available at:

<http://www.parliament.uk/business/publications/research/briefing-papers/SN02599/investigatory-inquiries-and-the-tribunals-of-inquiry-evidence-act-1921>.

In the event, subsequent to their refusal of an inquiry under the Act, Finucane’s family stated that they would accept such an inquiry, but with the stipulation that the ministerial powers under section 19 would not be used, as had been arranged in the Baha Mousa Inquiry, *Submissions on behalf of the family of Pat Finucane*, contained in *Note for Madden and Finucane Meeting*, Pat Finucane Centre, available at:

<http://www.patfinucanecentre.org/pf/111014docs.pdf>.

¹⁷⁹ Rights Watch UK, written evidence.

¹⁸⁰ Extract from UK Families Flight 103 19 July 2002 Letter to Foreign Secretary Jack Straw.

¹⁸¹ Peter Riddell, Q 63.

¹⁸² Collins, Kemish, Underwood, written evidence, paragraph 11.

¹⁸³ Q 62.

¹⁸⁴ Q 24.

¹⁸⁵ Q 62.

¹⁸⁶ Robert Francis QC, written evidence, paragraph 11.

conducted.”¹⁸⁷ That view is borne out by the judgment of the European Court of Human Rights in the *Edwards* case.¹⁸⁸ In that case the authorities who had statutory responsibility towards the deceased set up the inquiry into the circumstances of his death, determined its terms of reference, and appointed its members as well as the solicitors who assisted the inquiry. Nevertheless the court was satisfied that the inquiry was independent, because the inquiry chairman was a member of the Bar with judicial experience and the other members were eminent or experienced in the relevant fields. None had any hierarchical link to the authorities in question and, in the court’s view, all acted in an independent capacity. The report was described as meticulous and the Court declared that it had no hesitation in relying on its assessment of the facts and issues.¹⁸⁹

105. We have considered whether the power to set up an inquiry should reside with the minister of the department responsible for the matter under investigation, or with a minister of an “overseeing” department, which would have responsibility for all inquiries. Prior to the passage of the Act departments had been responsible for specific legislation, now repealed, under which inquiries could be set up; they still retain expertise on the subject of particular inquiries. One example is the Ministry of Defence—Jonathan Duke-Evans told us of his position: “it was thought that there needed to be a quasi-permanent post dealing with public inquiries”.¹⁹⁰ In chapter 5 we recommend the establishment of a central inquiries unit with responsibility for maintaining good practice. Before an inquiry is established the minister could seek advice from this unit.
106. **We believe it is right that the power to establish a public inquiry should be held by a minister of the relevant department. The fact that ministers are accountable to Parliament, and that Parliament can always call for an inquiry to be set up, allows sufficient Parliamentary involvement in the process.**

Giving reasons for not ordering inquiries

107. In *Effective inquiries: response to consultation*,¹⁹¹ it was stated that: “The Government believes that it is right that Ministers should explain publicly any decision to establish, or not to establish, an inquiry.” Normally a minister who decides not to order an inquiry does not have to give reasons—indeed, does not have to do anything at all. In practice, in significant matters of public concern, there has often been a ministerial statement to Parliament; we have given examples of these above. In this section we consider whether it is possible to set out stricter criteria governing the cases where ministers should be obliged to give their reasons.
108. As judicial review is the only means by which to challenge a ministerial decision, it is important whether or not reasons are given. Christopher

¹⁸⁷ Eversheds, written evidence, paragraph 12.

¹⁸⁸ *Edwards v United Kingdom* (2002) 35 EHRR 19.

¹⁸⁹ *Ibid.* paragraphs 25, 28, 76 and 80–81.

¹⁹⁰ Q 275.

¹⁹¹ CP (R) 12/04, ODPM, 28 September 2004.

Jefferies told us: “it is absolutely essential that cogent reasons are given”¹⁹² for the refusal to hold an inquiry. Robert Francis QC went further and suggested a procedure which could “allow for these reasons to be offered to Parliament for scrutiny”,¹⁹³ a suggestion also made by Professor Tomkins¹⁹⁴.

109. We see no reason why a practice of giving reasons for not holding an inquiry should lead to an escalation in applications for judicial review. The decision to hold or not to hold an inquiry can be judicially reviewed whether or not reasons are given¹⁹⁵ and the position is similar in respect of coroners’ inquests. Several aspects of inquiry procedure have been the subject of judicial review, notably challenges concerning the anonymity of witnesses before the Saville Inquiry.¹⁹⁶ Robert Francis QC told us: “Judicial review should offer a sufficient opportunity to challenge perverse or unlawful refusals.”¹⁹⁷ A number of witnesses, on the other hand, including Sir Stephen Sedley,¹⁹⁸ Julie Bailey,¹⁹⁹ Disaster Action,²⁰⁰ Herbert Smith Freehills,²⁰¹ Stephen Jones²⁰² and Liberty,²⁰³ stressed that judicial review was cumbersome and expensive and hence not necessarily easily available to persons hoping that an inquiry will be set up or seeking to challenge procedure. Robert Francis QC also noted that “there remains a judicial reluctance to order inquiries”.²⁰⁴ For instance, we referred earlier²⁰⁵ to recent cases where it was held that an investigation established by the Secretary of State for Defence was neither independent nor adequately compliant with the investigative duties under Articles 2 and 3 of the European Convention on Human Rights.
110. It would be impractical for ministers to give reasons every time there is a call for an inquiry which they do not believe to be justified, and none of our witnesses were able to suggest firm criteria for when reasons should, or should not, be given. **We believe ministers must retain a general discretion as to when to give reasons for their decisions; at the same time, events involving what the Cabinet Secretary called “failure in**

¹⁹² Christopher Jefferies, Q 163.

¹⁹³ Robert Francis QC, written evidence, paragraph 14.

¹⁹⁴ Q 39.

¹⁹⁵ In *R v Home Secretary ex p Amin* [2003] UKHL 51, the appellant successfully challenged the decision of the Home Secretary not to hold an inquiry in public. The case established the obligation to hold a sufficient inquiry in cases covered by Article 2 of the European Convention on Human Rights. And in *R v Secretary of State for the Home Department* [2014] EWHC 194 (Admin) the appellant successfully challenged the reasons given by the Home Secretary not to hold an inquiry under the Act.

¹⁹⁶ *R v Lord Saville of Newdigate*, ex p. A [2000] 1 WLR 1855; *R v Lord Saville of Newdigate* ex p. B (No 2) [2000] 1 WLR 1855; *Lord Saville of Newdigate and others v Widgery Soldiers and others* [2002] 1 WLR 1249.

¹⁹⁷ Written evidence, paragraph 11.

¹⁹⁸ Q 46.

¹⁹⁹ Q 182.

²⁰⁰ Written evidence, paragraph 4.4.

²⁰¹ Written evidence, paragraph 14. Herbert Smith Freehills are London solicitors who have represented a number of core participants in inquiries, including Trinity Mirror plc in the Leveson inquiry.

²⁰² Written evidence, paragraph 4.

²⁰³ Q 243.

²⁰⁴ Written evidence, paragraph 9. This is also true of the judgment in *R v Secretary of State for the Home Department* [2014] EWHC 194 (Admin) where the Court stopped short of ordering an inquiry.

²⁰⁵ Paragraphs 74–75.

regulation” are uniquely important and reasons should always be given for a decision not to initiate an inquiry.

- 111. We recommend that ministers should give reasons to Parliament for a decision not to hold an inquiry particularly in the following circumstances: when invited to hold an inquiry by IPCC, Ofsted, the Information Commissioner, Parliamentary Commissioners for Administration and Health, the Commission for Local Administration, or a body of similar standing; and when an investigation by a regulatory body has been widely criticised.**
- 112. A decision on a request by a coroner for an inquest to be converted into an inquiry should always be the subject of reasons.**

CHAPTER 4: SETTING UP AN INQUIRY: THE FORMALITIES

Constitution of the inquiry: appointment of the chairman

113. Once a decision has been taken to hold an inquiry, the most important matter to be decided is the identity of the chairman. It is not therefore something to be done in haste. Yet Robert Francis QC told us:

“like most chairmen, I had the experience of being phoned up out of the blue and asked to decide within an hour whether I would like to chair the inquiry because the Minister was in a hurry to make an announcement ... I think there is absolutely no reason why the announcement that there will be an inquiry has to be accompanied immediately by the name of a chair. There would be a lot to be said for a process that is a little more transparent in relation to appointment.”

Professor Kennedy added: “I was phoned at about 8.30 pm to be told that the Secretary of State was delighted that I had agreed to take on this inquiry, which I might say left me with little room to negotiate.”²⁰⁶

114. We are not saying that ministerial haste has ever resulted in the appointment of a chairman whose appointment might subsequently have been regretted, but we agree with Mr Francis that there is much to be said for a process which is less hurried and more transparent. The difficulty arises from section 6(1) of the Act, which requires a minister who proposes to cause an inquiry to be held to make a statement to Parliament “as soon as is reasonably practicable” and section 6(2)(a) which requires the statement to stipulate who is to be appointed as chairman. **We believe the fact of the inquiry and the name of the chairman should not necessarily be the subject of the same statement, and we recommend that section 6(2) should be amended accordingly.** Section 6(4) allows such statements to be oral or written. A minister may well wish to announce an inquiry in an oral statement, but the identity of the chairman could be the subject of a subsequent written statement.

Judges as chairmen

115. There are both advantages and disadvantages in having a judge or retired judge as chairman.

Advantages

116. Robert Francis QC suggested that “there are some inquiries where it is not only proper but probably almost essential that a senior judicial figure undertakes it. Those are the inquiries where the need for independence and proven integrity and authority are the greatest, and probably those that involve very contested facts”.²⁰⁷ Sir Stephen Sedley quoted to us some words of Lord Scarman: “I believe that a judge does have special qualifications ... for investigating disorder ... He is a trained adjudicator between differing

²⁰⁶ Q 205. Sir David Bell told us that he was rung by the Cabinet Secretary and asked to act as an assessor to the Leveson Inquiry “completely out of the blue when I was on holiday in Italy” (Q 296).

²⁰⁷ Q 203.

parties. He is a trained investigator of fact. He is by office, and should be by nature, impartial and detached.”²⁰⁸

117. This view was shared by Sir Brian Leveson, who agreed that judges are “absolutely independent and publicly recognised as independent”, but suggested additional qualities a judge can offer, such as

“experience of fact finding about past events ... [judges] are very used to listening to witnesses speak about past events and making up their mind about what happened ... they have the ability to deal with legal and procedural complexity ... they are very used to running trials, running hearings, and avoiding unnecessary diversions and keeping focus ... they are very used to analysing large amounts of data and making recommendations.”²⁰⁹

Disadvantages

118. Lord Gill thought that “Some inquiries may be suited to other types of chairmen. Maybe in an inquiry on a specifically scientific topic, for example, it might be thought best to appoint someone with scientific expertise.”²¹⁰ Lord Richard saw other disadvantages:

“I am not sure that [judges] tend to follow the inquiry afterwards by making sure that something happens, because they are not used to doing that. They make a judgment in the court and that is the end of it ... I do not think they are necessarily the best people to draft reports in a way that normal people can understand ... I am not sure that they are absolutely the best people to work with the press.”²¹¹

119. Professor Kennedy raised what seems to us to be the most important disadvantage of a judicial appointment: “if a public inquiry is set up, as it usually is, in the context of political controversy or the inability of political leaders to reach some kind of alternative solution then the judge is necessarily, as a sitting judge, embroiled in political controversy. The independence of the judiciary is thereby, in my view, impaired.”²¹² Lord Gill made the same point: “when politics come into the matter, no judge would wish to be involved in an inquiry that had a political content. That would be your worst nightmare, I would have thought.”²¹³ We agree. We did not need evidence to remind us of the inquiry into the death of Dr David Kelly. Lord Hutton’s conduct of the inquiry was widely and rightly admired, not least by the press, until his report reached conclusions which they had neither expected nor desired. At that point his report was described as a whitewash, and he personally was vilified.²¹⁴

²⁰⁸ Q 43. Lord Scarman had chaired the inquiries into the Red Lion Square disorders in 1974 and the Brixton riots in 1981.

²⁰⁹ Q 81.

²¹⁰ Q 191.

²¹¹ Q 203.

²¹² Q 203.

²¹³ Q 91.

²¹⁴ During the passage of the Inquiries Bill through the House of Lords Lord Hutton said: “I fear the reality is that if there is an inquiry into a matter in which some sections of the media hope that there will be a report that will be highly critical of the government, then notwithstanding that the report does not so report on the basis of evidence given to it, there will still be sections of the media that will allege a whitewash. I fear

120. The dangers of involving a serving judge in matters of political controversy are all too apparent. The present Lord Chief Justice, Lord Thomas of Cwmgiedd, told us that it is not appropriate to ask a judge to conduct an inquiry into issues of policy (other than policy related to the operation of the courts and the administration of justice).²¹⁵ Sir Brian Leveson said that he would never have agreed to conduct his inquiry had there not been cross-party support for it.²¹⁶
121. **We acknowledge that there are often significant advantages in the appointment of a serving or retired judge to chair an inquiry, but we believe that ministers have in the past been too ready to assume that a serving judge would be the most suitable chairman.**

The view of the senior judiciary: consultation or consent?

122. Section 10(1) of the Act provides that if the minister proposes to appoint a serving judge of England and Wales as chairman, the Lord Chief Justice must first be consulted. There are similar provisions for the Supreme Court and for other jurisdictions.²¹⁷ In addition to the obvious fact that the removal of a judge from his judicial duties will have logistical repercussions, the Lord Chief Justice must have the opportunity to intervene where in his view such an appointment would be wrong; and where he agrees that the chairman should be a judge, he must be able to give his views on the identity of the judge.
123. The question is whether such consultation goes far enough, or whether the formal consent of the Lord Chief Justice should be required. As far back as May 1991 Lord Mackay of Clashfern, then Lord Chancellor and hence at that time head of the judiciary, stated that “in the case of an inquiry to be chaired by a serving judge the Lord Chancellor’s concurrence is required.”²¹⁸ In the Inquiries Bill as introduced in the House of Lords the requirement was only for consultation. During the passage of the Bill, Lord Goodhart, with wide all-party support, moved both in Committee²¹⁹ and on Report²²⁰ an amendment to replace the requirement to consult the Lord Chief Justice with a requirement to seek his consent. Both times the amendment was withdrawn, but on Third Reading it was pressed to a division and was

that that is simply a fact of life in this country today. However, that is not a reason why such an inquiry should not be conducted.” HL Deb, 18 January 2005, col GC218.

²¹⁵ Letter to Lord Shutt of Greetland, 17 December 2013.

²¹⁶ QQ 81–82. See also the written evidence of Lord Justice Beatson, paragraphs 3–5.

²¹⁷ In the case of a judge of the Supreme Court the President must be consulted; in the case of a Scottish judge, the Lord President of the Court of Session; and in the case of a Northern Ireland judge, the Lord Chief Justice of Northern Ireland. What we say about the consent of the Lord Chief Justice of England and Wales applies equally to those cases.

²¹⁸ Paragraph 17 of the Note by Lord Mackay of Clashfern LC on *Disasters and the law: deciding the form of inquiry*, 16 May 1991, printed in Annex D to the Final Report of Lord Justice Clarke on the Thames Safety (*Marchioness*) inquiry, January 2000, Cm 4558.

²¹⁹ HL Deb, 18 January 2005, col GC242.

²²⁰ HL Deb, 7 February 2005, col 645. The amendment was supported by Lord Woolf, the then Lord Chief Justice and a member of this Committee.

agreed.²²¹ However when the Bill reached the House of Commons the original wording was reinstated.²²²

124. In evidence to us it was argued by Shailesh Vara MP, the Parliamentary Under-Secretary of State at the Ministry of Justice and the Minister for Courts and Legal Aid, that “it is highly unlikely that a Minister would go against the advice of a Lord Chief Justice.”²²³ It is also unlikely that a judge would agree to serve in the face of opposition from the Lord Chief Justice. Nevertheless, as Lord Justice Beatson reminded us, “section 10 appears to be the only example in the statute book of a government minister being empowered to deploy a serving judge ... it should not be for government alone to decide that a serving judge is to be used and to choose the judge who is to chair or conduct the inquiry.” Sir Brian Leveson²²⁴ and Lord Cullen of Whitekirk²²⁵ were among others who thought that the Lord Chief Justice (or his equivalent in other jurisdictions) should have to give his consent.
125. The Lord Chief Justice, in a letter to our chairman,²²⁶ endorsed what was said by Lord Justice Beatson, and regarded it as “imperative” that the consent of the Lord Chief Justice should be required: “concurrence, not merely consultation, is required for the Lord Chief Justice properly to fulfil his responsibility for judicial deployment and to protect against judicial involvement in areas of political controversy.” We share that view.
126. **We recommend that section 10(1) of the Act should be amended so that a minister who wishes to appoint a serving judge as a chairman or panel member of an inquiry should first obtain the consent of the appropriate senior member of the judiciary.**

Panel members and assessors

127. Some chairmen are appointed for their expertise in the subject-matter of the inquiry, some—in particular judges—are appointed more for their stature and reputation. Most inquiries are investigating matters of some complexity; some, especially those investigating disasters, are looking at highly specialised topics. In many cases even the most expert of chairmen would not pretend that they have all the specialist knowledge they need. The question arises whether and in what circumstances additional experts are needed, and how they are to take part in the inquiry.
128. The chairman can be assisted by additional panel members, or by assessors. Many functions are for the chairman alone: it is the chairman alone who is consulted by the minister on a variety of matters, the chairman who ultimately determines the procedure and conduct of the inquiry, who designates core participants, who makes restriction orders, who decides awards of costs, and who rules on a number of other matters. But the chairman is the first among equals. Panel members are full members of the inquiry, they will be consulted on these matters, they will play a full part in

²²¹ HL Deb, 28 February 2005, col 22.

²²² HC Deb, Standing Committee B, 22 March 2005, cols. 62–63.

²²³ Q 333.

²²⁴ Q 82.

²²⁵ Q 190.

²²⁶ Letter to Lord Shutt of Greetland, 17 December 2013.

the conduct of the inquiry, and the report will be theirs as much as the chairman's.

129. Before the setting-up date the minister must inform the person appointed, or to be appointed, as chairman whether or not he proposes to appoint other panel members, and must consult the chairman before appointing another panel member.²²⁷ The chairman therefore has some say in the matter; but given that the panel members must work closely together, perhaps over a period of years, this may not go far enough.
130. **Section 4(3) of the Act, which requires the minister to consult the chairman before appointing a further member to the inquiry panel, should be amended to provide that the minister can appoint a member to the inquiry panel only with the consent of the chairman.**
131. Assessors, like panel members, are there to assist the chairman, but the way in which they do so and the extent of their contribution will be entirely for him. It is for him to decide at what stage to seek their advice, and what to make of it. They will often read the report in draft and comment on it, but ultimately it is the chairman's alone. They can be appointed by the chairman at any stage of the inquiry. The minister is also empowered to appoint assessors before the setting up date, again after consulting the chairman.
132. Sir Brian Leveson told us about the appointment of the six assessors who assisted him:
- “The position was the assessors were in fact appointed by, I think, the Prime Minister or formally then by the Home Secretary and the Secretary of State for Culture, Media and Sport ... I was asked for my views ... I was given a list of names of those whom the Government sought to consider. I was not given the choice: assessors or no assessors? This was how the Government decided they wished to proceed. Of course, you must recognise that I did not know any of these people personally and what happened was I said that I would speak to each. I had very lengthy conversations with each one, first of all to ensure they understood what was involved and, secondly ... so that I could be satisfied that I would be getting impartial views based upon the evidence and their experience.”²²⁸
133. As Sir Brian implied, it is particularly important that experts, whether panel members or assessors, should be able to demonstrate that their previous experience will not prevent them from reaching unbiased views. One of Sir Brian's assessors was Sir David Bell, who had been in the newspaper industry for 40 years and was chair of the Media Standards Trust until he resigned on being appointed an assessor. He explained to us that although his interests were exhaustively declared and published on the inquiry website, he would have been happy to answer questions formally before his appointment, particularly from the organs of the press which objected to his appointment.²²⁹
134. Where expertise is required, and is not provided by expert witnesses, the question arises whether it is preferable for the chairman to be accompanied

²²⁷ Sections 3(1), 4(3) and 5(1).

²²⁸ Q 87.

²²⁹ Q 298.

by other panel members or to be assisted by assessors. On this we heard differing views. Dr Mackie thought that “it would be helpful to have more capabilities on an inquiry team than you get through one judge,”²³⁰ and Professor Kennedy said: “I think that the default position for any chairman of an inquiry would be to sit with others ... ordinarily those others ought to be part of the inquiry’s panel and therefore have a say.”²³¹

135. Other witnesses thought an inquiry should be by a chairman alone, with additional expertise provided by assessors or expert witnesses. Sir Brian Leveson told us that “The trouble with appointing members of a panel is that they are just as much conducting the inquiry as the chairman ... the consequence would have been a massive extension of the time everything took.”²³² Lord Richard pointed to the effect panel members had on a report: “I did not want to get myself into a position where I was having to compromise what I thought needed to be said by having to trade off with others.”²³³ Robert Francis QC agreed: “... a report written by a committee is a rather different animal from one that an individual chairman ... it is more likely to be a compromise, for obvious reasons. I think there are disadvantages with that.”²³⁴ There may also be problems when a panel member leaves for whatever reason, as Peter Riddell did in the Detainee Inquiry.²³⁵
136. We believe that facility of organisation, clarity of drafting and avoiding lengthening the reporting process are all persuasive arguments for having a single member panel. **We recommend that an inquiry panel should consist of a single member unless there are strong arguments to the contrary.**
137. Section 11(2)(a) and (3) allows the minister to appoint assessors after consulting the chairman, but does not require the chairman’s consent. It is clear from the evidence of Sir Brian Leveson and Sir David Bell which we have cited that the chairman’s consent is essential. **We recommend that section 11(3) should be amended so that the minister can appoint assessors only with the consent of the chairman.**²³⁶
138. Courts can, but very seldom do, appoint assessors; when they need expert help, they receive it in the form of evidence from expert witnesses. This has the advantage that the expert advice, like evidence of fact and opinion, is heard openly by all taking part, can to a certain extent be challenged, and can be cited by the judge in the judgment. Inquiries are very different to courts, not least in their procedure. We do not seek to diminish the contribution made by assessors, but we believe inquiries might sometimes benefit from receiving expert advice in the form of evidence.
139. **Where the chairman requires expert assistance during the course of the inquiry hearings, consideration should be given to receiving this**

²³⁰ Q 72.

²³¹ Q 209.

²³² Q 85.

²³³ Q 209.

²³⁴ Q 209.

²³⁵ In the event this did not impede the inquiry, since it was halted when criminal proceedings were imminent.

²³⁶ Under section 11(2)(b) the chairman has the power to appoint assessors during the course of the inquiry.

openly from expert witnesses rather than privately from assessors. However the chairman should continue to be able to rely on the confidential advice of assessors when drafting the report.

140. We heard evidence from Dr Judith Smith, the Nuffield Trust's Director of Policy, whose assistance to the Mid Staffordshire inquiry was unusual, perhaps unique. She started as an expert to the inquiry, prepared extensive written evidence and was one of the two opening witnesses to the inquiry, giving oral evidence over two days. She then had a period of almost two years of work with the inquiry before being appointed as an assessor towards the end of it, at the stage of report writing.²³⁷ In this particular case this seems to have worked satisfactorily, perhaps because of the nature of her expertise, but **we doubt whether it would usually be right for the same person to give expert evidence openly to the inquiry and subsequently to advise the chairman privately on the same issues.**

Terms of reference

141. The precise terms of reference of an inquiry are crucially important. Not only will they define the breadth of the inquiry's remit, and hence its powers, but they will often be the chairman's only defence against arguments, all too frequent, that the scope of the inquiry should be widened.
142. We have already said that the identity of the chairman should not be decided in haste, and that the fact of the inquiry and the name of the chairman should not necessarily be the subject of the same statement to Parliament. This applies *a fortiori* to the terms of reference, which under section 6(2)(c) also have to be in the same statement as the announcement that an inquiry is to be held. The requirement of section 5(4) that the Minister must consult the chairman on the terms of reference means that the time for formulating and agreeing them is still further reduced.
143. An inquiry cannot be set up unless there is some indication of the terms of reference. In the case of disaster inquiries these may be clear from the outset, but not in the case of all inquiries. In his opening statement on 28 July 2011 Lord Justice Leveson²³⁸ said that his terms of reference "in the week following the initial statement by the Prime Minister on 13 July grew very substantially." Government and Opposition had agreed on 6 July 2011 that there should be a public inquiry. The following day the Leader of the House²³⁹ announced that the Government were looking at two inquiries, "the second on the wider issue of media ethics", and that careful thought would have to be given to the terms of reference, on which there would be wide consultation. On 13 July in an oral statement the Prime Minister announced that there would be a single inquiry under the Inquiries Act 2005, led by Lord Justice Leveson, and he gave the terms of reference.²⁴⁰ But in a further oral statement a week later he described these as "draft terms of reference",²⁴¹ and announced that after consulting Lord Justice Leveson, the

²³⁷ Q 298.

²³⁸ At the time of the inquiry which he chaired, Sir Brian Leveson, now President of the Queen's Bench Division, was a Lord Justice of Appeal, and we so refer to him in references to the time of the inquiry.

²³⁹ Sir George Young MP. Official report, HC Deb, 7 July 2011, col 1659.

²⁴⁰ Official report, HC Deb, 13 July 2011, cols 311–312.

²⁴¹ Official report, HC Deb, 20 July 2011, cols 918–919.

Opposition, the Chairs of relevant Select Committees, and the devolved Administrations, “significant amendments” had been made to the remit of the inquiry. He concluded: “I am today placing in the Library of the House the final terms of reference.”

144. It is not clear whether it was the Prime Minister’s statement on 13 or on 20 July which was, or was intended to be, the statement under section 6(1) of the Act; and perhaps it does not matter, since section 5(3) in any event allows the terms of reference to be amended.²⁴² What this does illustrate is the importance of allowing flexibility and latitude in the announcement of the fact of the inquiry, the identity of the chairman, and the terms of reference. The current wording of section 6 militates against this. We agree with Jason Beer QC’s suggestion of “allowing a little cooling-off period. Announce the fact of the inquiry, announce the chairman or panel members, do not announce the full terms of reference, have a relatively short period while the chairman familiarises himself or herself with the material, consult, then publish the terms of reference.”²⁴³ Robert Francis QC described this as “a staged process.”²⁴⁴
145. **We recommend that section 5(4) should be amended so that the consent of the chairman is needed before the minister can set or amend the terms of reference.**
146. We have already recommended that section 6(2) should be amended so that the fact of the inquiry and the name of the chairman need not necessarily be the subject of the same statement. **We recommend that section 6(2) should be further amended to allow a minister, in announcing an inquiry, to set out only draft terms of reference, and that the final terms of reference should, when agreed with the chairman, be the subject of a further statement. This, we anticipate, would normally be a written statement, as permitted by section 6(4).**

Consultation with interested parties

147. In his statement on 20 July 2011 the Prime Minister said that, before the terms of reference of the Leveson Inquiry were finalised, “I also talked to the family of Milly Dowler and the Hacked Off campaign.”²⁴⁵ Lee Hughes, who was secretary to the Hutton, Baha Mousa and Al-Sweady inquiries, told us: “I think it is good practice for the terms of reference to be discussed by the major stakeholders before the inquiry is announced. That is what happened on both the Baha Mousa Inquiry and the Al-Sweady Inquiry. For example, the legal representatives for the Iraqi claimants in those inquiries were involved in the discussions on the terms of reference.”²⁴⁶
148. Robert Francis QC went further, and thought that “there should be consultation with the public about the terms of reference that the Minister

²⁴² The Prime Minister was in any event not strictly the “Minister who proposes to cause an inquiry to be held”, whose duty it is under section 6(1) to make the statement, since Lord Justice Leveson was appointed jointly by the Secretary of State for Culture, Media and Sport and the Minister of State at the Home Office by a letter dated 28 July 2011.

²⁴³ Q 121.

²⁴⁴ Q 215.

²⁴⁵ HC Deb, 20 July 2011, cols 918–919.

²⁴⁶ Q 131.

should be required to have regard to, though not bound to follow.”²⁴⁷ Eversheds on the other hand thought that “consideration should be given when establishing terms of reference for liaising with relevant victims who may have valuable input on the formulation of the terms of reference.”²⁴⁸ Julie Bailey, a moving spirit behind the Mid Staffordshire Inquiry, told us: “One of the things that I felt was missing from the public inquiry was a chance at the beginning to all get together and look at lines of inquiry that we needed to look at ... one thing that I felt was missing from the very start of the terms of reference of the Mid Staffs public inquiry was whistleblowing”.²⁴⁹

149. Consultation already happens in the case of non-statutory inquiries. Alun Evans, who was secretary of both the Foot and Mouth Inquiry and the Detainee Inquiry, told us that in both cases: “for three months before the formal start of the inquiry, there were discussions between the chair and the secretary and the Government representatives. In both of those inquiries as well we informally consulted groups of relevant stakeholders and only once we had got a near agreed set of terms of reference did we then formally launch an inquiry.”²⁵⁰
150. We believe that such consultation is desirable in the case of inquiries under the Act, though three months may be excessive. A short period—no more than a month—should be allowed between the announcement of an inquiry and the finalisation of the terms of reference during which persons and bodies with an interest, in particular those who have been calling for an inquiry, can be consulted and have an opportunity to give their views on the draft terms of reference. This may have the additional benefit of avoiding judicial review of the terms of reference, as happened in the case of the Robert Hamill Inquiry.²⁵¹
151. **We recommend that interested parties, particularly victims and victims’ families, should be given an opportunity to make representations about the final terms of reference.**
152. In the case of an inquiry chaired by a serving judge, the Lord Chief Justice is by definition a person with an interest in the terms of reference. Lord Thomas of Cwmgiedd has suggested that for such an inquiry the Lord Chief Justice’s consent should be required to the terms of reference.²⁵² We can understand the Lord Chief Justice’s fear that he might consent to the appointment of a judge as chairman of an inquiry on the basis of draft terms of reference which are subsequently substantially amended. However we have already recommended²⁵³ that section 5(4) of the Act should be amended to make the concurrence of the chairman to the terms of reference, and to any amendment, mandatory. We think this should suffice.

²⁴⁷ Q 215.

²⁴⁸ Written evidence, paragraph 12.

²⁴⁹ Q 160.

²⁵⁰ Q 131.

²⁵¹ See the written evidence of the Northern Ireland Committee on the Administration of Justice, paragraphs 10–12, where they give details of the judicial review seeking amendments to the terms of reference of the Robert Hamill Inquiry. They also explain that in the case of the Rosemary Nelson Inquiry (a non-statutory inquiry) the terms of reference were amended following representations made by them.

²⁵² Letter to Lord Shutt of Greetland of 17 December 2013.

²⁵³ Paragraph 145.

CHAPTER 5: SETTING UP AN INQUIRY: THE PRACTICALITIES

Introduction

153. When, in the full glare of publicity, ministers have agreed to set up an inquiry, have chosen a chairman and perhaps other members, have agreed terms of reference and have appointed a secretary, it seems that they believe their task is done, and that it is now for the inquiry to carry out its allotted task.
154. In fact at this stage “the inquiry” will consist of a very small number of individuals, few if any of whom will have played any part in an inquiry in the past, and who may not have even the most basic of necessities. This is the stage at which they could most use the help of those with experience of such fundamental matters as the appointment of staff, procurement of office premises and a venue for public hearings, communications, establishing a website, preparing budgets, procurement procedures, registration under the Data Protection Act 1998, arrangements for electronic handling of documents, transcripts of evidence, and many others. But they are largely left painfully to acquire such knowledge for themselves.
155. Inevitably the choices made will not necessarily be those which will result in the most efficient running of the inquiry, nor those which will be most cost-effective. By the end of the inquiry, however, those involved will have acquired all the knowledge and expertise which they would have wished to have at the start. That is the stage at which they will revert to other duties, so that all their knowledge and experience, which future inquiries would have found invaluable, is lost.
156. Our remit covers the practice of inquiries. We have concluded that much could be done with relatively little effort to simplify the setting up of inquiries, and that often the result would be to shorten the inquiry and reduce the expenditure.

Cabinet Office Guidance

157. The Propriety and Ethics Team at the Cabinet Office issues a document entitled *Inquiries Guidance: Guidance for Inquiry Chairs and Secretaries, and Sponsor Departments*. The only available version is described as a Draft. We understand that it dates from 2012, and is permanently in draft form so that it can be updated.²⁵⁴ The Minister from the Ministry of Justice described it to us as a “comprehensive document” which was “widely used.”²⁵⁵ One of those who used it, Ashley Underwood QC, told us it “frankly was no use at all.”²⁵⁶
158. The Guidance is 50 pages long. It begins with Guidance for Sponsor Departments, dealing at some length with ministerial involvement in the setting up of inquiries. It then lists the different types of inquiry but, as we have already pointed out,²⁵⁷ there is no suggestion that an inquiry under the

²⁵⁴ We have published on the Committee’s website the Guidance as it was on 8 August 2012. We are not aware that, at the date of this report, it has since been amended.

²⁵⁵ Q 318.

²⁵⁶ Q 254.

²⁵⁷ Paragraph 62.

Act might be the preferred form of inquiry. There follow passages on the reactions of departments to requests for papers (including access to papers of former administrations), how officials should respond to requests for oral evidence, how to react to the inquiry report, and what to do when the inquiry is completed.

159. Next comes guidance for inquiry chairs, which is brief and only in the most general terms. The final, and longest, section of the Guidance is entitled “Guidance for Inquiry Teams.” There is much about what needs to be done, but very little about how to do it. There is a statement that “The Inquiry Team will need to establish good relationships with key contacts in the sponsor department ... The sponsor department will be able to assist in establishing the inquiry, for example by using their pre-existing contacts for the supply of computer and communications equipment and to assist in recruitment.” This overlooks the fact that even for those departments most often involved with inquiries—Health, Transport, Defence and Northern Ireland—the setting up of an inquiry is something that happens very occasionally, and the department, however anxious to help, will have less idea than the secretariat about what is needed. Every department will have staff with knowledge of procurement procedures, but first they must know what needs to be procured.

Lessons Learned papers

160. It is at this stage that access to the expertise of those who have previously run inquiries would be invaluable. Such knowledge should be readily available, since the Guidance to inquiry teams includes specific instructions dealing with this.²⁵⁸

BOX 5

Lessons Learned papers

The Secretary is responsible for writing a “lessons learned” paper on their experience so that central guidance can be refreshed, and should consult with the solicitor and the Chair in doing this. The paper, which should focus on the process of the inquiry and difficulties that were experienced and overcome, should be submitted to the Cabinet Office and the sponsor department within two months of the inquiry finishing. The Secretary should draft the paper so as to include any significant points of interest for government or for future inquiries. As a minimum the paper should include information on:

- Any relevant statute and powers as well as the terms of reference;
- Timetable and description of different stages of the inquiry, including any private or public elements;
- Overall cost and a breakdown including pay rates for the Chair, panel, lawyers and any experts engaged;
- Location;
- Relationship with the sponsor department;

- IT and Information Management;
- Staffing structure;
- Publication, including the form and detail of any prior access given; and
- Any particular difficult issues faced by the inquiry or areas on which the inquiry would have benefited from guidance, and offer advice for future inquiries.

161. If this instruction was followed, the secretariat of a new inquiry would have immediately available at the Cabinet Office and at the sponsoring department a fund of useful knowledge which would enable them to follow the best practice of previous inquiries, and to avoid the traps into which they fell. They would also be able to contact previous secretaries who might be able to offer additional advice.
162. We therefore asked the Ministry of Justice for copies of the Lessons Learned papers for inquiries under the 2005 Act. We were astonished to be told that the Cabinet Office held only one, for the Baha Mousa Inquiry.²⁵⁹ In evidence to us the Minister was unable to explain this, except to say: “I think they simply are not materialising at the end of the inquiry.”²⁶⁰ He subsequently wrote to explain that responsibility for this fell to the Cabinet Secretary.²⁶¹ We therefore asked the Cabinet Secretary to explain this apparent failure by the Cabinet Office to insist on secretaries to inquiries supplying lessons learned papers. He replied that the instructions set out above still constitute the current guidance to secretaries, and that the guidance was routinely shared with inquiry secretaries at an early stage. He undertook to make clear in future that a lessons learned paper must be produced and sent to the Cabinet Office Propriety and Ethics team at the conclusion of the inquiry, so that they could share best practice.
163. The Cabinet Secretary also stated that both the Ministry of Justice and the Cabinet Office already provided advice and guidance to secretariats of inquiries, but he pointed out that inquiry teams were “highly experienced” and will often have had experience in previous inquiries. This is hardly borne out by the evidence. It is true that some secretaries have experience of one or even two previous inquiries, but it is precisely those who have told us how valuable it would be to have full, detailed guidance on the practicalities of setting up inquiries.²⁶² Even for them there was once a first time for setting up an inquiry.
164. **We believe that the current Cabinet Office Guidance on inquiries is wholly inadequate. In particular, there is no point in requiring secretaries of inquiries to provide lessons learned papers unless they, or any unit replacing them, ensure that such papers are produced,**

²⁵⁹ We were also sent what purported to be a Lessons Learned paper for the Azelle Rodney Inquiry, but which was in fact an early draft of evidence submitted to us. This may ultimately form the basis of a Lessons Learned paper for that inquiry.

²⁶⁰ Q 337.

²⁶¹ Letter to the Chairman of 16 December 2013.

²⁶² See the evidence quoted in paragraphs 168–169 below.

and use them to provide detailed guidance for secretaries of subsequent inquiries.

A Central Inquiries Unit

165. On 6 May 2004 the Department for Constitutional Affairs, now the Ministry of Justice, issued a Consultation Paper which was itself a response to the “Issues and Questions Paper” published by the Public Administration Select Committee (PASC) on 24 February 2004, as part of its inquiry into “Government by Inquiry”. In reply to one question the Government replied in the following terms.

BOX 6

A Dedicated Inquiries Unit

The Government believes that there may be more advantage in maintaining a small, dedicated Inquiries Unit, which can co-ordinate the setting-up and running of new inquiries. The Unit could advise on possible candidates to chair inquiries, and could also provide assistance with the tasks involved in setting up an inquiry, including:

- getting an appropriate secretary in place as soon as possible;
- liaising as soon as possible with the Treasury Solicitor’s Department and the Attorney General’s Department about the appointment of counsel and solicitor to the inquiry (if appropriate);
- ensuring the terms of reference are clearly drafted and correctly focussed;
- ensuring suitable hearing accommodation, information technology, and security arrangements are put in place quickly; and
- dealing with the high level of media interest that might surround the inquiry.

The Unit could also take on a wider role in ensuring that lessons are learnt from the conduct and procedures of previous inquiries. It could work together with sponsor Departments and the Treasury Solicitors to develop and maintain general guidance for the use of inquiry members and staff, covering a wide range of issues from inquiry procedures to budgetary systems and effective records management. It could keep abreast of best practice and, following each inquiry, could take the views of inquiry members and staff on what they had found worked well and what lessons they had learnt. It could set up an advice network, and put new inquiry secretaries in touch with people who had previously served in this role and were ready to give the benefit of their experience.²⁶³

166. Among the 30 consultees who commented on this suggestion was the Council on Tribunals, which said: “The Council considers that a dedicated central inquiries unit would be a great asset. It could provide valuable advice

²⁶³ Written evidence from the Department for Constitutional Affairs to the Public Administration Select Committee, (Session 2003–04, HC 606–ii), paragraphs 7.3–7.4, available at: <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmpublicadm/606/4052502.htm>.

and experience and so avoid the need to re-think the core structural and administrative issues afresh each time.”

167. The Government’s conclusion was: “The Government recognises there is a case for a dedicated Inquiries Unit and will consider the matter further.”²⁶⁴ It is not clear to us whether, in nearly a decade, there has been such further consideration. It seems now to be the intention that this unit’s work should be carried out by the Cabinet Office, the one Government department which is unlikely ever to sponsor an inquiry, and within the Cabinet Office by the Propriety and Ethics Team, which “oversees the provision of advice to all government departments on standards and ethics issues, corporate governance in public bodies, and makes and manages public appointments.”²⁶⁵ Officials in that team may be well placed to advise on persons to be appointed to the inquiry panel or as assessors, and the terms of appointment; but there is nothing to suggest that they are the repositories of knowledge about the practicalities of setting up an inquiry. There is indeed nothing to suggest that such a repository exists anywhere in central government.
168. The importance of this task should not be underestimated. All our witnesses who were involved in inquiries, and many who were not, agreed on the importance of having a central unit to perform this task. Alun Evans, who was successively the secretary to the two Foot and Mouth inquiries and to the Detainee Inquiry, thought there should be such a unit “to learn the lessons of how to run a good inquiry and prevent having to re-create the wheel at the start of each inquiry ... issues like terms of reference, communications, engaging with stakeholders, ensuring there is a clear, what I would call, project plan for delivery of it.”²⁶⁶ Lee Hughes, whose experience is unrivalled,²⁶⁷ told us:
- “With this reinventing the wheel issue, even on the inquiries I have done, it is very dispiriting two or three years down the line to do another inquiry and find that everything you set up before has been dismantled and you have to do it all again. It is quite wasteful of public money just to go through the procurement exercise to get your IT in yet again, whereas if you had one department responsible for delivering the inquiries you could get call-off contracts arranged and that kind of thing. We are not talking about billions of pounds here but we are talking about millions, so there are great savings to be made.”²⁶⁸
169. Collins, Kemish and Underwood too thought that “a dedicated sponsoring department for inquiries would be invaluable.” They recommended that
- “wherever practicable, core members of an inquiry team are picked from those with inquiry experience and, ideally experience of working

²⁶⁴ Effective inquiries: response to consultation, CP(R) 12/04, September 2004.

²⁶⁵ Cabinet Office website.

²⁶⁶ Q 137.

²⁶⁷ As we said in the previous chapter, he was secretary to the Hutton (non-statutory) Inquiry, and two statutory inquiries, the Baha Mousa and Al-Sweady inquiries. He was also the secretary to the inquest into the death of Diana, Princess of Wales and Dodi Al Fayed, which was run along the lines of an inquiry although it was in fact an inquest. Since his retirement from the civil service he has been acting as secretary to the inquest into the death of Alexander Litvinenko.

²⁶⁸ Q 137.

with each other ... very often those who have been seconded to an inquiry are simply returned to their department after the report is published, and their experience and expertise is lost. At the very least they should, if prepared to do so, be regarded as the first choice for further inquiries.”²⁶⁹

We agree with all these very experienced witnesses that a central inquiries unit would be invaluable.

170. It was suggested to us by Dr Mackie that there was a strong case for establishing an independent inquiries office which would carry out all these functions but would additionally have the wider task of “public engagement, of helping educate the public, who say they do not really understand the public inquiry process, as to what the inquiry process is about, the purpose of inquiries, talks to schools, build it into politics courses in universities.”²⁷⁰ We do not ourselves think that it is necessary for a central support unit to perform these further tasks, or that the expenditure could be justified.
171. The Ministry of Justice are responsible for Her Majesty’s Courts and Tribunals Service (HMCTS). Michael Collins explained: “This operational unit could sit in a number places (e.g. Cabinet Office, HMT, MoJ etc) and there are pros and cons to all of these ... One option that I know does work from personal experience, is to have the unit based in Her Majesty’s Courts and Tribunal Service (HMCTS) premises in London as an NDPB²⁷¹ of the MoJ.”²⁷² Lee Hughes said: “To me, the right place for delivering public inquiries is probably the Courts and Tribunals Service, irrespective of whether it is a judge in charge. The facilities that that organisation has around the country would be very useful if public inquiries are held and if they had the responsibility then I am sure it could be factored into their court usage time”.²⁷³
172. We agree with these witnesses that to base the unit within HMCTS would give it access to all the necessary expertise and at the same time give it the necessary degree of independence. It would have the additional advantage that, while the Courts Service is responsible only for the courts in England and Wales, the Tribunals Service has additional responsibility for non-devolved tribunals in Scotland and Northern Ireland, so that a unit based there would be in a good position to support inquiries in those jurisdictions too.
173. We put this proposal to the Lord Chief Justice and were glad to find that he fully supported it. The Senior President did however point out that, while such a unit could be located in HMCTS, there was no scope within HMCTS’ existing resources either to provide such a unit, or to provide the necessary infrastructure. We fully accept this, but are confident that any necessary additional resources the department would have to provide would be more than compensated by the consequent savings.²⁷⁴

²⁶⁹ Written evidence, paragraph 23.

²⁷⁰ Q 61.

²⁷¹ Non-departmental public body.

²⁷² Second written evidence, paragraph 13.4.

²⁷³ Q 137.

²⁷⁴ See e.g. paragraphs 181–193 and 243–251.

174. **We recommend that the Government should make resources available to create a unit within Her Majesty's Courts and Tribunals Service which will 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 chairman and secretary of the inquiry.**
175. **The inquiries unit should ensure that on the conclusion of an inquiry the secretary delivers a full Lessons Learned paper from which best practice can be distilled and continuously updated.**
176. **The inquiries unit should review and amend the Cabinet Office Guidance in the light of our recommendations and the experiences of inquiry secretaries, and should publish it on the Ministry of Justice website.**
177. **The inquiries unit should also retain the contact details of previous secretaries and solicitors, and be prepared to put them in touch with staff of new inquiries.**

Procedure protocols

178. In nearly every inquiry the chairman finds it convenient to set out for the benefit of the participants the procedure which will be followed. By way of example, in the Mid-Staffordshire Inquiry Robert Francis QC issued the following Protocols:
 - a Procedures Protocol (26 pages);
 - an Addendum to the Procedures Protocol, on Warning Letters (4 pages);
 - a Protocol on Statements and Evidence obtained (2 pages);
 - a Media and Accreditation Protocol (3 pages);
 - a Protocol on Legal Representation at Public Expense (12 pages);
 - an Assessors Protocol (2 pages).
179. Inquiries have differing needs, but plainly it would be wasteful of resources if every inquiry drafted such protocols from scratch. Counsel to the Leveson Inquiry stated that his draft Assessors Protocol “draws from the protocol deployed by the Mid Staffordshire Foundation Trust Inquiry.”²⁷⁵ The Leveson Protocol in relation to Legal Representation at Public expense is also plainly based on the Mid Staffordshire Protocol on that subject; and indeed both appear to derive from Lord Gill’s Protocol for the ICL Inquiry.
180. This is another field where the inquiries unit could usefully act as a central repository. **The inquiries unit which we recommend should collate Procedures Protocols and other protocols issued by inquiries and make them available to subsequent inquiries.**

²⁷⁵ Note submitted by counsel to the inquiry for the preliminary hearing on 4 October 2011, paragraph 6.

Cost of inquiries

181. The Saville Inquiry into Bloody Sunday lasted over 12 years and cost £191.5 million. This was of course exceptional, but three other Northern Ireland inquiries have together cost £109 million.²⁷⁶ The most expensive inquiries set up under the Act have been those requiring evidence from Iraq: Al-Sweady at £21.3 million to date and Baha Mousa at £13 million.²⁷⁷ Otherwise the most expensive has been the Mid Staffordshire Inquiry at £13.7 million. Many of the inquiries set up under the Act have cost around the £2 million mark: *C. difficile* at £1.8 million, ICL at £1.91 million, Azelle Rodney at £2.5 million, and *E. coli* at £2.35 million.²⁷⁸
182. Inquiries vary immensely, and comparisons of length and cost must be treated with caution. Northern Ireland inquiries, for example, have security requirements which most other inquiries do not, and are often held in more than one location. Some of the inquiries into Iraq have also dealt with situations of conflict and mistrust, and they have had the additional expense that much of the evidence has needed translation or interpretation. But even making allowances for all these factors, there is no doubt that the manner of setting up and administration of an inquiry has a decisive influence on the cost, both directly and through the correlation between length and cost. “The biggest cost in an inquiry is the length. If you can keep the inquiry shorter, you save money.”²⁷⁹

Comparisons of costs: Hamill and Rodney

183. Robert Hamill died of injuries sustained during an affray in Portadown, County Armagh, in 1997. The inquiry into the circumstances surrounding his death, including allegations of perversion of the course of justice which are the subject of ongoing criminal proceedings, lasted from November 2004 to February 2011 and cost £33 million. Azelle Rodney was shot by a police marksman in North London in April 2005, and the inquiry lasted 3 years and cost £2.2 million. The team which took over the running of the Hamill Inquiry subsequently ran the Rodney Inquiry, and the written evidence of Michael Collins, the secretary of the Rodney Inquiry, together with his oral evidence and that of Ashley Underwood QC and Judi Kemish,²⁸⁰ was therefore particularly valuable. They stressed that the Hamill Inquiry was more extensive and that the information needs to be used with care; nevertheless where one inquiry costs 15 times more than the other there cannot fail to be lessons to be learned.

²⁷⁶ Rosemary Nelson: 7 years and £46m; Billy Wright: 6 years and £30m; Robert Hamill: 6 years and £33m.

²⁷⁷ The Billy Wright and Robert Hamill inquiries were converted into inquiries under the Act under section 15, but were set up respectively under section 7 of the Prison Act (Northern Ireland) 1953 and section 44 of the Police (Northern Ireland) Act 1998.

²⁷⁸ See Appendix 5 for the length and cost of inquiries prior to 2005, together with subsequent non-statutory inquiries, and Appendix 4 for the length and cost of inquiries under the Act. These are the most recent figures available from the Ministry of Justice, and sometimes do not include the final months of an inquiry.

²⁷⁹ Lee Hughes, Q 141.

²⁸⁰ Ashley Underwood QC was Leading Counsel to the Robert Hamill Inquiry, and to the Azelle Rodney Inquiry. Judi Kemish was seconded as the solicitor and secretary to the Robert Hamill Inquiry, then as the solicitor and also junior Counsel to the Azelle Rodney Inquiry. Michael Collins was secretary to the Azelle Rodney Inquiry.

184. The whole of their evidence bears examination, but the differing costs of the IT systems are illustrative. In the Rodney Inquiry existing desk-top computers were used on the MoJ platform and serviced under the MoJ contract, so that no additional costs were incurred other than the standard cost of eight desk-top computers. But Michael Collins said: “In my experience IT suppliers will be looking out for public inquiries that are being set up and they will make an approach to provide ‘state of the art’ IT that they say you simply cannot do without.” In the Hamill Inquiry this resulted in a custom-built IT system costing £6.35 million, but which, because it was custom-built, was not available until a considerable time after the appointment of the large inquiry team.²⁸¹ The Hamill Inquiry Finance Officer described the IT infrastructure as “a massive area of expenditure [which] seemed to be multi-layered (in terms of IT consultants and contractors).”²⁸² Lee Hughes and Alun Evans told us that they too used cheaper “off-the-peg” or existing IT systems.²⁸³
185. Another major difference in cost was the venue. The Rodney Inquiry was held in courtrooms in the Royal Courts of Justice. The Hamill Inquiry required two venues. The Finance Officer said that the Belfast premises were rented and the associated costs “very substantial”; the London premises “were also rented at a substantial cost”; using a courtroom “would certainly have been cheaper.”²⁸⁴
186. A third major difference was the legal costs. Counsel to the Hamill Inquiry alone cost £4.5 million, with a further £9.5 million²⁸⁵ spent on the legal costs of core participants. In the Rodney Inquiry the senior counsel was engaged to work for a significantly reduced hourly rate and his hours were usually capped at 40 hours a week. The solicitor, who was also the junior counsel, was an in-house MoJ lawyer on loan from the Criminal Appeal Office. She was therefore paid the salary of a senior government lawyer with no overtime regardless of how many hours she worked.²⁸⁶ In the ICL Inquiry Lord Gill told us that the inquiry team managed to reduce the initial fee proposal of £1.5 million to £80,000 by using his discretionary powers under section 40 of the Act in advance of the hearing.²⁸⁷
187. **We recommend that the chairman, solicitor and secretary of an inquiry should consult the central inquiries unit and the Treasury Solicitor to ensure that counsel are appointed on terms which give the best value for money.**

Initial planning

188. Michael Collins told us that in conducting the Robert Hamill Inquiry “no-one attempted in the early stages to look at all the key issues to put together

²⁸¹ Supplementary written evidence, paragraphs 7.8 and 9.1.

²⁸² This is taken from a draft of a Lessons Learned note prepared by the Finance Officer of which we obtained a copy, even though the Cabinet Office said they did not have such a note.

²⁸³ Q 143.

²⁸⁴ This is taken from a draft of a Lessons Learned note prepared by the Finance Officer.

²⁸⁵ Provisional figures supplied by the Northern Ireland Office. The cost of the solicitor to the inquiry is not available.

²⁸⁶ Collins, supplementary written evidence, paragraph 14.1–14.2.

²⁸⁷ Q 197.

realistic timeline and costs”.²⁸⁸ It is clear that effective scoping and planning at the initial stages reduces costs, and that ineffective planning increases them. A number of our other witnesses, among them Herbert Smith Freehills,²⁸⁹ Lee Hughes, Alun Evans,²⁹⁰ Sir Brian Leveson,²⁹¹ and Sir Louis Blom-Cooper QC,²⁹² told us that the most effective way of controlling the length and cost of inquiries was by conducting a scoping and planning exercise at the outset. We agree; but such an exercise will not be effective unless those involved have the benefit of the lessons learned from previous inquiries.

189. **We recommend that a scoping exercise should be carried out by the staff involved in planning a new inquiry to examine all the key issues, in particular to address matters of timescale and cost.**
190. **They must have available from the outset the material derived from lessons learned at previous inquiries. While their first priority must be the effectiveness of their own inquiry, comparison with other inquiries should avoid the excessive expenditure which has bedevilled many of them.**

Statutory and non-statutory: the cost

191. The Ministry of Justice stated in its post-legislative memorandum that the Act aimed “to make inquiries swifter, more effective at finding facts and making practical recommendations, and less costly whilst still meeting the need to satisfy the public expectation for a thorough and wide ranging investigation.”²⁹³ Section 17(3) of the Act places a duty on the chairman to act with “the need to avoid any unnecessary cost”²⁹⁴ and section 40 gives the Chairman discretion when to award amounts in respect of legal representation, compensation for loss of time, and expenses. The Act would indeed make inquiries less costly if it made them swifter, but we think that length is influenced by practice rather than statute. We hope and believe that chairmen of inquiries would seek to avoid unnecessary cost whether or not under a statutory duty to do so, but there are times when it is helpful to be able to point to this duty, for example when reaching decisions on the representation of core participants and in making awards in respect of legal representation.²⁹⁵
192. Many of our witnesses told us that non-statutory inquiries are often preferred as an alternative to inquiries under the Act because they are shorter and so

²⁸⁸ Collins, supplementary written evidence, paragraph 7.5.

²⁸⁹ Written evidence, paragraph 13.

²⁹⁰ Q 131.

²⁹¹ Q 92.

²⁹² Q 290.

²⁹³ Memorandum to the Justice Select Committee: Post-Legislative Assessment of the Inquiries Act 2005. Cm 7943, paragraph 6, available at: <http://www.justice.gov.uk/downloads/publications/moj/2010/Post-Legislative-Assessment-Inquiries-Act.pdf>.

²⁹⁴ Section 17(3) of the Inquiries Act 2005.

²⁹⁵ See for example the Costs ruling of Lord Justice Leveson on 11 June 2012.

cheaper.²⁹⁶ Non-statutory inquiries have indeed to date tended to be shorter than statutory inquiries, and some have been less costly. However two of the three non-statutory inquiries set up since 2005 and for which costs are available are the Iraq (Chilcot) Inquiry, which cost £6.1 million to the end of March 2012, and the Detainee (Gibson) Inquiry, which was terminated prematurely, but whose running costs to October 2013 still reached £2.3 million.²⁹⁷

193. In theory, a statutory inquiry should cost more than one without a statutory basis only if and to the extent that the statute imposes on the inquiry obligations which involve expenditure which is not incurred by a similar non-statutory inquiry. We know of only one such obligation, the detailed procedure for warning letter under rules 13–15 of the Inquiry Rules 2006, and we explain in chapter 7 our reasons for recommending the revocation of these rules.

²⁹⁶ For instance Robert Francis QC and Lord Bichard (Q 217), Jonathan Duke-Evans (Q 275), Alun Evans (Q 132).

²⁹⁷ See the Detainee Inquiry website:
<http://www.detaineeinquiry.org.uk/administration/costs/>.

CHAPTER 6: INDEPENDENCE OF INQUIRIES

194. Any inquiry, whether or not set up under the Act, needs to be, and to be seen to be, independent of the executive. This is all the more important in the case of inquiries which scrutinise and may criticise the conduct of ministers personally, of the executive generally, or of executive agencies. Inquiries into deaths involving the army or the police, or where there are allegations of collusion by special forces, are particularly sensitive.

The Joint Committee on Human Rights

195. It is therefore hardly surprising that when the Inquiries Bill was introduced in November 2004 the chief criticism was of the powers which ministers were granted. In addition to their power to set up inquiries (which of course includes the power not to set up an inquiry), to appoint the chairman, panel members and assessors, and to decide the terms of reference, ministers were given the following powers:
- The power of the responsible Minister to bring an inquiry to a conclusion at any stage before the publication of the report (clause 14(1)(b));
 - The power of the responsible Minister to issue a restriction notice at any time during the course of the inquiry, limiting attendance at the inquiry or the disclosure or publication of evidence or documents provided to the inquiry (clause 19(2));
 - The power of the responsible Minister to withhold material from publication in the report of the inquiry, where this is required by law, or where it is considered to be necessary in the public interest (clause 25(4));
 - The power of the responsible Minister to withdraw funding from an inquiry where he or she believes that the inquiry is operating outside its terms of reference, or is likely to do so (clause 39(4));
 - The permissibility in exceptional circumstances of appointments to an inquiry panel of a person having a direct interest in the matters under consideration, or an association with an interested party (clause 9(1)).
196. All of these powers were questioned by the Joint Committee on Human Rights in its scrutiny of the Bill, on the grounds of possible non-compliance with Articles 2, 3 and 8 ECHR. The Joint Committee first raised these concerns in January 2005,²⁹⁸ and the chairman wrote to the Lord Chancellor, Lord Falconer of Thoroton, seeking his views. In his reply of 6 February 2005 the Lord Chancellor defended all these powers, explaining the very limited circumstances in which they—might be used. The Government did however table amendments which required the minister to consult the chairman before issuing a notice to end the inquiry, and for the notice to set out the reasons for exercising the power,²⁹⁹ and a further amendment prohibiting a minister from withholding material from publication in the report if a person would have access to it under the Freedom of Information

²⁹⁸ Joint Committee on Human Rights, (4th Report, Session 2004–05, HL Paper 26, HC 224).

²⁹⁹ Now section 14(3) and (4).

Act 2000.³⁰⁰ Despite this, in their final report the Joint Committee continued to express concern over the compatibility with the Convention of the power of ministers to issue restriction notices, to withhold material from publication and to withdraw funding from the inquiry.³⁰¹

Views of judges

197. The Joint Committee's concerns were shared by senior members of the judiciary. Lord Saville of Newdigate, then chairing the Bloody Sunday Inquiry, was consulted by the Department of Constitutional Affairs about the Bill. In a letter of 26 January 2005 to Baroness Ashton of Upholland, the minister piloting the Bill through this House, he expressed the view that the power of a minister to impose restrictions on attendance at the inquiry, or on the disclosure or publication of evidence or documents, made "a very serious inroad into the independence of any inquiry and [was] likely to damage or destroy public confidence in the inquiry and its findings". He went so far as to say that he would not be prepared to be appointed as a member of an inquiry subject to a prohibition of that kind.³⁰²
198. Similar concerns were expressed by Judge Peter Cory, a retired judge of the Canadian Supreme Court who had been appointed by the British and Irish Governments in 2002 to investigate allegations of collusion in six controversial murder cases. In evidence to a Committee of the United States Congress he wrote that he "[could] not contemplate any self-respecting Canadian judge accepting an appointment to any inquiry constituted under the proposed new Act."³⁰³ We are not however aware of any instances of ministers having abused these powers, and it is of course the case that a number of highly respected judges and former judges have accepted appointment as chairmen of inquiries constituted under the Act.

Views of interest groups

199. In our call for evidence we specifically sought views on the extent of these ministerial powers, and it is clear that a number of bodies have not changed their views. In written evidence Liberty said: "the strength of the powers granted under the 2005 Act are badly undermined by numerous provisions of the Act which restrict public access to the inquiry and reduce its transparency, and which allow Ministers to suspend and even terminate an inquiry at will. These provisions are not conducive to the inherent function of a public inquiry; that it inspires confidence on the part of the public and the individuals involved." The CAJ stated: "CAJ concerns in relation to the Inquiries Act 2005 centre on the manner in which the Act provides for unprecedented interference at practically every stage of the inquiry by a

³⁰⁰ Now section 25(7).

³⁰¹ Joint Committee on Human Rights, (8th Report, Session 2004–05, HL Paper 60, HC 388).

³⁰² Lord Saville's letter is quoted in Beer, *Public Inquiries*, paragraphs 1.67–1.68, and also in a Joint Statement issued on 22 March 2005 by Amnesty International, British Irish Rights Watch (now Rights Watch UK), the Committee on the Administration of Justice, Human Rights First, the Human Rights Institute of the International Bar Association, INQUEST, JUSTICE, Lawyers' Rights Watch Canada, the Law Society of England and Wales, the Pat Finucane Centre and the Scottish Human Rights Centre.

³⁰³ Letter to the Chairman of the Committee of Congress, 15 March 2005. Judge Cory gave oral evidence to that Committee on 16 March 2005. His views were also quoted in written evidence to us from the Northern Ireland Committee on the Administration of Justice.

government Minister despite the very actions of the Executive tending to be the focus of the inquiries”.³⁰⁴ The Committee referred in particular to the Secretary of State declining to extend the terms of reference of the Hamill Inquiry to include an analysis of the role of the DPP.

200. In oral evidence similar views were expressed. Rachel Robinson said that Liberty’s particular concerns were about ministerial powers to suspend or terminate an inquiry, which in her view “cast a shadow over inquiries and over the work of the chairman of an inquiry. The situation is similar with provisions around redactions of evidence, non-disclosure and excluding access to the inquiry.”³⁰⁵

The Government’s views

201. The Government, in their response to the call for evidence, stated: “HMG believes that the responsibilities set out for Ministers in the 2005 Act are still appropriate as is the balance of power with the chairman and inquiry panel ... HMG believes the power in section 14 is sufficient to bring an inquiry to an earlier end where necessary and that the Act contains appropriate safeguards against the inappropriate use of such a notice.”³⁰⁶ In oral evidence the minister said that he was satisfied with the ministerial powers as set out in the Act.³⁰⁷ In relation to the power to terminate an inquiry he added: “I suspect that there would need to be very formidable reasons to [exercise the power]. As I say, that power has not been exercised and it is not one that would be exercised lightly.”³⁰⁸

The Committee’s view

202. Even though they have not been used, the existence of these powers causes us concern, simply because the potential for abuse may lessen public confidence in the inquiry process. But the view of Collins, Kemish and Underwood also has force: “The degree to which an inquiry secures the confidence of those interested in it has nothing to do with the provisions of the Act and everything to do with whether the panel and the inquiry team are seen to be acting fairly and thoroughly.”³⁰⁹ This view was shared by Herbert Smith Freehills: “In our view, confidence stems predominantly from the way in which an inquiry is conducted rather than the existence of the Act.”³¹⁰
203. It is the minister’s powers under sections 13 and 14 to suspend or to terminate inquiries that have caused the most concern. We believe nevertheless that these are powers of last resort which must remain. We are satisfied that they would indeed “not be exercised lightly”; the requirement

³⁰⁴ Written evidence, paragraph 3.

³⁰⁵ Q 230.

³⁰⁶ Government written response, Part 2, paragraphs 15 and 17.

³⁰⁷ Q 331.

³⁰⁸ Q 332.

³⁰⁹ Written evidence, paragraph 28.

³¹⁰ Written evidence, paragraph 14.

that a notice of the reasons should be laid before Parliament, added during the passage of the Bill,³¹¹ should be sufficient to ensure this.

204. There are however three other ministerial powers which in our view should be circumscribed.

Restrictions on public access

205. Under section 19, restrictions on public access to an inquiry can be imposed either by the minister in a “restriction notice” given to the chairman, or by a “restriction order” made by the chairman. We have already referred³¹² to the ruling of the European Court of Human Rights in *Edwards v United Kingdom*³¹³ to the effect that the inability of an inquiry to compel the attendance of witnesses may render that inquiry non-compliant with ECHR Article 2. That case involved an inquiry which had been held in private and where the parents of the deceased young man had been allowed to attend only when they themselves were giving evidence. The Court held that the parents “cannot be regarded as having been involved in the procedure to the extent necessary to safeguard their interests”, and that this was a further reason why the investigation did not comply with Article 2.³¹⁴
206. We believe that only the chairman should be allowed to restrict access to the inquiry by issuing a restriction order, for the limited reasons set out in section 19(3)–(5). **We recommend that the power of the minister to issue a restriction notice under section 19, restricting public access to an inquiry, should be abrogated. The chairman’s power to issue a restriction order is sufficient.**

Withholding material from publication

207. Under section 25 the minister can at any time invite the chairman to accept responsibility for publication of the report of the inquiry. In this case, only the chairman has the power to withhold material from publication where this is required by law, or it is in the public interest to do so. But the default position is that the responsibility for publication is the minister’s; in that case the power to withhold material from publication is also the minister’s. **We recommend that, whoever is responsible for publication of the inquiry report, section 25(4) should be amended so that, save in matters of national security, only the chairman has the power to withhold material from publication.**

Termination of appointment of a member of the panel

208. There is a further ministerial power which does not seem to have attracted significant criticism either during the passage of the Bill or subsequently, but which has troubled us: the power to terminate the appointment of a member of the panel. Section 12(3) allows the minister to terminate the appointment

³¹¹ By Government amendments moved in the House of Lords on Report, in reply to amendments moved by Lord Goodhart: HL Deb, 8 February 2005, cols 694–698.

³¹² Paragraph 70.

³¹³ *Edwards v United Kingdom* Judgment of 14 March 2002, available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60323#{\"itemid\":\[\"001-60323\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60323#{\).

³¹⁴ Paragraphs 82–84 and 87 of the judgment.

of a panel member on health grounds, for failure to comply with a duty under the Act, because a conflict of interest has arisen, or because he has been guilty of misconduct which makes him unsuited to continue as a member. This is a necessary power of last resort, but we believe it should be subject to strict conditions. At present the only condition is that, in the case of panel members other than the chairman, the chairman must be consulted. His consent is not however required.

209. We believe that a power as radical as this should not be exercisable without further conditions. **We recommend that where the minister wishes to terminate the appointment of a panel member other than the chairman, section 12(6) should be amended to require the chairman's consent.**
210. In the case of the chairman himself, the only condition for termination of his appointment is that the other panel members, if there are any, can be consulted. Again consent is not required. Where, as will usually be the case, the chairman is the sole panel member, the power to terminate the appointment is subject to no conditions at all. **We recommend that section 12 should be amended to provide that where the minister wishes to terminate the appointment of the chairman of an inquiry, he should be required to lay before Parliament a notice of his intention, with the reasons.**

CHAPTER 7: INQUIRY PROCEDURE

Inquisitorial or adversarial

211. Rule 1.4 of the Civil Procedure Rules 1998³¹⁵ imposes on the civil courts of England and Wales a duty of active case management. Nevertheless litigation, whether civil or criminal, is basically adversarial, in the sense that evidence is presented by the parties in furtherance of their case rather than requested by the court. Witnesses are examined and cross-examined to the same end. Court procedure is designed with this in mind. The truth, if it emerges, does so as a by-product of the adversarial litigation.
212. An inquiry under the Act “is not to rule on, and has no power to determine, any person’s civil or criminal liability.”³¹⁶ However “an inquiry panel is not to be inhibited in the discharge of its functions by any likelihood of liability being inferred from the facts that it determines or recommendations that it makes.”³¹⁷ Nothing therefore should prevent an inquiry from seeking evidence which will allow it to perform its central task of eliciting the truth. As Eversheds told us, what the witnesses want to say is not necessarily what the inquiry needs to know.³¹⁸
213. All our witnesses who addressed the issue agreed that inquiries were best served by an inquisitorial rather than an adversarial procedure, with the line of questioning directed at ensuring that the panel hear all that they need to know. Jason Beer QC told us that an inquisitorial model
- “allows the inquiry to remain focused on its terms of reference ... It allows the inquiry to focus on the issues that are of concern to it, to the chairman or the panel members, because an inquisitorial model has the inquisitor at its centre. Lastly, it allows often contentious and difficult issues to be examined and determined in a relatively dispassionate environment, without the extra heat that is brought to an affair when people are adversaries to each other.”³¹⁹
214. Our witnesses, who included many chairmen and counsel involved in recent inquiries under the Act, felt without exception that the Act provided a suitable framework for such a procedure. Lord Gill said: “I thought the 2005 Act worked very well in the inquiry that I did. I think the legislation is good legislation.”³²⁰ Sir Brian Leveson’s view was similar: “I think the Inquiries Act does a splendid job in making the inquiry inquisitorial, not adversarial ... I think the Act did provide me with adequate powers to conduct the inquiry in a way that was efficient and as effective as I could make it.”³²¹ Sir Robert Jay, counsel to his inquiry, felt that “the Act itself and most of the rules made under it worked extremely well, with sufficient flexibility, to meet the

³¹⁵ SI 1998 No 3132.

³¹⁶ Section 2(1).

³¹⁷ Section 2(2).

³¹⁸ Written evidence, paragraph 22.

³¹⁹ Q 112.

³²⁰ Q 192.

³²¹ QQ 94, 101.

particular requirements of the Leveson Inquiry, and do not warrant significant change. I think it is a good piece of legislation.”³²²

215. **We agree with our witnesses that an inquisitorial procedure for inquiries is greatly to be preferred to an adversarial procedure, and we conclude that the Act provides the right procedural framework for both the chairman and counsel to the inquiry to conduct an inquiry efficiently, effectively and above all fairly.**

Counsel to the inquiry

216. The chairman will invariably direct the line of questioning, but most inquiries appoint counsel to the inquiry to carry out the questioning. Sir Stephen Sedley³²³ explained that “the reason why it is wise to have counsel to an inquiry is that if the chair starts asking all the questions, there is a real risk that at some point he or she is going to look *parti pris*. It is much better for the counsel to have that much distance from the chair.”³²⁴ Collins, Kemish and Underwood agreed:

“Having the panel lead the questioning would tend to give rise to an impression that it has made its mind up about some issues. Further, without the meticulous preparation and mastery of the materials that is expected of counsel to the inquiry, matters may be overlooked. Finally, because counsel to the inquiry is able to discuss the evidence with witnesses and other lawyers involved, he or she is able to discern what evidence may be capable of agreement.”³²⁵

217. Sir Brian Leveson told us that his relationship with Sir Robert Jay, his counsel, was “very close”³²⁶ and he clearly found his counsel’s work invaluable. Other chairmen emphasised the differences between their job and that of counsel. Robert Francis QC explained that “whether you have a legally qualified chairman, a judge, or not, you do in all but the simplest of inquiries need someone else to be asking the questions, and that skill, if I may say so, is different from the skills required as a chairman.”³²⁷ Lord Bichard said: “I chaired the Soham [non statutory] inquiry but I had counsel interrogating witnesses and that worked terribly well ... I met counsel every morning; we talked about what the questioning was going to be; we met at the end of the day; we reflected upon it”.³²⁸
218. Some inquiries seem to have managed without counsel. Alun Evans explained that in the Foot and Mouth Inquiry “the chairman was absolutely adamant that he did not want permanent access to counsel.” The Iraq Inquiry has not used counsel, but Sir John Chilcot told us: “The absence of Counsel to the Inquiry undoubtedly placed an additional onus on myself and

³²² Q 127.

³²³ A former Lord Justice of Appeal. He was Counsel for one of the parties in Lord Scarman’s inquiries into the 1974 Red Lion Square disorders and the 1981 Brixton riots, and chaired the 1987 Tyra Henry child abuse inquiry on behalf of the Borough of Lambeth.

³²⁴ Q 45.

³²⁵ Written evidence, paragraph 17.

³²⁶ Q 97.

³²⁷ Q 204.

³²⁸ Q 204.

my colleagues in relation to the questioning of each witness who appeared before us. When preparing for our public hearings, we were assisted by staff employed within the Inquiry Secretariat and received some expert guidance on the questioning of witnesses.”³²⁹ Sir Stephen Sedley pointed out that the Iraq Inquiry not only had no counsel but no practising lawyer on the panel, and “some of us reading the daily reports of what was going on were almost weeping at the questions that were not being asked.”³³⁰

219. One argument advanced against the use of counsel to the inquiry is the expense. We referred earlier³³¹ to the judgment of the Divisional Court in *R (Ali Zaki Mousa) v Secretary of State for Defence (No 2)*. One of the Court’s reasons for ordering a number of quasi-inquests³³² rather than a single inquiry was the expense of legal expertise: “We have taken cognisance of the fact that the extensive deployment of teams of lawyers at inquiries has added significantly to the cost and length of inquiries.”³³³ In a later judgment the Court said: “We have expressed our very strong view that there should be no separate counsel to the inquiry as the inquiry can be effective without such counsel and the appointment would impose a disproportionate cost.”³³⁴ This view was subsequently embodied in a formal order of the Court: “There should be no separate counsel to the inquiry.”³³⁵
220. The expense of counsel to the inquiry is undoubtedly considerable, though for the reasons advanced in chapter 5 we do not think it need be inordinate. We do not know whether the Court received evidence that the cost would be “disproportionate”. The evidence we received from Lee Hughes (whose experience, as we have said, was very substantial) was, on the contrary, that the use of counsel could save money: “I am a great believer in having counsel to the inquiry leading and focusing the questioning of witnesses. The biggest cost in an inquiry is the length. If you can keep the inquiry shorter, you save money. There are various ways you can do that but one of them, I think, is having counsel to the inquiry taking the major responsibility for the questioning of witnesses.”³³⁶ We stress that, ultimately, the responsibility for the questioning will be that of the chairman.
221. **We agree with the majority of our witnesses that for an inquiry of any length the appointment of counsel to the inquiry is essential.**

Appointment of counsel

222. There are references in the Act to counsel to an inquiry, for example in the provisions on immunity from suit³³⁷ and on payment,³³⁸ but there is no definition in the Act of “counsel to the inquiry” and no provision concerning

³²⁹ Written evidence.

³³⁰ Q 29.

³³¹ Paragraphs 74–76.

³³² Formal inquests were not possible since the deaths occurred outside the jurisdiction.

³³³ Judgment of 24 May 2013, paragraph 213.

³³⁴ Judgment of 2 October 2013, paragraph 23.

³³⁵ Order of 31 October 2013.

³³⁶ Q 141.

³³⁷ Section 37.

³³⁸ Section 39.

the appointment of counsel. The Rules define “counsel to the inquiry” as “the qualified lawyer or lawyers, if any, appointed by the chairman to act as counsel”. In practice counsel are invariably appointed by the chairman, and this is clearly right. As Sir Brian Leveson said, “The relationship between the chairman and counsel to the inquiry is very close ... I was very content that I was able to appoint somebody, first, who I thought could do the job and, secondly, with whom I could work ... It is difficult for somebody else to do it because you cannot do the chemistry thing and it is difficult for somebody else to know precisely how you want the inquiry to be conducted.”³³⁹

223. The precise role of counsel is to be settled with the chairman, and needs no statutory provision. We believe the Act should include a provision to make clear that appointment of counsel too is a matter for the chairman. Section 11 makes clear that assessors may be appointed by the chairman as well as by the minister, and it should perhaps be put beyond doubt that the minister has no say in the appointment of counsel.
224. **A provision should be added to the Act stating that the chairman, and only the chairman, may appoint one or more barristers or advocates in private practice to act as counsel to the inquiry.**
225. In deciding how many counsel to appoint, and who they should be, the chairman will bear in mind the general duty to avoid unnecessary cost to public funds³⁴⁰ and, as we have suggested,³⁴¹ will wish to consult the central unit and the Treasury Solicitor. There will be occasions when the Law Officers could also usefully be consulted.

Legal representation for core participants and witnesses

226. Persons with a particular interest in an inquiry who are designated by the chairman as core participants³⁴² may well give written or oral evidence, though they will not necessarily do so. There will usually be persons appearing as witnesses—often many—who will not be core participants. Some of these witnesses will have been summoned to give evidence, some will have requested and been given permission to do so. There is of course nothing to stop anyone involved in an inquiry, whether or not as core participants or witnesses, from receiving legal advice, whether from solicitors, counsel or both. There are however detailed provisions in the Act and the Rules on the extent to which such legal representatives can take part in the proceedings, and on whether and to what extent they should be paid out of public funds. We have considered whether these provisions strike the right balance between the interests of the inquiry as a whole and the fair treatment of core participants and witnesses, particularly in the light of Helen Shaw of INQUEST’s comments: “we think that one thing that is very important is the standing that the victims or bereaved families have in an inquiry”.³⁴³ We are conscious of the fact that, although the inquiry will not be determining

³³⁹ Q 97.

³⁴⁰ Section 17(3).

³⁴¹ Paragraph 187.

³⁴² Under rule 5 of the Inquiry Rules 2006.

³⁴³ Q 231.

civil or criminal liability, liability may be inferred from what is said, and reputations may be damaged or even destroyed.

Core participant status

227. Designation of a person as a core participant is a matter for the chairman's discretion, taking account of the criteria in rule 5. Once a person is so designated, the chairman must direct that where two or more core participants have similar interests they are to be represented by a single legal representative.³⁴⁴ In his Ruling on Core Participants of 14 September 2011 Lord Justice Leveson ruled that the 46 persons listed in the Annex to the Ruling who were alleging ill-treatment by the press should be represented by a single legal representative.
228. The main advantages of core participant status often derive from decisions of the chairman on practice and procedure. Thus Lord Justice Leveson allowed core participants to see in advance, under strict rules of confidentiality, copies of statements that witnesses had provided and which would form the basis of their evidence. For those who were not core participants, the witness statements only became available when published on the inquiry website after the conclusion of the evidence of the witness.

Powers and duties of legal representatives

229. We have set out in paragraph 30, Box 2, the six Salmon principles which the Royal Commission on Tribunals of Inquiry thought should be followed by inquiries to provide protection for witnesses. In summary, the Salmon Commission thought that a person called as a witness should have a right to legal representation out of public funds, and should have an opportunity to be examined by his own solicitor or counsel and to test by cross-examination any evidence affecting him. As Professor Tomkins told us, the Salmon principles "come from an era when we used to talk of something called tribunals of inquiry, when we did not know what the difference was between a tribunal and an inquiry". He suggested that "one of the things that ... your Committee could usefully do is officially junk the Salmon principles."³⁴⁵ He thought they should be replaced by principles fit for investigative inquiries where neither the courts nor Parliament could fill the gap.
230. Not all our witnesses showed quite the same root and branch antipathy to the Salmon principles, but in a sense the first two have already been "junked" by the Inquiry Rules. The default position is now that only counsel to the inquiry and the inquiry panel can ask questions of a witness to an inquiry.³⁴⁶ There are qualifications to this. The chairman can direct that a witness who has been questioned by counsel to the inquiry can be questioned by his own legal representative.³⁴⁷ The chairman can allow a witness to be questioned by the legal representative of a core participant;³⁴⁸ and, within strictly defined criteria, he can allow the legal representative of a witness who

³⁴⁴ Rule 7.

³⁴⁵ Q 31.

³⁴⁶ Rule 10(1).

³⁴⁷ Rule 10(2).

³⁴⁸ Rule 10(4).

is not a core participant to question another witness.³⁴⁹ But in both cases an application has to be made to the chairman, and it is the chairman's decision which is final. The right of a witness to be examined by his own counsel, and to have his counsel cross-examine other witnesses, has already gone.

231. There is thus a heavy burden on the chairman and, subject to the chairman, on counsel to the inquiry to make sure that the right questions get asked, and that no important issues are overlooked because questions go unasked. As Ashley Underwood QC told us, "I think it is a position of huge power which has to be used incredibly carefully."³⁵⁰ Professor Kennedy explained: "I developed a procedure where cross-examination was not barred, although there was no right to it, but it was made irrelevant because counsel to the inquiry received all the requests from those representing interested parties and he or she then asked the relevant questions on behalf of those interested parties."³⁵¹ Sir Brian Leveson had a similar procedure: "I was very keen that counsel to the inquiry, whoever was going to ask questions of any witness, met informally with that witness beforehand ... to discuss the evidence and the sorts of questions they would ask, and equally to receive any feedback ... Nobody was disadvantaged only because they were a witness as opposed to a core participant",³⁵² although Sir Brian Leveson emphasised: "if I was investigating a death then I would be extremely sensitive to the legitimate concerns of the family of the bereaved. Therefore, I have no doubt that I would allow much greater latitude to those legal representatives ... I do believe that the approach to inquiries after fatal incidents requires extreme sensitivity and adjustment to the approach."³⁵³
232. Disaster Action told us: "To the bereaved or survivor from a disaster ... the process can feel adversarial, particularly when it is clear that the company or government department involved in the multiple deaths have briefed their own lawyers."³⁵⁴ Helen Shaw agreed: "From the point of view of whether it is an inquiry involving a death or a series of deaths, it is absolutely vital that there is, in addition to counsel to the inquest, counsel for the victims' families."³⁵⁵ But Collins, Kemish and Underwood cautioned that "The adversarial model is not suited to discovering the truth, and would add stress to what is almost inevitably a charged atmosphere of public concern."³⁵⁶ It is precisely such stress that all involved in inquiries should seek to avoid.
233. Broadly, the core participants who spoke to us thought this system worked fairly. Julie Bailey said: "On balance, I think we did get most of the questions that we wanted. There were occasions where we would like to have pushed a little bit more and got more evidence out of the witness. There was always at the back of your mind that you wanted this inquiry to finish quickly".³⁵⁷ Christopher Jefferies told us:

³⁴⁹ Rule 10(3).

³⁵⁰ Q 266.

³⁵¹ Q 208.

³⁵² Q 95.

³⁵³ Q 98.

³⁵⁴ Written evidence, paragraph 9.1.

³⁵⁵ Q 245.

³⁵⁶ Written evidence, paragraph 17.

³⁵⁷ Q 165.

“Certainly as far as putting forward my own views are concerned, I had ample opportunity to do that and there was nothing that I would have wanted to say that I did not have the opportunity to say. As far as questioning others or challenging the views of others ... I do not think it would have been particularly helpful if I, for example, had had the opportunity to question journalists who had reported on my arrest. In any case, that was done probably more effectively by Robert Jay when those journalists themselves appeared.”³⁵⁸

234. One member of this Committee with experience of giving evidence to an inquiry, and of the stresses which inappropriate questioning can place on witnesses, believes that they should once more have the right to be represented by their own counsel. The majority of us, while sympathising with this view, believe that with the right chairman and counsel the interests of those involved—core participants and other witnesses—are sufficiently protected by the flexibility of the procedure under the Inquiry Rules. They allow the inquiry proceedings to be taken forward without undue delay, but also without the risk of unfairness to the participants. But we agree with Mr Underwood that achieving this places a heavy burden on counsel.
235. **The fourth and sixth Salmon principles, which allow a person the opportunity of being examined by his own solicitor or counsel, and of testing by cross-examination any evidence which may affect him, are over-prescriptive and have the effect of imposing an adversarial procedure on proceedings which should be inquisitorial. They should no longer be followed. Reliance should be placed on the chairman who has a duty to ensure that the inquiry is conducted fairly.**

Expenses of legal representation

236. The chairman’s power to make awards of costs to compensate witnesses for their expenses includes power to award amounts in respect of legal representation “where the chairman considers it appropriate.”³⁵⁹ It is subject to conditions notified by the minister to the chairman,³⁶⁰ and to detailed provisions of the Rules.³⁶¹ The general criteria which the chairman must take into account in determining whether an award should be made are the financial resources of the applicant, and whether making an award is in the public interest.³⁶² We have already referred in paragraph 179 to the very similar detailed Protocols on Legal Representation at Public Expense issued by the chairmen of the ICL, Mid Staffordshire and Leveson inquiries to explain to those contemplating applying for costs from public funds whether they are likely to be awarded them, and if so subject to what conditions.
237. If the Salmon entitlement of witnesses to examination by their own counsel, and to cross-examination of other witnesses, still applied, we can see that there might be arguments in favour of such representation being paid for out of public funds unconditionally. As it is, **we believe that it is right to leave**

³⁵⁸ Q 154.

³⁵⁹ Section 40(1) and (2).

³⁶⁰ Section 40(4).

³⁶¹ Rules 20–34.

³⁶² Rule 21.

to chairmen of inquiries the discretion of whether the cost of legal representation of core participants and witnesses should be met out of public funds.

Assistance to core participants and witnesses

238. Most inquiries include as witnesses, and in certain circumstances as core participants,³⁶³ people who have been directly affected by the matter under investigation. These people, especially victims and victims' families, will usually have no experience of any previous form of inquiry. We heard that for them participating in an inquiry can be a daunting task. Julie Bailey suggested that some people were reluctant to give evidence "because it was going to be in public and adversarial."³⁶⁴ Sir Robert Jay agreed that some witnesses are frightened to give evidence, although he explained that this could be for a variety of reasons.³⁶⁵
239. Our witnesses who had been core participants told us that they were generally well provided for. Julie Bailey told us: "We felt very supported. I felt we had a very good team at the public inquiry and I think we felt supported when we gave evidence ... we had a separate room and were given all the help we needed ... we were offered counselling if we needed it, and some witnesses did take up that offer."³⁶⁶ She detailed the assistance given to her even prior to the start of the inquiry. Christopher Jefferies emphasised that he was satisfied with his legal support, and did not need emotional support.³⁶⁷ But where it was needed, we heard evidence of inquiry teams organising support such as counselling.³⁶⁸ Collins, Kemish and Underwood told us that they set up a dedicated "witness support team" for one inquiry, which proved successful.³⁶⁹
240. Some inquiry chairmen met witnesses in advance. Lord Cullen of Whitekirk explained the value of this: "Certainly I find it helpful to have meetings with the bereaved and possibly the injured—mostly the bereaved—before the inquiry gets going, so they have a chance to see what I am like and they can put questions to me and we can discuss how the inquiry is going to be carried out."³⁷⁰ Lord Gill agreed: "You have to make it clear to them at the outset that everything is coming out in the open, that nothing is being held back and that everything that they want to know, to the extent that it can be known, will be brought out. I think it also helps if you speak to them directly, person to person, just to let them know that all you are there to do is to help to get to the truth."³⁷¹ Sir Brian Leveson told us that he was keen that counsel to the inquiry met informally with witnesses beforehand.³⁷² We can see the value of doing so.

³⁶³ See paragraph 49 and footnote 70.

³⁶⁴ Q 155.

³⁶⁵ Q 119.

³⁶⁶ Q 155.

³⁶⁷ Q 157.

³⁶⁸ Q 267.

³⁶⁹ Written evidence, paragraph 19; Judi Kemish, Q 252.

³⁷⁰ Q 196.

³⁷¹ Q 196.

³⁷² Q 95.

241. **Inquiry chairmen and counsel to the inquiry should as a matter of course meet victims and families as early as possible in the inquiry process. There should be a dedicated team or named members of staff responsible for liaising with witnesses.**
242. Julie Bailey raised concerns about having to share the same waiting space as other witnesses: “What I did find uncomfortable at times was having to share the same rooms with other witnesses who I felt were responsible for some of the harm ... I did feel quite unnerved some days by some witnesses being there around us after they had failed so badly.”³⁷³ While we recognise that the inquiry process is not adversarial, we accept that in certain instances it may not be appropriate for certain witnesses to share the same space. **We urge the inquiry secretariat to ensure that witnesses and core participants are handled sensitively, so that victims and families do not come into contact with those they believe to be responsible for any harm.**

Warning letters

243. Any participants in an inquiry, in whatever capacity, who will be or may be criticised in an interim or final report should have an opportunity to state their case. This is no more than common fairness and common law. From the point of view of the inquiry panel, it is also common sense. This practice is sometimes said to derive from the second Salmon principle. That principle, however, recommends that any person who is involved in an inquiry should be informed of any allegations which are made against him, and the evidence in support of them, before he is called as a witness. Here we are concerned with what happens at the later stage when the evidence has been heard, and it is clear that the draft report will be critical of individuals.
244. We believe that circumstances are so varied that fixed rules are unnecessary and unhelpful. There will be cases where, from the outset of an inquiry, it is clear that it is concerned with serious allegations against individuals—one need think only of some of the staff of Stafford Hospital, or of the *News of the World*—and their concern throughout the inquiry will therefore be to argue their case. They may succeed. If they do not, this will be clear to them, and they will hardly be surprised if the report contains perhaps very strong criticism of them. At the other extreme, at a late stage of an inquiry cogent evidence may be given criticising an individual who has not previously been concerned with the inquiry; it would be blatantly unfair if the report were to criticise that person without allowing them first to put their views.
245. The provisions of the Inquiry Rules on warning letters are highly detailed and go far beyond what is necessary. Rule 13(1) ostensibly gives the chairman a discretion whether or not to send a warning letter to a person, but there is in fact no discretion, since rule 13(3) does not allow any significant criticism of a person to be included in a report unless that person has been sent a warning letter and given an opportunity to respond to it. Furthermore, rule 15 specifies in minute detail what the letter must say: it must set out the proposed criticism, the facts which substantiate it, and the evidence supporting those facts.

³⁷³ Q 155.

246. The interpretation of those rules has caused great difficulty. Some chairmen have interpreted them as requiring individuals to be sent drafts of the passages of the report including criticism. Robert Francis QC stated in the Executive Summary to the report of the Mid Staffordshire Inquiry: “Some recipients asked that they be given sight of any revision of the potential criticism before publication of the Inquiry report. I declined to do so; first because the Rules do not provide for such a facility, and second because it would have been impracticable and undesirable. Such a process would inevitably have led to a virtually endless exchange of drafts and submissions, making the Inquiry process even longer than it already had been.”³⁷⁴ In evidence to us Mr Francis stated: “in practice I think my inquiry was extended by at least six months by having to undertake a rule 13 process.”³⁷⁵
247. Lord Justice Leveson issued a 25-page ruling explaining how he intended to apply these rules in his inquiry, and a further 11-page ruling on the specific application to the Metropolitan Police. He told us that “if I had obeyed [rule 13] to the letter, [it] would have killed any prospect of doing the report in time.” He continued: “I think it is rule 15 that required me to set out the potential criticism, the facts forming the basis of the criticism, and all the evidence. Had I done that in terms, I need never have finished because they were all very specific.”³⁷⁶ Robert Jay QC said: “Rule 15 caused us huge grief and a huge amount of work and incurring of public expense. I think literally thousands of hours of work went into the generic letter.”³⁷⁷
248. The Penrose Inquiry into Hepatitis C/HIV acquired infection from NHS treatment in Scotland was to have reported in March 2014. It will now not meet that date, and one of the reasons is that “this date was subject to the time required for the warning letters process and this process is taking longer than expected.”³⁷⁸ Lord MacLean, the chairman of the Vale of Leven Hospital Inquiry, hopes to report by 31 March 2014, but started sending out warning letters as long ago as October 2013.³⁷⁹
249. Further work, also at public expense, has been involved in an application for judicial review by E7 (the police marksman) arising from the Azelle Rodney Inquiry. He attempted, unsuccessfully, to review the inquiry findings, arguing that the draft report containing possible criticisms should not have been sent to all core participants, that a letter with those criticisms should have been sent only to E7, and that when the chairman amended the draft to strengthen the criticisms he should have sent a new warning letter with the revised draft. Counsel to the inquiry described this as “an absurdly stretched interpretation of Rules 13–15”.³⁸⁰
250. The only support for these rules came from Jason Beer QC, and even this was limited: “A lot of the inquiries that I have tended to be involved in ... involved very serious allegations, the most serious allegations, and if you were

³⁷⁴ Paragraphs 101–105.

³⁷⁵ Q 216. Mr Francis was also critical of these rules in paragraphs 64–73 of his written evidence.

³⁷⁶ Q 93.

³⁷⁷ Q 125.

³⁷⁸ The Penrose Inquiry website, available at: <http://www.penroseinquiry.org.uk/>.

³⁷⁹ The Vale of Leven Hospital Inquiry website, available at: <http://www.valeoflevenhospitalinquiry.org/>.

³⁸⁰ *R (E7) v Sir Christopher Holland*.

on the wrong end of those allegations you would want full and meticulous compliance with rules 13 to 15. So they are very well suited and absolutely necessary in such cases.”³⁸¹ We believe that even in such cases chairmen can follow a procedure which is strictly fair without the shackles of the rules.

251. **We recommend that rules 13–15 of the Inquiry Rules 2006 should be revoked and a rule to the following effect substituted: “If the chairman 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.”**

Other amendments to rules

252. The complexities of rules 13–15 are only examples of a greater problem, which is the general over-prescriptiveness of the Rules. We agree with Lee Hughes that “there are a number of administrative things that the rules over-specify and make far too complicated.”³⁸² Inquiries would work more efficiently (and hence be quicker and cheaper) if the chairman and secretariat were given greater discretion in organising their procedure. We give here three examples which have been drawn to our attention.

Rules 2 and 18: inquiry records

253. Rule 2 defines “inquiry record” as “*all* documents given to or created by the inquiry” [our emphasis]. At the end of the inquiry “the chairman must transfer custody of the inquiry record to a department of Her Majesty’s Government in the United Kingdom or to the appropriate public record office, as the Minister directs.”³⁸³ We were told that transferring all the inquiry documents to a public record office can be “very problematic.”³⁸⁴
254. Robert Francis QC pointed out to us that the National Archives publishes guidance on the archiving of the inquiry record. It sets out the responsibilities of the various parties. It is the duty of the chair of a public inquiry, as a person responsible for public records “to make arrangements for the selection of those records which ought to be permanently preserved and for their safe-keeping.”³⁸⁵ There is clearly a conflict between this guidance and a strict interpretation of rules 2 and 18. The Government have noted that “the definition of ‘inquiry records’ could be amended to include only materials which merit permanent preservation but not day-to-day working papers”.³⁸⁶ They have not however made such a change to the Rules. We believe they should. **We recommend that rules 2 and 18 be amended to give the inquiry secretariat some discretion as to which documents created by the inquiry should be part of the permanently archived inquiry record.**

³⁸¹ Q 125.

³⁸² Q 151.

³⁸³ Rule 18(1)(b).

³⁸⁴ Jason Beer QC, Q 128.

³⁸⁵ Written evidence, paragraph 94.

³⁸⁶ Written Response, Annex 2.

Rule 9: written statements

255. Rule 9 provides that the inquiry panel must send a written request for a written statement to any person from whom the inquiry proposes to take evidence. It does not allow the inquiry itself to take statements from witnesses. Lee Hughes told us: “This certainly has been a problem where you ask for a statement and it comes through, having been taken by the solicitor for the witness, and it is not adequate. We ask the witness to come in so that the inquiry can take a statement and the solicitors refuse, saying, “No, we will do it”, and you have to go through iteration after iteration until you get anything useful.”³⁸⁷ The Government recorded a similar criticism in Annex 2 to their Response. **We recommend that rule 9 should be amended to allow the inquiry’s own legal team to take written statements from witnesses.**

Rules 20–34: awards of costs

256. Lee Hughes pointed to the procedure for the assessment, award and payment of expenses as another example of the unnecessary complexity of the Rules. “The two inquiries I have done recently were sponsored by the Ministry of Defence. The easiest thing we could have done was to have paid all the expenses under the Ministry of Defence’s arrangements for expenses but we could not. So we had to devise a whole system that was compliant with the rules and it just drove everybody mad, I think, trying to deliver that.”³⁸⁸ We agree that the Rules appear to be over-prescriptive. This is a case where the department could learn the views of previous inquiry secretaries from Lessons Learned documents. **Rules 20 to 34 are over-prescriptive; we recommend that the procedure for awarding costs should be simplified.**

The Scottish and Northern Irish Rules

257. The provisions of the Inquiries (Scotland) Rules 2007³⁸⁹ are very similar to those of the United Kingdom Rules, though there are differences of drafting and numbering. We are not aware of any reason why the changes we recommend to the United Kingdom Rules should not also be made to the Scottish Rules, and we invite Scottish ministers to consider doing so.
258. As we have explained,³⁹⁰ the Inquiry into Historical Institutional Abuse Rules (Northern Ireland) 2013³⁹¹ were made for the purpose of a single inquiry, and cannot be used for inquiries under the 2005 Act. Nevertheless we suggest that the First Minister and Deputy First Minister should urgently consider amending the equivalent provisions of those Rules, and in particular rules 14–16, which follow precisely rules 13–15 of the United Kingdom Rules and will, if applied, entail all the unnecessary additional length and cost.

³⁸⁷ Q 151.

³⁸⁸ Q 151.

³⁸⁹ SSI 2007 No 560.

³⁹⁰ Paragraph 42.

³⁹¹ Statutory Rules of Northern Ireland 2013 No. 171.

Freedom of Information Act 2000

259. There is a further problem with regard to the inquiry record. Section 32(2) of the Freedom of Information Act 2000 exempts from disclosure information in a document in the custody of a person conducting a statutory inquiry, and information in a document created by that person, i.e. the inquiry record. Those documents will include documents which are restricted from disclosure under section 19 of the Inquiries Act, and such restrictions can continue indefinitely.³⁹² Such documents may for example include papers relating to restriction orders for reasons of national security, requests by witnesses for anonymity, and orders made allowing anonymity.
260. These provisions work while the inquiry is running and the documents are in the custody of the inquiry. But once the inquiry record has been transferred to a public authority under rule 18(1)(b), as a consequence of section 18(3) of the Act (which was added to the Bill by a Government amendment which was not debated)³⁹³ section 32(2) of the Freedom of Information Act ceases to apply, and under section 20(6) of the 2005 Act once the information is held by a public authority the disclosure restrictions imposed under section 19 cease to apply.
261. The Government acknowledge these problems, but have done nothing about them other than to say that “HMG plans to keep these issues under review.”³⁹⁴ In his oral evidence the minister accepted that “The Freedom of Information Act poses matters that need to be considered,” but had no solution except to say that the issue needed to be looked at further.³⁹⁵ **We recommend that section 18(3) and (4) of the Inquiries Act 2005 be repealed, and section 20(6) amended, so that after the inquiry is concluded the inquiry record continues to have the same exemption from disclosure under the Freedom of Information Act as previously, and disclosure restrictions continue to apply.**

Use of evidence in subsequent proceedings

262. As we have said, section 2 prohibits an inquiry from determining civil or criminal liability, but the inquiry is not to be inhibited from making findings or recommendations from which liability might be inferred. It has not been suggested to us that inquiry findings should determine liability. However there remains the question of the weight which evidence given to an inquiry should have in subsequent proceedings.
263. Inevitably evidence given to an inquiry may be relevant in subsequent proceedings. Lord Cullen of Whitekirk said: “It is inevitable that what turns up in the inquiry will be material that could lead to the founding of a claim,” and Lord Gill agreed: “Certainly some of the findings that I made in my inquiries were plainly significant in relation to the civil claims. I understand that in some of the civil claims that are still going through the court, claimants are referring to some of my findings. That is inevitable. I do not

³⁹² Section 20(5).

³⁹³ HL Deb, 8 February 2005, cols 709–710. Section 18(4) of the Act makes a similar provision for Scotland.

³⁹⁴ Government Response, part 2, paragraphs 22–23.

³⁹⁵ Q 345.

see that that can be avoided.”³⁹⁶ Nor is it necessarily a bad thing, for as Dr Mackie said, “it does seem a terrible waste to run through a whole inquiry process and to then contemplate starting from the outset again with litigation or civil liability proceedings.”³⁹⁷ Sir Stephen Sedley thought that “Lord Justice Taylor’s findings at the first Hillsborough Inquiry could very well have stood as *prima facie* evidence of liability in the litigation that followed.”³⁹⁸

264. Herbert Smith Freehills sounded a note of caution: “The testing of evidence before an inquiry can be significantly more limited than the testing of evidence in civil proceedings with the consequence that the inquiry is not in the same position as a court in relation to fact finding. This can be unfair and unnecessarily damaging to participants, particularly where allegations of wrongdoing / misconduct are asserted.”³⁹⁹
265. **We believe it is right that evidence given to an inquiry, and findings based on it, can be used as evidence in subsequent proceedings.**

³⁹⁶ Q 197.

³⁹⁷ Q 78.

³⁹⁸ Q 48.

³⁹⁹ Written evidence. Herbert Smith Freehills acted for Trinity Mirror, one of the core participants in the Leveson Inquiry.

CHAPTER 8: RECOMMENDATIONS OF INQUIRIES

266. The terms of reference of inquiries usually conclude with the words: “and to make recommendations”. In this chapter we consider whether ministers, once they receive the recommendations, become solely responsible for deciding whether, when and how to implement them, or whether the inquiry chairman or other persons or bodies should have a role to play.
267. The Act has no provision for the implementation of inquiry recommendations. Section 24 deals with the submission of the report, which must set out any recommendations of the inquiry panel. The report is then laid by the Minister before Parliament. What comes next is not prescribed. Eversheds, among others, were concerned that “the Act does not ensure that recommendations are adequately implemented.”⁴⁰⁰ The question of who is responsible for overseeing the implementation of recommendations is one on which opinion was divided.

Judicial and non-judicial chairmen

Serving judges

268. Views on whether or not inquiry chairmen should be responsible for following up their own recommendations were in part dependent on whether the chairman was a serving member of the judiciary. Lord Justice Beatson encapsulated what seem to us to be the most important issues in relation to the relationship between the judiciary and the executive:

“Unless an inquiry directly concerns the administration of justice, or where there has been prior agreement about this (normally when the terms of reference are settled), a judge should not be asked to comment on the recommendations in his report or to take part in its implementation. This is the position of judges in relation to their decisions in legal proceedings over which they have presided. There are three principal reasons for the same principle governing judge-led inquiries:-

- (i) the judge may be asked to give an opinion without hearing evidence;
- (ii) the judge may be drawn into political debate, with accompanying risks to the perception of impartiality, as discussed above; and
- (iii) implementation is the responsibility and the domain of the executive.”⁴⁰¹

269. Many witnesses agreed with this position. Sir Brian Leveson told us: “I am a serving judge. It would be absolutely inappropriate for me to come back into the question of my report or regulation of the press. I was given a job to do. It was to examine the facts and to make recommendations. I examined the facts. I set them out in what might be described as extremely tedious detail. I

⁴⁰⁰ Eversheds, written evidence, paragraph 42.

⁴⁰¹ Beatson LJ, written evidence, paragraph 26.

reached a series of conclusions, which was my very best shot. I have said all I can say on the topic.”⁴⁰²

Sir Robert Jay agreed: “Sir Brian Leveson has given his recommendations. He signed off the report. He is *functus officio*. That is the end of it.”⁴⁰³ Lord Cullen of Whitekirk made the same point: “I think it is peculiarly inappropriate for a serving judge to be asked to undertake this.”⁴⁰⁴

270. We agree that in many cases for a judicial chair to take responsibility for overseeing his or her recommendations would risk them being drawn into areas of active party-political controversy, thereby damaging the perceived independence of the judiciary. **We consider that a serving judge who has chaired an inquiry not concerned with the practice or procedure of the courts should play no further part after submitting his report, leaving this to ministers, others to whom the recommendations are addressed, and Parliament.**
271. The Lord Chief Justice made the further point that “it is not right as a matter of constitutional principle that a judge who conducts an inquiry should be subject to questioning by Parliament in relation to the inquiry’s recommendations ... it would be highly desirable that there be a convention that Parliament would not question a judge in relation to any recommendations that they might have made”. We ourselves were scrupulous to avoid questioning Sir Brian Leveson and other former judges who had chaired inquiries and gave evidence to us, about their recommendations and whether, when or how they might be implemented.⁴⁰⁵
272. The day after he gave evidence to us, Sir Brian Leveson gave evidence to the Commons Select Committee on Culture, Media and Sport. Almost from the outset of a long evidence session he was asked questions about his recommendations and their implementation. He made clear that he would not be able to answer such questions,⁴⁰⁶ and quoted from a letter written to the chairman, John Whittingdale MP, by the previous Lord Chief Justice, Lord Judge:

“I am extremely concerned that the judge should not be asked to comment about matters which are in the political sphere, even when those matters arose out of the inquiry that he has conducted. There can be no doubt that the principle of whether the competing models of self-regulation satisfied the principles set out in Lord Justice Leveson’s report is at present an intensely political issue. Any judge asked questions about such matters would have no alternative but to decline to answer. The extent to which Lord Justice Leveson could assist the Committee would be to invite it to draw its own conclusions from the relevant sections of his report.”

⁴⁰² Q 99.

⁴⁰³ Q 127.

⁴⁰⁴ Q 200.

⁴⁰⁵ At the opening of Sir Brian Leveson’s evidence session on 9 October 2013 Lord Shutt of Greetland said: “I have advised the Committee, prior to you joining us, that we are not in the business of asking you questions about the recommendations of your committee or any rival plans for implementation ... What we are concerned about is the Inquiries Act, how it works and your experience with it.”

⁴⁰⁶ Q 771.

Nevertheless this line of questioning continued for most of the remainder of the evidence session.

Other chairmen

273. By “other chairmen” we mean chairmen who are retired judges or who are not part of the judiciary. The question whether other chairmen should continue to have some responsibility for their recommendations is nuanced, and we heard differing views. There have been instances where a chairman who has not been a serving judge has, either voluntarily or by invitation, followed up their own recommendations, with varying results.
274. Lord Bichard, following his inquiry into the Soham murders, said: “I decided that I should review the progress on recommendations six months after publication. I am not sure that has happened before but seemed sensible if the objective was to achieve real change. I have this week, therefore, written to the parties seeking a report on progress and will publish a report on this in February/March. I have no specific power to do so but all parties have indicated that they will respond.”⁴⁰⁷ In his evidence to us, Lord Bichard explained that he was able to do so because he was not a judge.⁴⁰⁸
275. After the death of Baby P, Lord Laming was invited by the Secretary of State for Children, Schools and Families, to “evaluate the good practice that has been developed since the publication of the report of the Independent Statutory Inquiry following the death of Victoria Climbié”,⁴⁰⁹ which he had chaired. Lord Laming found that although there had been progress in policy and structural terms, this had not been carried through to frontline practice, where implementation was patchy.
276. Judi Kemish told us:
- “in Azelle Rodney the chairman [Sir Christopher Holland, a retired High Court judge] made recommendations and he has been waiting for a report from the IPCC and the Metropolitan Police Service as to whether they have implemented them. He has had a response back but I think, in his view, he felt, suddenly because his position was *functus*, he could not then write angry letters or say, what is happening about my recommendations.”⁴¹⁰
277. Many of our witnesses felt that it was not within the remit of the chairman to oversee the implementation of their own recommendations. There are practical considerations. Ashley Underwood QC told us: “The difficulty under the Act is that once the chairman has told the minister that he has fulfilled his terms of reference, that is the end of the inquiry. So whether it is a judicial chairman or not, under a statutory inquiry it is finished and there is no scope for that at all.”⁴¹¹ Lord Gill agreed: “Once the inquiry chairman has

⁴⁰⁷ Written evidence from Sir Michael Bichard to the Public Administration Select Committee, (Session 2004–05, HC 51–i)

⁴⁰⁸ Q 222.

⁴⁰⁹ *The Protection of Children in England: A Progress Report*, March 2009, page 3, available at:

<http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/standard/publicationdetail/page1/HC%20330>.

⁴¹⁰ Q 269.

⁴¹¹ Q 269.

reported, that is the end of it as far as the chairman goes. His job is done, and I would not wish to be involved in any follow up. The implementation of recommendations is an entirely different exercise. That is for the politicians and the Executive to do”.⁴¹² However there is nothing to prevent an inquiry chairman from making a recommendation that Parliament be updated on progress, as suggested by Lord Cullen of Whitekirk.⁴¹³

278. **We agree with the majority of our witnesses that inquiry chairmen and panels are not responsible for the implementation of their recommendations when the inquiry has reported.**

Overseeing implementation

279. All our witnesses who considered this issue agreed that a monitoring and reporting of recommendations beyond the inquiry is necessary. Julie Bailey believed that public confidence in an inquiry comes from how the recommendations are implemented.⁴¹⁴ Christopher Jefferies agreed: “Implementation of the recommendations is key.”⁴¹⁵
280. The importance of monitoring and reporting on the implementation of recommendations is underlined by examples of inquiries whose recommendations were not acted upon, to negative effect. For instance:
- The Bristol Royal Infirmary report preceded the failings at Mid Staffordshire NHS Trust. Julie Bailey commented: “People say that, if the Bristol Royal Infirmary Inquiry recommendations had been implemented, Mid Staffs would never have happened and our loved ones certainly would not have lost their lives the way they did.”⁴¹⁶ Eversheds agreed.⁴¹⁷
 - The Fennell report into the 1987 King’s Cross underground fire preceded the 2005 London bombings. Disaster Action told us: “A number of significant recommendations concerning internal and external communications by the emergency services made by Mr Fennell had not been implemented by the time of the 2005 London bombings.”⁴¹⁸
 - The reforms in Lord Laming’s report into the death of Victoria Climbié were overwhelmingly supported, yet in his subsequent report following the death of Baby P he found that public bodies had not done enough to make them a reality in frontline practice.⁴¹⁹
281. We are not saying that all recommendations made by an inquiry must be accepted. The Government (and others to whom recommendations are addressed) may have reasons, perhaps good reasons, for not accepting recommendations, and they will say so in their response. The problem lies

⁴¹² Q 200.

⁴¹³ Q 200.

⁴¹⁴ Q 188.

⁴¹⁵ Q 188.

⁴¹⁶ Q 184.

⁴¹⁷ Written evidence, paragraph 43.

⁴¹⁸ Disaster Action, written evidence, paragraph 16.1.

⁴¹⁹ *The Protection of Children in England: A Progress Report*, March 2009, available at:

<http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/standard/publicationdetail/page1/HC%20330>.

with recommendations which are accepted in principle but not then implemented in practice. As Lord Cullen of Whitekirk said: “It is one thing for recommendations to be accepted or rejected. It is another thing for them to lie on the shelf.”⁴²⁰

282. Peter Riddell told us: “there ought to be a firm guideline that the government response should be given within a certain time, as they are supposed to be.”⁴²¹
283. Views on how the implementation of recommendations should be monitored were disparate. Dr Mackie suggested that the responsible department could “report back to that inquiry group, so they should formally reconvene to hear what is being delivered and what is being promised.”⁴²² Dame Janet Paraskeva, Stephen Jones, and Collins, Kemish and Underwood agreed that allowing the inquiry panel to reconvene could be useful. Conversely, Rights Watch UK told us: “It is not for a statutory inquiry to monitor the implementation of its recommendations”.⁴²³ We agree that overseeing the implementation of recommendations is not within the remit of an inquiry. To reconvene the inquiry group when the inquiry is over and the chairman and other members may have moved on to other areas of work seems impractical and onerous.
284. One alternative approach is section 3(7) of the Children Act 2004 which enables the Children’s Commissioner to require a responsible person to state in writing what action they have taken or propose to take in response to recommendations.⁴²⁴ Collins, Kemish and Underwood suggested a similar mechanism: “an obligation, on the party who should implement the recommendations, to report on their progress to other interested persons within a specified time.”⁴²⁵ We agree with the majority of our witnesses that the duty to report on the implementation of recommendations should reside with the affected body. Oversight of this is a matter for the executive and the judiciary, as outlined by Lord Justice Beatson and Lord Gill.
285. Robert Francis QC encouraged the House of Commons Health Select Committee to oversee implementation of his recommendations. The Committee accepted this role, stating: “The Committee agrees with Robert Francis’ recommendation for its role in monitoring implementation of his recommendations. The Committee therefore proposes to enhance its scrutiny of regulation of healthcare professionals by taking public evidence each year”.⁴²⁶
286. Several of our witnesses, including Professor Tomkins and Rachel Robinson of Liberty, endorsed this approach. Professor Tomkins gave us an example of Parliament taking forward recommendations from an inquiry, when the

⁴²⁰ Q 201.

⁴²¹ Q 60.

⁴²² Q 60.

⁴²³ Rights Watch UK, written evidence, paragraph 16.

⁴²⁴ “Where the Children’s Commissioner has published a report under this section containing recommendations in respect of any person exercising functions under any enactment, he may require that person to state in writing, within such period as the Children’s Commissioner may reasonably require, what action the person has taken or proposes to take in response to the recommendations.”

⁴²⁵ Written evidence, paragraph 31.

⁴²⁶ Health Select Committee, *After Francis: making a difference* (3rd Report, Session 2013–14, HC 657).

former Public Service Committee “took on a number of the recommendations of the Scott report, particularly the recommendations about ministerial responsibility, and produced its own report into ministerial accountability and responsibility, which led to the resolutions of the House of Commons and the House of Lords, which are now in turn enshrined in the ministerial code.”⁴²⁷

287. **In the case of many inquiries, publication of the formal Government response is accompanied by a statement to both Houses. We recommend that this should be the invariable practice. If a second, more detailed, written response is produced, as is often the case, it should also be published. It should say exactly which recommendations are accepted.**
288. **If the inquiry specifies that particular recommendations are for implementation by particular public bodies, those bodies should have a statutory duty to say within a specified time whether they accept the recommendations, and if so, what plans they have for implementation.**
289. **We recommend that in all cases, the response should be published not more than three months after receipt of an inquiry report. Reasons should be given for not accepting recommendations. For those which are accepted, details of when and how they will be implemented are essential. The report should include an implementation plan, and a commitment to issue further reports to Parliament at 12-monthly intervals.**
290. **We believe Commons Departmental Select Committees are best placed to monitor the implementation of inquiry recommendations.**

⁴²⁷ Q 25.

CHAPTER 9: OVERVIEW OF THE INQUIRIES ACT

291. We have made a number of recommendations, some of them significant, for amendment of the Act. We have not however heard any suggestion that the Act as a whole requires radical surgery. The major criticisms of it at the time it was a Bill, suggesting that the powers of ministers under the Act would be so excessive that no self-respecting judge would consider appointment as chairman of an inquiry under the Act,⁴²⁸ have proved unfounded. On the contrary, the judges who have chaired inquiries under the Act have described it as “good legislation”⁴²⁹ which “did provide me with adequate powers to conduct the inquiry in a way that was efficient and as effective as I could make it.”⁴³⁰
292. There has been criticism of some inquiries under the Act, especially on grounds of length and cost, but it seems that the public generally have confidence in inquiries under the Act—certainly more confidence than in those non-statutory inquiries where much of the evidence has been given in private.⁴³¹ But no inquiry has been set up under the Act since the Leveson Inquiry in July 2011.⁴³² Why is it that ministers are so reluctant to set up inquiries under an Act that broadly had the support of all the main parties when it was passed nine years ago?
293. The answer is not that there have been no matters of public concern. As we explained in chapter 3, even in the time this Committee has been working we have been informed of over 30 serious calls for inquiries to be set up. We do not suggest that all of these would have justified an inquiry; perhaps none of them would. But in that time the only reasons given for not holding inquiries are the statement by the Secretary of State for Northern Ireland in relation to the Omagh bombing,⁴³³ and the Home Secretary’s letter to the coroner declining to convert the Litvinenko inquest into an inquiry.⁴³⁴ The Statement of the Secretary of State for Health regarding the setting up of the non-statutory Morecambe Bay inquiry does not give reasons why the inquiry was not established under the Act⁴³⁵; and nor does the letter from Lord Faulks QC in relation to the independent review into self-inflicted deaths of young adults in custody.⁴³⁶
294. We believe the reason may be an assumption that inquiries, and especially statutory inquiries, are necessarily lengthy and expensive. This certainly

⁴²⁸ Paragraph 198.

⁴²⁹ Lord Gill, Q 192.

⁴³⁰ Sir Brian Leveson, Q 101.

⁴³¹ See evidence of Professor Adam Tomkins: “I know of no evidence that suggests that there is a problem with public confidence in the context of Inquiries Act inquiries. Indeed, it would seem to me that if and insofar as there is a problem of public confidence in inquiries it is in non-statutory inquiries that have been established since 2005 rather than in statutory inquiries, the obvious examples being the Iraq inquiry and the Detainees inquiry.” (Q 29)

⁴³² And only two non-statutory inquiries: the Morecambe Bay investigation; and the independent review into self-inflicted deaths of young adults in custody.

⁴³³ See Box 4, paragraph 97.

⁴³⁴ *Ibid.*

⁴³⁵ Paragraph 64.

⁴³⁶ Paragraph 65.

seems to have been taken for granted by the Divisional Court in its judgment in *Ali Zaki Mousa (No. 2)*,⁴³⁷ and there is no doubt that some inquiries have been inordinately lengthy and expensive. In his statement to the House of Commons on 15 June 2010 on the report of the Bloody Sunday Inquiry the Prime Minister said: “Of course, none of us anticipated that the Saville Inquiry would take 12 years or cost almost £200 million ... let me reassure the House that there will be no more open-ended and costly inquiries into the past.”⁴³⁸

295. However inquiries do not have to be lengthy. The Leveson Inquiry received over 1,000 submissions and heard oral evidence from some 350 witnesses, yet it reported within 16 months of being set up, and might have reported weeks or even months earlier if it had not had to undertake “literally thousands of hours of work”⁴³⁹ on warning letters to comply with the requirements of rules 13–15 of the Inquiry Rules, which we have recommended should be revoked.⁴⁴⁰
296. Nor do inquiries have to be costly. The Leveson Inquiry had a large staff—essential if it was to complete its task in that time. The cost, £5.4 million, was considerable, but not excessive for the work it had to undertake, and would have been significantly less but for the work on warning letters. Other less wide-ranging inquiries have cost substantially less.⁴⁴¹
297. **Our recommendations, in particular those on the setting up and administration of inquiries, and on a more flexible procedure, will make it easier to control both the length and the cost of inquiries under the Act. In particular, revocation of rules 13–15 should alone cut months off the length of inquiries, and reduce their cost proportionately.** We see no reason why, if our recommendations are accepted and implemented, an inquiry set up under the Act should be longer or more costly than one with another statutory basis, or no statutory basis.
298. We are fortunate to live in a parliamentary democracy where the public in general trust the executive and the organs of the state. We believe that such trust is not often misplaced. This makes it the more important that, where trust has been shaken, it should be restored. Where there is public concern, we believe the inquiry process is well placed to allay it, and to make recommendations which may help to restore trust.
299. This will not happen if ministers are reluctant to set up inquiries where these are justified. Disaster Action told us that
- “a campaign by family groups over many years, and through many changes of government, is the only way to achieve what should have occurred in the first place ... It is unfortunate, however, that [the setting up of the Hillsborough Independent Panel] should only have occurred when the bereaved or survivors have been willing and able to sustain exhausting and costly campaigns over decades.”⁴⁴²

⁴³⁷ See paragraph 74.

⁴³⁸ HC Deb, 15 June 2010, col 741.

⁴³⁹ Sir Robert Jay, Q 125.

⁴⁴⁰ Paragraph 251.

⁴⁴¹ See paragraph 181.

⁴⁴² Written evidence, paragraphs 4.3 and 13.2.

It should not have taken “a small group of mostly elderly people [who] had to stand out in the wind, snow and rain for nearly two years following ministers round”⁴⁴³ before ministers agreed to set up the Mid Staffordshire inquiry.

300. **Ministers have at their disposal on the statute book an Act and Rules which, subject to the reservations we have set out, in our view constitute a good framework for such inquiries. Ministers should be ready to make better use of these powers, and should set up inquiries under the Inquiries Act unless there are overriding reasons of security or sensitivity for doing otherwise.**

⁴⁴³ Julie Bailey, Q 152.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

In this chapter we summarise our conclusions and recommendations. The following eleven recommendations are for amendment of the Inquiries Act 2005, and so will require primary legislation.

Section of the Act	Rec.	Substance
4(3)	6	Consent of chairman to appointment of panel member
5(4)	9	Consent of chairman to terms of reference
6(2)	4 & 10	Separate statements for appointment of chairman and for terms of reference, once they are agreed by the chairman
10(1)	5	Consent of senior judiciary to appointment of serving judge
11(3)	8	Consent of chairman to appointment of assessors
12	21 & 22	Termination of appointment of chairman or panel members
18(3) & (4), 20(6)	29	Exemption of inquiry records from disclosure under the Freedom of Information Act 2000
19	19	Minister's power to issue restriction notices abrogated
25(4)	20	Power to withhold material from publication in report

Recommendations 25–28 are for amendment of the Inquiry Rules 2006, and can be implemented by Rules made under section 41 of the Act.

We encourage the House's Liaison Committee, in following up our recommendations a year after this report is published,⁴⁴⁴ to pay particular attention to recommendations 12–16 on the setting up of a Central Inquiries Unit within Her Majesty's Courts and Tribunals Service.

When should there be a public inquiry?

1. We have concluded that there neither can nor should be fixed criteria regulating the setting up of inquiries. (paragraph 51)
2. Where deaths, injuries or other incidents have occurred which seemingly need not and would not have occurred if regulatory or investigatory bodies had properly been carrying out their duties, there will be public concern not

⁴⁴⁴ See paragraph 18.

just at what has happened but at the failure to prevent it happening. In such cases a public inquiry may well be the best and only way of alleviating public concern. (paragraph 57)

3. We believe that statutory bodies such as the IPCC, Ofsted, the Information Commissioner, the Parliamentary Commissioners for Administration and Health, the Commission for Local Administration, and the Children's Commissioner, can be in a position to recommend full public inquiries when they identify wider areas of concern. (paragraph 59)

What type of inquiry? Statutory or non-statutory?

4. **Recommendation 1:** We recommend that inquiries into issues of public concern should normally be held under the Act. This is essential where Article 2 of the ECHR is engaged. No inquiry should be set up without the power to compel the attendance of witnesses unless ministers are confident that all potential witnesses will attend. (paragraph 81)
5. We would not however remove the possibility of an inquiry being held otherwise than under the Act, for example where security issues are involved, or other sensitive issues which require evidence to be heard in secret. Ministers should give reasons for any decision to hold an inquiry otherwise than under the Act. (paragraph 82)

Inquests as an alternative

6. Where public concern extends significantly beyond a death itself to wider related issues, an inquiry may be preferable to an inquest. If such issues emerge in the course of an inquest, consideration should be given to suspending the inquest and appointing a senior judge as chairman of an inquiry under the Inquiries Act 2005. (paragraph 92)

Who should decide?

7. We believe it is right that the power to establish a public inquiry should be held by a minister of the relevant department. The fact that ministers are accountable to Parliament, and that Parliament can always call for an inquiry to be set up, allows sufficient Parliamentary involvement in the process. (paragraph 106)

Giving reasons for not ordering inquiries

8. We believe ministers must retain a general discretion as to when to give reasons for their decisions; at the same time, events involving what the Cabinet Secretary called "failure in regulation" are uniquely important and reasons should always be given for a decision not to initiate an inquiry. (paragraph 110)
9. **Recommendation 2:** We recommend that ministers should give reasons to Parliament for a decision not to hold an inquiry particularly in the following circumstances: when invited to hold an inquiry by IPCC, Ofsted, the Information Commissioner, Parliamentary Commissioners for Administration and Health, the Commission for Local Administration, or a body of similar standing; and when an investigation by a regulatory body has been widely criticised. (paragraph 111)

10. **Recommendation 3:** A decision on a request by a coroner for an inquest to be converted into an inquiry should always be the subject of reasons. (paragraph 112)

Setting up an inquiry: the formalities

Constitution of the inquiry

11. **Recommendation 4:** We believe the fact of the inquiry and the name of the chairman should not necessarily be the subject of the same statement, and we recommend that section 6(2) should be amended accordingly. (paragraph 114)
12. We acknowledge that there are often significant advantages in the appointment of a serving or retired judge to chair an inquiry, but we believe that ministers have in the past been too ready to assume that a serving judge would be the most suitable chairman. (paragraph 121)
13. **Recommendation 5:** We recommend that section 10(1) of the Act should be amended so that a minister who wishes to appoint a serving judge as a chairman or panel member of an inquiry should first obtain the consent of the appropriate senior member of the judiciary. (paragraph 126)
14. **Recommendation 6:** Section 4(3) of the Act, which requires the minister to consult the chairman before appointing a further member to the inquiry panel, should be amended to provide that the minister can appoint a member to the inquiry panel only with the consent of the chairman. (paragraph 130)
15. **Recommendation 7:** We recommend that an inquiry panel should consist of a single member unless there are strong arguments to the contrary. (paragraph 136)
16. **Recommendation 8:** We recommend that section 11(3) should be amended so that the minister can appoint assessors only with the consent of the chairman. (paragraph 137)
17. Where the chairman requires expert assistance during the course of the inquiry hearings, consideration should be given to receiving this openly from expert witnesses rather than privately from assessors. However the chairman should continue to be able to rely on the confidential advice of assessors when drafting the report. (paragraph 139)
18. We doubt whether it would usually be right for the same person to give expert evidence openly to the inquiry and subsequently to advise the chairman privately on the same issues. (paragraph 140)

Terms of reference

19. **Recommendation 9:** We recommend that section 5(4) should be amended so that the consent of the chairman is needed before the minister can set or amend the terms of reference. (paragraph 145)
20. **Recommendation 10:** We recommend that section 6(2) should be further amended to allow a minister, in announcing an inquiry, to set out only draft terms of reference, and that the final terms of reference should, when agreed with the chairman, be the subject of a further statement. This, we anticipate, would normally be a written statement, as permitted by section 6(4). (paragraph 146)

21. **Recommendation 11:** We recommend that interested parties, particularly victims and victims' families, should be given an opportunity to make representations about the final terms of reference. (paragraph 151)

Setting up an inquiry: the practicalities

Cabinet Office Guidance

22. We believe that the current Cabinet Office Guidance on inquiries is wholly inadequate. In particular, there is no point in requiring secretaries of inquiries to provide lessons learned papers unless they, or any unit replacing them, ensure that such papers are produced, and use them to provide detailed guidance for secretaries of subsequent inquiries. (paragraph 164)

A Central Inquiries Unit

23. **Recommendation 12:** We recommend that the Government should make resources available to create a unit within Her Majesty's Courts and Tribunals Service which will 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 chairman and secretary of the inquiry. (paragraph 174)
24. **Recommendation 13:** The inquiries unit should ensure that on the conclusion of an inquiry the secretary delivers a full Lessons Learned paper from which best practice can be distilled and continuously updated. (paragraph 175)
25. **Recommendation 14:** The inquiries unit should review and amend the Cabinet Office Guidance in the light of our recommendations and the experiences of inquiry secretaries, and should publish it on the Ministry of Justice website. (paragraph 176)
26. **Recommendation 15:** The inquiries unit should also retain the contact details of previous secretaries and solicitors, and be prepared to put them in touch with staff of new inquiries. (paragraph 177)
27. **Recommendation 16:** The inquiries unit which we recommend should collate Procedures Protocols and other protocols issued by inquiries and make them available to subsequent inquiries. (paragraph 180)

Cost of inquiries

28. **Recommendation 17:** We recommend that the chairman, solicitor and secretary of an inquiry should consult the central inquiries unit and the Treasury Solicitor to ensure that counsel are appointed on terms which give the best value for money. (paragraph 187)

Initial planning

29. **Recommendation 18:** We recommend that a scoping exercise should be carried out by the staff involved in planning a new inquiry to examine all the key issues, in particular to address matters of timescale and cost. (paragraph 189)

30. They must have available from the outset the material derived from lessons learned at previous inquiries. While their first priority must be the effectiveness of their own inquiry, comparison with other inquiries should avoid the excessive expenditure which has bedevilled many of them. (paragraph 190)

Independence of inquiries

31. **Recommendation 19:** We recommend that the power of the minister to issue a restriction notice under section 19, restricting public access to an inquiry, should be abrogated. The chairman's power to issue a restriction order is sufficient. (paragraph 206)
32. **Recommendation 20:** We recommend that, whoever is responsible for publication of the inquiry report, section 25(4) should be amended so that, save in matters of national security, only the chairman has the power to withhold material from publication. (paragraph 207)
33. **Recommendation 21:** We recommend that where the minister wishes to terminate the appointment of a panel member other than the chairman, section 12(6) should be amended to require the chairman's consent. (paragraph 209)
34. **Recommendation 22:** We recommend that section 12 should be amended to provide that where the minister wishes to terminate the appointment of the chairman of an inquiry, he should be required to lay before Parliament a notice of his intention, with the reasons. (paragraph 210)

Inquiry Procedure

Inquisitorial or adversarial

35. We agree with our witnesses that an inquisitorial procedure for inquiries is greatly to be preferred to an adversarial procedure, and we conclude that the Act provides the right procedural framework for both the chairman and counsel to the inquiry to conduct an inquiry efficiently, effectively and above all fairly. (paragraph 215)

Counsel to the inquiry

36. We agree with the majority of our witnesses that for an inquiry of any length the appointment of counsel to the inquiry is essential. (paragraph 221)
37. **Recommendation 23:** A provision should be added to the Act stating that the chairman, and only the chairman, may appoint one or more barristers or advocates in private practice to act as counsel to the inquiry. (paragraph 224)

Core participants and witnesses

38. **Recommendation 24:** The fourth and sixth Salmon principles, which allow a person the opportunity of being examined by his own solicitor or counsel, and of testing by cross-examination any evidence which may affect him, are over-prescriptive and have the effect of imposing an adversarial procedure on proceedings which should be inquisitorial. They should no longer be followed. Reliance should be placed on the chairman who has a duty to ensure that the inquiry is conducted fairly. (paragraph 235)

39. We believe that it is right to leave to chairmen of inquiries the discretion of whether the cost of legal representation of core participants and witnesses should be met out of public funds. (paragraph 237)
40. Inquiry chairmen and counsel to the inquiry should as a matter of course meet victims and families as early as possible in the inquiry process. There should be a dedicated team or named members of staff responsible for liaising with witnesses. (paragraph 241)
41. We urge the inquiry secretariat to ensure that witnesses and core participants are handled sensitively, so that victims and families do not come into contact with those they believe to be responsible for any harm. (paragraph 242)

Amendments to the Inquiry Rules 2006

42. **Recommendation 25:** We recommend that rules 13–15 of the Inquiry Rules 2006 should be revoked and a rule to the following effect substituted: “If the chairman 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.” (paragraph 251)
43. **Recommendation 26:** We recommend that rules 2 and 18 be amended to give the inquiry secretariat some discretion as to which documents created by the inquiry should be part of the permanently archived inquiry record. (paragraph 254)
44. **Recommendation 27:** We recommend that rule 9 should be amended to allow the inquiry’s own legal team to take written statements from witnesses. (paragraph 255)
45. **Recommendation 28:** Rules 20 to 34 are over-prescriptive; we recommend that the procedure for awarding costs should be simplified. (paragraph 256)

Freedom of Information Act 2000

46. **Recommendation 29:** We recommend that section 18(3) and (4) of the Inquiries Act 2005 be repealed, and section 20(6) amended, so that after the inquiry is concluded the inquiry record continues to have the same exemption from disclosure under the Freedom of Information Act as previously, and disclosure restrictions continue to apply. (paragraph 261)

Use of evidence in subsequent proceedings

47. We believe it is right that evidence given to an inquiry, and findings based on it, can be used as evidence in subsequent proceedings. (paragraph 265)

Implementation of recommendations

48. We consider that a serving judge who has chaired an inquiry not concerned with the practice or procedure of the courts should play no further part after submitting his report, leaving this to ministers, others to whom the recommendations are addressed, and Parliament. (paragraph 270)
49. We agree with the majority of our witnesses that inquiry chairmen and panels are not responsible for the implementation of their recommendations when the inquiry has reported. (paragraph 278)

50. **Recommendation 30:** In the case of many inquiries, publication of the formal Government response is accompanied by a statement to both Houses. We recommend that this should be the invariable practice. If a second, more detailed, written response is produced, as is often the case, it should also be published. It should say exactly which recommendations are accepted. (paragraph 287)
51. **Recommendation 31:** If the inquiry specifies that particular recommendations are for implementation by particular public bodies, those bodies should have a statutory duty to say within a specified time whether they accept the recommendations, and if so, what plans they have for implementation. (paragraph 288)
52. **Recommendation 32:** We recommend that in all cases, the response should be published not more than three months after receipt of an inquiry report. Reasons should be given for not accepting recommendations. For those which are accepted, details of when and how they will be implemented are essential. The report should include an implementation plan, and a commitment to issue further reports to Parliament at 12-monthly intervals. (paragraph 289)
53. We believe Commons Departmental Select Committees are best placed to monitor the implementation of inquiry recommendations. (paragraph 290)

Overview of the Act

54. Our recommendations, in particular those on the setting up and administration of inquiries, and on a more flexible procedure, will make it easier to control both the length and the cost of inquiries under the Act. In particular, revocation of rules 13–15 should alone cut months off the length of inquiries, and reduce their cost proportionately. (paragraph 297)
55. **Recommendation 33:** Ministers have at their disposal on the statute book an Act and Rules which, subject to the reservations we have set out, in our view constitute a good framework for such inquiries. Ministers should be ready to make better use of these powers, and should set up inquiries under the Inquiries Act unless there are overriding reasons of security or sensitivity for doing otherwise. (paragraph 300)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Baroness Buscombe
 Baroness Gould of Potternewton
 Baroness Hamwee
 Lord King of Bridgwater
 Lord Morris of Aberavon
 Lord Richard
 Lord Shutt of Greetland (Chairman)
 Lord Soley
 Baroness Stern
 Lord Trefgarne
 Lord Trimble
 Lord Woolf

Declarations of Interest

Baroness Buscombe
As former Chairman of the Press Complaints Commission gave written and oral evidence to the Leveson Inquiry

Baroness Gould of Potternewton
None

Baroness Hamwee
None

Lord King of Bridgwater
None

Lord Morris of Aberavon
None

Lord Richard
None

Lord Shutt of Greetland (Chairman)
*Former trustee of the Joseph Rowntree Charitable Trust
 Former Chairman and Director of the Joseph Rowntree Reform Trust Ltd.*

Lord Soley
Submitted written evidence to the Leveson Inquiry

Baroness Stern
Trustee of the Civil Liberties Trust. Her husband, Professor Andrew Coyle CMG, was a member of the Billy Wright Inquiry

Lord Trefgarne
Gave oral and written evidence to Lord Justice Scott's inquiry into Exports of Defence Equipment to Iraq

Lord Trimble
International Observer attached to the Israeli Public Commission to examine the maritime incident of 31 May 2010

Lord Woolf

Chaired the inquiry into Prison Disturbances (Strangeways riots) (1990)

Chair of an inquiry commissioned by BAE Systems into the company's ethical business conduct

Joint Chair of an Inquiry into Public Inquiries sponsored by CEDR

A full list of Members' interests can be found in the Register of Lords Interests:
<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at <http://www.parliament.uk/inquiries-act-2005> and available for inspection at the Parliamentary Archives (020 7219 5314)

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with * gave both oral evidence and written evidence. Those marked with ** gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

* QQ 1–21	Judith Bernstein, Head of Coroners, Burials, Cremation and Inquiries Policy Team, Law and Access to Justice, Ministry of Justice
*	Richard Mason, Deputy Director, Ministry of Justice
** QQ 22–48	Rt Hon Sir Stephen Sedley
**	Professor Adam Tomkins, Professor of Public Law, Glasgow University
** QQ 49–79	Dr Karl Mackie CBE, Chief Executive, Centre for Effective Dispute Resolution (CEDR)
**	Rt Hon Peter Riddell CBE
** QQ 80–101	Rt Hon Sir Brian Leveson
** QQ 102–128	Jason Beer QC
**	Sir Robert Jay
** QQ 129–151	Alun Evans
**	Lee Hughes CBE
** QQ 152–189	Julie Bailey CBE
**	Christopher Jefferies
** QQ 190–201	Rt Hon Lord Cullen of Whitekirk KT
**	Rt Hon Lord Gill, Lord President of the Court of Session
** QQ 202–229	Lord Bichard KCB
*	Robert Francis QC
**	Professor Sir Ian Kennedy
** QQ 230–247	Susan Bryant, Director, Rights Watch UK
*	Rachel Robinson, Policy Officer, Liberty
*	Helen Shaw, Co-Director, INQUEST
* QQ 248–271	Michael Collins
*	Judi Kemish
*	Ashley Underwood QC

- * QQ 272–282 Jonathan Duke-Evans, Head of Claims, Judicial Reviews and Public Inquiries, Ministry of Defence
- ** QQ 283–294 Sir Louis Blom-Cooper QC
- ** QQ 295–316 Sir David Bell
- ** Dr Judith Smith
- * QQ 317–345 Shailesh Vara MP, Parliamentary Under-Secretary of State, Ministry of Justice
- * Judith Bernstein, Head of Coroners, Burials, Cremation and Inquiries Policy Team, Law and Access to Justice, Ministry of Justice
- * Richard Mason, Deputy Director, Ministry of Justice

Alphabetical list of all witnesses

- ** Julie Bailey CBE (QQ 152–189)
Rt Hon Lord Justice Beatson
- ** Jason Beer QC (QQ 102–128)
- ** Sir David Bell (QQ 295–316)
- ** Lord Richard KCB (QQ 202–229)
- ** Sir Louis Blom-Cooper QC (QQ 283–294)
Rt Hon Sir John Chilcot GCB
- * Michael Collins (QQ 248–271)
Committee on the Administration of Justice (Northern Ireland)
- ** Rt Hon Lord Cullen of Whitekirk KT (QQ 190–201)
Disaster Action
- ** Alun Evans (QQ 129–151)
Eversheds
- * Robert Francis QC (QQ 202–229)
- ** Rt Hon Lord Gill, Lord President of the Court of Session (QQ 190–201)
Herbert Smith Freehills
Sir Jeremy Heywood, KCB, CVO, Secretary of the Cabinet
- ** Lee Hughes (QQ 129–151)
- ** INQUEST (QQ 230–247)
- ** Sir Robert Jay (QQ 102–128)
- ** Christopher Jefferies (QQ 152–189)
Stephen Jones
- * Judi Kemish (QQ 248–271)
- ** Professor Sir Ian Kennedy (QQ 202–229)

- ** Rt Hon Sir Brian Leveson (QQ 80–101)
- * Liberty (QQ 230–247)
- ** Dr Karl Mackie CBE (QQ 49–79)
- * Ministry of Defence (QQ 272–282)
- * Ministry of Justice (QQ 1–21)
Rt Hon Dame Janet Paraskeva DBE
- ** Rt Hon Peter Riddell CBE (QQ 49–79)
- * Rights Watch UK (QQ 230–247)
- ** Rt Hon Sir Stephen Sedley (QQ 22–48)
Damien Paul Shannon
- ** Dr Judith Smith (QQ 295–316)
Rt Hon Lord Thomas of Cwmgiedd, Lord Chief Justice of England and Wales
- ** Professor Adam Tomkins, Professor of Public Law, Glasgow University (QQ 22–48)
- * Ashley Underwood QC (QQ 248–271)
- * Shailesh Vara MP, Parliamentary Under-Secretary of State, Ministry of Justice (QQ 317–345)

APPENDIX 3: CALL FOR EVIDENCE

The Select Committee on the Inquiries Act 2005 was set up on 16 May 2013, primarily with the task of conducting post-legislative scrutiny of that Act. Its remit however goes wider: it is “to consider the law and practice relating to inquiries into matters of public concern, in particular the Inquiries Act 2005”. The Committee will therefore be looking at the Act, to see whether it is satisfactorily governing the matters which Parliament intended it to, but will also be looking to see whether the law and practice relating to inquiries generally is satisfactory, and whether the law, practice and procedure may need amending. The Committee has to report by 28 February 2014.

This is a public call for written evidence to be submitted to the Committee. The deadline is 31 July 2013.

An inquiry can be set up under the Inquiries Act 2005 only if it appears to a minister that “(a) particular events have caused, or are capable of causing, public concern, or (b) there is public concern that particular events may have occurred.” Thus, for example, inquiries into major new infrastructure projects, though they may cause great public concern, are outside the remit of the Act, and outside the remit of the Committee’s inquiry.

The objects of the Act were stated to be “to make inquiries swifter, more effective at finding facts and making practical recommendations, and less costly whilst still meeting the need to satisfy the public expectation for a thorough and wide ranging investigation. It also aimed to restore public confidence in the inquiry process particularly given the concerns and controversies generated by the conduct of inquiries such as the Bloody Sunday Inquiry and other earlier pre-2005 Act inquiries.”

The Committee would welcome general views on whether the Act has achieved these objects. It would in particular welcome views on the following issues:

- (1) What is the function of public inquiries? What principles should underlie their use?
- (2) To what extent does the Inquiries Act 2005 reflect those principles?
- (3) Does the Act achieve the right balance between the respective roles of ministers, Parliament, the courts and inquiry panels themselves in making decisions about inquiries?
- (4) In particular, is it right that ministers should have the power to set up, or not to set up, an inquiry, to set its terms of reference, appoint the chairman and members, suspend or terminate the inquiry, and restrict the publication of documents?
- (5) Should other persons have any of these powers in addition to or instead of ministers?
- (6) Are inquiries generally set up when they are needed, and not when they are not? Are there examples of cases where an inquiry would have been useful, but ministers declined to set one up? Are there cases where an inquiry has unnecessarily been set up to deflect or defer criticism?
- (7) Is there a danger that the role of ministers will prevent the setting up of inquiries into their conduct, or restrict the roles of inquiries looking into the conduct of ministers?

- (8) Is the degree of involvement of the judiciary in inquiries appropriate?
- (9) Do lawyers acting for the inquiry or representing those complaining or complained against make an appropriate contribution? Is an inquisitorial or an adversarial process more appropriate for argument before inquiries? Is it easy enough for people to represent themselves?
- (10) Some inquiries set up before the Act was passed were both lengthy and inordinately expensive. An aim of the Act was to make inquiries briefer and less costly. Has it achieved this? If not, what could be done to improve this?
- (11) Inquiries are often asked to report by a particular date, and often fail to do so. Should there be a power to curtail an inquiry's proceedings? If so, exercisable by whom?
- (12) Is it right that ministers can and do continue to set up inquiries otherwise than under the Act? Is there any justification for this?
- (13) Is there a role for independent reviews to be established otherwise than under the Act (like the Hillsborough Independent Panel)?
- (14) Has the Act succeeded in securing confidence in inquiries from those closely involved—the core participants—and from the wider public generally? If not, what could be done to improve this?
- (15) Where an inquiry reveals or confirms wrongdoing, should evidence given to the inquiry be admissible in civil or criminal proceedings, and if so, with what safeguards?
- (16) Are the recommendations made by inquiries adequately implemented? Should there be a procedure for an inquiry to reconvene to consider this?
- (17) The Inquiry Rules 2006 have been criticised, not least by the Ministry of Justice, as being too prescriptive and not allowing an inquiry panel sufficient freedom to regulate their own proceedings. Do you agree with this view? How might the Rules be improved?
- (18) At present, certain inquiry records become subject to the Freedom of Information Act 2000 after the inquiry has ended. Should an inquiry's record be kept confidential after the inquiry has concluded? How else might the interface between the Inquiries Act 2005 and the Freedom of Information Act 2000 need to be changed?

APPENDIX 4: TABLE OF INQUIRIES ESTABLISHED UNDER THE INQUIRIES ACT 2005 OR CONVERTED INTO INQUIRIES UNDER THE ACT

Inquiry	Chair	Duration	Cost	Purpose
The Billy Wright Inquiry, Northern Ireland Office ⁴⁴⁵	Lord MacLean, retired Scottish Appeal Judge	November 2004 to October 2010	£29.8m	To inquire into the circumstances surrounding the death of Billy Wright who was murdered at the Maze prison in Northern Ireland on 27 December 1997. It found no evidence of collusive acts or collusive conduct in the murder of Billy Wright but identified a number of failings which facilitated his death.
The Robert Hamill Inquiry ⁴⁴⁶ , Northern Ireland Office	Sir Edwin Jowitt, retired High Court Judge	November 2004 to February 2011	£33m	To inquire into the circumstances surrounding the death of Robert Hamill, who died from injuries he sustained during an affray in Portadown, Co Armagh in 1997. In December 2010 criminal proceedings were commenced against three individuals on charges of perverting the course of justice in relation to Robert Hamill's death. The report will not be published until proceedings against 3 individuals on charges of perverting the course of justice in relation to Hamill's death have been concluded.
The <i>E. coli</i> Inquiry ⁴⁴⁷ , National Assembly of Wales	Prof Hugh Pennington, Professor of Bacteriology at Aberdeen University	March 2006 to March 2009	£2.35m	To investigate circumstances that led to the outbreak of <i>E. coli</i> 0175 in South Wales. It broadly found that there were systematic failures in food safety management at the time of the outbreak, with the exception of the outbreak control and clinical care systems which worked well, and that the requirements for food hygiene should have been sufficient to prevent the outbreak.

⁴⁴⁵ Report available at: http://cain.ulst.ac.uk/issues/collusion/docs/wright_140910.pdf.

⁴⁴⁶ Website available at: <http://www.roberthamillinquiry.org/>.

⁴⁴⁷ Report available at: <http://wales.gov.uk/ecoliinquiry/?lang=en>.

Inquiry	Chair	Duration	Cost	Purpose
The ICL Inquiry, ⁴⁴⁸ Scottish and UK Governments	Lord Gill, Lord Justice Clerk (now Lord President of the Court of Session)	February 2008 to July 2009	£1.91m	To carry out an investigation into an explosion in May 2004 at the ICL factory in Glasgow which killed 9 people and seriously injured a further 45. It broadly found that there were failures in appreciation of the dangers posed by Liquefied Petroleum Gas (LPG) and the condition of the LPG supply at the factory over many years.
The Fingerprint Inquiry, ⁴⁴⁹ Scottish Government	Sir Anthony Campbell, retired NI Appeal Court judge	March 2008 to December 2011	~£4.75m estimated (media pack-no date)	To inquire into the steps taken to identify and verify the fingerprints associated with the case of <i>HM Advocate v. McKie</i> in 1999, a perjury case which had given rise to questions about the correctness or otherwise of the identification of fingerprints. It broadly found that there were weaknesses in the methodology of fingerprint comparison. Fingerprint examiners are accustomed to regard their conclusions as a matter of certainty. There is no reason to suggest that fingerprint comparison is an inherently unreliable form of evidence but practitioners should give due consideration to its limits.
The Penrose Inquiry, ⁴⁵⁰ Scottish Government	Lord Penrose, retired Court of Session Judge	April 2008 to present (final report expected in March 2014)	£8.8m at 31/03/12 (latest figures)	To look into Hepatitis C/HIV acquired infection from blood and blood products administered by the NHS in Scotland.

⁴⁴⁸ Report available at: http://www.theinquiry.org/Documents/Documents/HC8381CL_Inquiry_Report.pdf.

⁴⁴⁹ Report available at: <http://www.thefingerprintinquiry.scotland.org.uk/inquiry/3127.html>.

⁴⁵⁰ Website: <http://www.penroseinquiry.org.uk/>.

Inquiry	Chair	Duration	Cost	Purpose
The Baha Mousa Inquiry, ⁴⁵¹ Ministry of Defence	Sir William Gage, serving Appeal Court judge when appointed; since retired	August 2008 to September 2011	£13.0m at 31/01/12 (latest figures, exc VAT)	To investigate the circumstances surrounding the death of Baha Mousa, an Iraqi civilian who died in Iraq in 2003 and the treatment of others detained with him by the British armed forces. It found that Baha Mousa spent most of the 36 hours after his arrest 'hooded' and forced to adopt 'stress positions'; both are banned interrogation techniques. He was subjected to violent abuse and assaults. A post-mortem examination found that Baha Mousa had sustained 93 external injuries. Nine other Iraqis were also detained; all sustained injuries, physical and/or mental.
Inquiry into the outbreak of <i>C. difficile</i> in Northern Health and Social Care Trust Hospitals, ⁴⁵² NI Department for Health, Social Services and Public Safety	Dame Deirdre Hine, former Chief Medical Officer for Wales	October 2008 to March 2011	£1.8m	To investigate the outbreak of <i>Clostridium difficile</i> infection in Northern Health and Social Care Trust Hospital in March 2009. It found that <i>C. difficile</i> infection was the underlying or a contributory cause in 31 of the deaths in the Trust during the outbreak. A total of 124 clinical records were examined.
The Bernard (Sonny) Lodge Inquiry, ⁴⁵³ Ministry of Justice	Barbara Stow, former Assistant Prisons and Probation Ombudsman	February 2009 to December 2009 (ad hoc investigation began in September 2008)	Not yet known as costs for one party remain outstanding pending settlement negotiations	An ad hoc investigation into the death of Bernard (Sonny) Lodge at HMP Manchester in August 1998 converted into a 2005 Act inquiry to compel certain witnesses. It broadly found that the clinical care for Mr Lodge's physical health was appropriate and consistent with practice at the time and the clinical record-keeping was generally good but there were systematic failures in the psychiatric reassessment, counselling and support provided.

⁴⁵¹ Report available at: <http://www.bahamousainquiry.org/report/index.htm>.

⁴⁵² Report available at: <http://www.cdifinquiry.org/index/inquiry-report.htm>.

⁴⁵³ Report available at: <http://iapdeathsincustody.independent.gov.uk/news/post-5/>.

Inquiry	Chair	Duration	Cost	Purpose
The Vale of Leven Hospital Inquiry, ⁴⁵⁴ Scottish Government	Lord MacLean, retired Scottish Appeal Judge	October 2009 to present (final report expected March 2014)	£5.7m at 25/04/12, (not yet published)	To investigate the circumstances surrounding the deaths and illness which occurred at the Vale of Leven Hospital in Dunbartonshire between 1 January 2007 and 1 June 2008 attributed to <i>C. difficile</i> infection at the hospital.
The Al Sweady Inquiry, ⁴⁵⁵ Ministry of Defence	Sir Thyne Forbes, retired High Court Judge	November 2009 to present (target end date in 2014)	£21.3m at 31/12/13 (exc VAT)	To investigate allegations that Iraqi nationals were detained after a fire-fight with British soldiers in Iraq in 2004 during which some of those detained were unlawfully killed at a British camp and others were mistreated both at that camp and later at a detention facility.
The Azelle Rodney Inquiry, ⁴⁵⁶ Ministry of Justice	Sir Christopher Holland retired High Court Judge	June 2010 to July 2013	c. £2.5m at 30/06/13	To investigate the death of Azelle Rodney who was shot by a police marksman in North London on 30 April 2005. (An inquest in the death could not proceed because of sensitive material which neither coroner nor inquest jury could see.) It found that Azelle Rodney died from bullet wounds to his head and chest as a result of being shot by a Metropolitan Police Officer. 'Operation Tayport' was not planned and controlled so as to minimise, to the greatest extent possible, recourse to lethal force; and the inquiry found that the force used by the Police Officer was not strictly proportionate to the aim of protecting persons against unlawful violence. The Report was also critical of what happened after Azelle Rodney was killed.

⁴⁵⁴ Report available at: <http://www.valeoflevenhospitalinquiry.org/background.aspx>.

⁴⁵⁵ Report available at: <http://www.alsweadyinquiry.org/>.

⁴⁵⁶ Report available at: <http://azellerodneyinquiry.independent.gov.uk/>.

Inquiry	Chair	Duration	Cost	Purpose
Inquiry into the role of the commissioning, supervisory and regulatory bodies in monitoring of Mid-Staffordshire NHS Foundation Trust, ⁴⁵⁷ Department of Health	Robert Francis QC	June 2010 to February 2013	£13.7m (inc VAT)	To investigate failings in patient care at Mid-Staffordshire NHS Foundation Trust between January 2005 and March 2009. It found there had been serious systemic issues at the Trust requiring a degree of urgent and effective attention which they did not receive, despite many instances where those charged with managing, leading, overseeing or regulating the Trust's provision of services had been made aware of causes for concern.
Inquiry into the Culture, Practices and Ethics of the Press, ⁴⁵⁸ DCMS and Home Office	Lord Justice Leveson, Court of Appeal Judge (now President of the Queen's Bench Division)	July 2011 to November 2012	£5.4m	To inquire into the culture, practices and ethics of the press and to look into the specific claims about phone hacking at the <i>News of the World</i> , the initial police inquiry and allegations of illicit payments to police by the press. The report made 92 recommendations including the establishment of an independent self-regulatory regime, amendments to the Data Protection Act 1998 and a review of criminal and civil law.

⁴⁵⁷ Report available at: <http://www.midstaffpublicinquiry.com/report>.

⁴⁵⁸ Report available at: <http://www.levesoninquiry.org.uk/about/the-report/>.

APPENDIX 5: TABLE OF INQUIRIES SINCE 1990 UNDER OTHER LEGISLATION AND NON-STATUTORY INQUIRIES

Inquiry	Chair	Legislation	Duration	Cost	Purpose
Inquiry into the supervision of the Bank of Credit and Commerce International, HM Treasury	Lord Bingham	Non-statutory	July 1991–October 1992	£600k	To enquire into the supervision of BCCI under the Banking Acts; [and] to consider whether the action taken by all the UK authorities was appropriate and timely.
Investigation into the flotation of Mirror Group Newspapers plc, ⁴⁵⁹ Department of Trade and Industry	Two inspectors, (Sir Roger Thomas, Raymond Turner)	Companies Act 1985 s.432(2) and s.442	June 1992–March 2001	£8.6m	To investigate the affairs of Mirror Group Newspapers (and to have particular regard to its flotation on the London Stock Market) and also to investigate the membership of the company for the purpose of determining those persons interested in its success or failure.
Inquiry into the Exports of Defence Equipment and Dual-use Goods into Iraq and Related Prosecutions, ⁴⁶⁰ Department of Trade and Industry	Lord Justice Scott, now Lord Scott of Foscote	Non-statutory	November 1992–February 1996	Not available	To investigate reports of arms sales from the UK to Iraq in 1980s.
The Allitt Inquiry, Department of Health	Sir Cecil Clothier	NHS Act 1977, s.2	May 1993–February 1994	Not available	The circumstances surrounding the murder by Beverly Allitt of four children and the injuring of nine others in the children's ward of Grantham and Kesteven general hospital in 1991.
Shootings at Dunblane Primary School, ⁴⁶¹ Scottish Office	Lord Cullen of Whitekirk	Tribunals of Inquiry (Evidence) Act 1921	March 1996–October 1996	Not available	The circumstances leading up to and surrounding the events at Dunblane Primary School on Wednesday 13 March 1996, which resulted in the deaths of 18 people.

⁴⁵⁹ Report available at: <http://publicinquiries.org/inquiries/2000-Present/investigation-into-the-flotation-of-mirror-group-newspapers-plc-1992>.

⁴⁶⁰ *Report of the Inquiry into the Export of Defence Equipment and Dual-use Goods to Iraq and Related Prosecutions*, HC 115, The Stationery Office, 1996.

⁴⁶¹ Report available at: <http://www.archive.official-documents.co.uk/document/scottish/dunblane/dunblane.htm>.

Inquiry	Chair	Legislation	Duration	Cost	Purpose
North Wales Child Abuse Inquiry, ⁴⁶² Welsh Office	Sir Ronald Waterhouse	Tribunals of Inquiry (Evidence) Act 1921	June 1996– February 2000	£13m (est)	The physical and sexual abuse of children in care homes in the counties of Clwyd and Gwynedd.
Ashworth Special Hospital Inquiry, Department of Health	His Honour Peter Fallon QC	NHS Act 1977, s.84	February 1997– January 1999	£7.5m	To investigate the functioning of the Personality Disorder Unit at Ashworth Hospital following allegations about misuse of drugs and alcohol, financial irregularities, possible paedophile activity and the availability of pornographic material within the Personality Disorder Unit.
Stephen Lawrence Inquiry, ⁴⁶³ Home Office	Sir William MacPherson	Police Act 1996, s.49	July 1997– February 1999	(Costs published: National Archives ref NT 3/24)	Matters arising from the death of Stephen Lawrence on 22 April 1993 to date, in order particularly to identify the lessons to be learned for the investigation and prosecution of racially motivated crimes.
BSE Inquiry, ⁴⁶⁴ Ministry of Agriculture, Fisheries and Food	Lord Phillips of Worth Matravers	Non-statutory	January 1998– October 2000	£26m	To establish and review the history of the emergence and identification of BSE and new variant CJD in the United Kingdom, and of the action taken in response to it up to 20 March 1996.
Bloody Sunday Inquiry, ⁴⁶⁵ Northern Ireland Office	Lord Saville of Newdigate	Tribunals of Inquiry (Evidence) Act 1921	January 1998– June 2010	£191.5m	The events on Sunday 30 January 1972 which led to loss of life in connection with the procession in Londonderry on that day, taking account of any new information relevant to events on that day.

⁴⁶² *Lost in Care – Report of Inquiry into the Abuse of Children in Care in the Former County Council Areas of Gwynedd and Clwyd since 1974*, HC 201, The Stationery Office, 2000.

⁴⁶³ Website: <http://www.archive.official-documents.co.uk/document/cm42/4262/4262.htm>.

⁴⁶⁴ Website: <http://webarchive.nationalarchives.gov.uk/20060715141954/bseinquiry.gov.uk>.

⁴⁶⁵ Website: <http://webarchive.nationalarchives.gov.uk/20101103103930/http://bloody-sunday-inquiry.org/>.

Inquiry	Chair	Legislation	Duration	Cost	Purpose
Southall Rail Accident Inquiry, ⁴⁶⁶ Health and Safety Commission	Professor John Uff QC	Health and Safety at Work etc Act 1974, s.14(2)(b)	February 1998–February 2000	£2.25m	Why the accident happened, and in particular to ascertain the cause or causes, to identify any lessons which have relevance for those with responsibilities for securing railway safety and to make recommendations. [The accident at Southall occurred on 19 September 1997 when a high speed train travelling from Swansea to Paddington collided with an empty freight train; seven people were killed and 147 people taken to hospital.]
Sierra Leone Arms Investigation, ⁴⁶⁷ Foreign and Commonwealth Office	Sir Thomas Legg and Sir Robin Ibbs	Non-statutory	May 1998–July 1998	Not available	To conduct an investigation in the light of recent allegations about Government involvement with the supply of arms to Sierra Leone by UK citizens or firms with a view to establishing what was known by government officials (including military personnel) and Ministers about plans to supply arms to Sierra Leone after 8 October 1997; whether any official encouragement or approval was given to such plans or such supply; and, if so, on what authority.
Bristol Royal Infirmary Inquiry <i>Department of Health</i>	Professor Sir Ian Kennedy	NHS Act 1977, s84	June 1998–July 2001	£14m (est)	The management of the care of children receiving complex cardiac surgical services at the Bristol Royal Infirmary between 1984 and 1995.
Thames Safety Inquiry (into the <i>Marchioness-Bowbell</i> disaster), Department for the Environment, Transport and the Regions	Lord Justice Clarke	Non-statutory	August 1999–January 2000	See <i>Marchioness Inquiry</i>	To review the responsibilities of Government Departments, the Port of London Authority and any other persons or bodies for promoting safety on the River Thames (the River) and advise on specific issues, including whether there is a case for a further investigation or inquiry into the circumstances surrounding the <i>Marchioness</i> disaster and its causes on 20th August 1989.

⁴⁶⁶ Report available at: http://www.railwaysarchive.co.uk/documents/HSE_Southall1997.pdf.

⁴⁶⁷ Website: www.official-documents.gov.uk/document/hc9798/hc101016/1016.pdf.

Inquiry	Chair	Legislation	Duration	Cost	Purpose
Royal Liverpool Children's Hospital Inquiry, Department of Health	Mr Michael Redfern QC	NHS Act 1977, s.2	February 2000–January 2001	£3.5m	To inquire into the circumstances leading to the removal, retention and disposal of human tissue, including organs and body parts, from children at the Royal Liverpool Children's NHS Trust (and its predecessor NHS organisations) who have undergone post mortem.
<i>MV Derbyshire</i> Inquiry, Department for the Environment, Transport and the Regions	Mr Justice Colman	Merchant Shipping Act 1995, s.269	April 2000–November 2000	£11m	Cause of the sinking of the <i>Derbyshire</i> in September 1980 without trace in the Pacific about 350 miles south east of Japan. All those on board perished—42 members of crew and two of their wives. She was the largest British ship ever lost at sea. (Cost includes underwater survey costs and implementation of recommendations.)
Ladbroke Grove Inquiry, Health and Safety Commission	Lord Cullen of Whitekirk	Health and Safety at Work etc Act 1974, s.14(2)(b)	May 2000–September 2001	£8.6m	To inquire into, and draw lessons from, the accident near Paddington Station on 5.10.99, taking account of the findings of the HSE's investigations into immediate causes. To consider general experience derived from relevant accidents on the railway since the Hidden Inquiry, with a view to drawing conclusions about: (a) factors which affect safety management (b) the appropriateness of the current regulatory regime.
Joint Inquiry into Train Protection Systems, ⁴⁶⁸ Health and Safety Commission	Lord Cullen of Whitekirk and Professor John Uff QC	Health and Safety at Work etc Act 1974, s.14(2)(b)	September 2000–October 2000	£1.2m	To consider the following: (i) Train Protection and Warning Systems; (ii) future application of Automatic Train Protection Systems (iii) SPAD prevention measures taking account in particular of the Southall accident on 19 September 1997; the rail accident at Ladbroke Grove Junction on 5 October 1999; the technical assessment for the Deputy Prime Minister of Rail Safety Systems by Sir David Davies.

⁴⁶⁸ Report available at: http://www.railwaysarchive.co.uk/documents/HSE_Lad_TPS001.pdf.

Inquiry	Chair	Legislation	Duration	Cost	Purpose
<i>Marchioness</i> Inquiry, Department for the Environment, Transport and the Regions	Lord Justice Clarke	Merchant Shipping Act 1995, s.268	October 2000–March 2001	£6.3m	(The £6.3m includes cost of inquiries into Victim Identification and Thames Safety Inquiries.)
Inquiry into issues arising out of the identification of the victims following major transport accidents, Department for the Environment, Transport and the Regions	Lord Justice Clarke	Non-statutory	November 2000–March 2001	See <i>Marchioness</i> Inquiry	
Shipman Inquiry, ⁴⁶⁹ Department of Health	Dame Janet Smith	Tribunals of Inquiry (Evidence) Act 1921	January 2001–January 2005	£21m	To enquire into the actions of the statutory bodies, authorities, other organisations and responsible individuals concerned in the procedures and investigations which followed the deaths of those of Harold Shipman's patients who died in unlawful or suspicious circumstances.
Foot and Mouth Disease 2001: Lessons to be Learned Inquiry, ⁴⁷⁰ DEFRA	Dr Iain Anderson	Non-statutory	April 2001–July 2002	Not available	To make recommendations for the way in which the Government should handle any future major animal disease outbreak, in the light of the lessons identified from the handling of the 2001 Foot and Mouth Disease outbreak in Great Britain.
Victoria Climbié Inquiry, ⁴⁷¹ Department of Health	Lord Laming	Children Act 1989, s.81, NHS Act 1977, s.84 Police Act 1996, s.49	May 2001–January 2003	£3.8m	To establish the circumstances leading to and surrounding the death of Victoria Climbié.

⁴⁶⁹ Report available at: <http://webarchive.nationalarchives.gov.uk/20090808154959/http://www.the-shipman-inquiry.org.uk/reports.asp>.

⁴⁷⁰ Website: <http://webarchive.nationalarchives.gov.uk/20100807034701/http://archive.cabinetoffice.gov.uk/fmd/>.

⁴⁷¹ Report available at: <http://www.nationalarchives.gov.uk/ero/details.aspx?seriesid=64446&deliverableUnitId=576&entrypoint=VC/2/2/P2/INDEX.HTM>.

Inquiry	Chair	Legislation	Duration	Cost	Purpose
Equitable Life Inquiry, HM Treasury	Lord Penrose	Non-statutory	August 2001– March 2004	£2.5m	To enquire into the circumstances leading to the current situation of the Equitable Life Assurance Society, taking account of relevant life market background; [and] to identify any lessons to be learnt for the conduct, administration and regulation of life assurance business.
“The Three Inquiries”: ⁴⁷² Ayling, Neale, Kerr/Haslam. Department of Health	Anna Pauffley QC, Suzan Matthews QC and Nigel Pleming QC	Originally s.2 of the NHS Act 1977. All three subsequently reconstituted under s.84 NHS Act 1977	April 2003– July 2004	£5m (est)	To assess the appropriateness and effectiveness of the procedures operated in the local health services (a) for enabling health service users to raise issues of legitimate concern relating to the conduct of health service employees and professionals; (b) for ensuring that such complaints are effectively considered; and (c) for ensuring that appropriate remedial action is taken in the particular case and generally.
Holyrood Inquiry, ⁴⁷³ Scottish Parliament	Lord Fraser of Carmyllie	Non-statutory	June 2003– September 2004	£717,000	To review the policy decisions in relation to the Holyrood Project taken prior to its transfer to the Scottish Parliamentary Corporate Body on 1st June 1999 and subsequently.
Investigation surrounding the death of Dr David Kelly, ⁴⁷⁴ Department for Constitutional Affairs	Lord Hutton	Non-statutory	July 2003– January 2004	£1.68m	Circumstances surrounding the death of Dr Kelly.

⁴⁷² Report available at: http://publicinquiries.org/inquiries/2000-Present/the_three_inquiries_-_ayling.

⁴⁷³ Report available at: <http://www.holyroodinquiry.org/>.

⁴⁷⁴ Report available at: <http://webarchive.nationalarchives.gov.uk/20090128221550/http://www.the-hutton-inquiry.org.uk/content/rulings.htm>

Inquiry	Chair	Legislation	Duration	Cost	Purpose
Soham murders, ⁴⁷⁵ Home Office	Sir Michael Bichard (now Lord Bichard)	Non-statutory	December 2003–June 2004	£1.9m	Urgently enquire into child protection procedures in Humberside Police and Cambridgeshire Constabulary in the light of the recent trial and conviction of Ian Huntley for the murder of Jessica Chapman and Holly Wells. In particular to assess the effectiveness of the relevant intelligence-based record keeping, the vetting practices in those forces since 1995 and information sharing with other agencies, and to report to the Home Secretary on matters of local and national relevance and make recommendations as appropriate.
<i>FV Gaul</i> Inquiry, Department for the Environment, Transport and the Regions	Mr Justice David Steel, (Wreck Commissioner)	Merchant Shipping Act 1995, s.269	January 2004–December 2004	£6m (est)	
Review of intelligence on weapons of mass destruction, Foreign and Commonwealth Office	Lord Butler of Brockwell	Non-statutory	February 2004–July 2004	Not available	To investigate the intelligence coverage available in respect of WMD programmes in countries of concern and on the global trade in WMD, taking into account what is now known about these programmes; as part of this work, to investigate the accuracy of intelligence on Iraq WMD up to March 2003, and to examine any discrepancies between the intelligence gathered, evaluated and used by the Government before the conflict, and between that intelligence and what has been discovered by the Iraq survey group since the end of the conflict; and to make recommendations to the Prime Minister for the future on the gathering, evaluation and use of intelligence on WMD, in the light of the difficulties of operating in countries of concern.

⁴⁷⁵ Report available at: <http://dera.ioc.ac.uk/6394/1/report.pdf>.

Inquiry	Chair	Legislation	Duration	Cost	Purpose
Zahid Mubarek Inquiry, ⁴⁷⁶ Home Office	Mr Justice Keith	Non-statutory	April 2004– June 2006	£4.2m	In the light of the House of Lords judgment in the case of <i>Regina v. Secretary of State for the Home Department ex parte Amin</i> , to investigate and report to the Home Secretary on the death of Zahid Mubarek, and the events leading up to the attack on him, and make recommendations about the prevention of such attacks in the future, taking into account the investigations that have already taken place – in particular, those by the Prison Service and the Commission for Racial Equality.
Rosemary Nelson Inquiry, ⁴⁷⁷ Northern Ireland Office	Sir Michael Morland	Section 44 of the Police (Northern Ireland) Act 2005	November 2004–May 2011	£46m	To inquire into the death of Rosemary Nelson with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary, Northern Ireland Office, Army or other state agency facilitated her death or obstructed the investigation of it, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; whether the investigation of her death was carried out with due diligence; and to make recommendations.
Contaminated Blood and Blood Products Inquiry, ⁴⁷⁸ Department of Health	Lord Archer of Sandwell	Non-statutory	March 2007– February 2009	£75,000	To investigate the circumstances surrounding the supply to patients of contaminated NHS blood and blood products; its consequences for the haemophilia community and others afflicted; and suggest further steps to address both their problems and needs and those of bereaved families.

⁴⁷⁶ Report available at: <http://www.webarchive.org.uk/wayback/archive/20060721120000/http://www.zahidmubarekinquiry.org.uk/index.html>.

⁴⁷⁷ Report available at: <http://webarchive.nationalarchives.gov.uk/20110612081947/rosemarynelsoninquiry.org/>.

⁴⁷⁸ Report available at: <http://www.archerebbp.com/>.

Inquiry	Chair	Legislation	Duration	Cost	Purpose
Human Tissue Analysis in UK Nuclear Facilities, ⁴⁷⁹ DTI / DECC	Michael Redfern QC	Non-statutory	April 2007–November 2010	Not available	The circumstances in which, between 1961 and 1992, organs/tissue were removed from 65 individuals, and were sent to and analysed at Sellafield. Revised Terms of Reference: The circumstances in which, from 1955, organs/tissue were removed from individuals at NHS or other facilities, and sent to and analysed at nuclear laboratory facilities.
The Iraq Inquiry, ⁴⁸⁰ Cabinet Office, FCO, DfID	Sir John Chilcot	Non-statutory	June 2009–present	£7.5m to end March 2013	The period from the summer of 2001 to the end of July 2009, embracing the run-up to the conflict in Iraq, the military action and its aftermath. The UK's involvement in Iraq, including the way decisions were made and actions taken.
<i>FV Trident</i> , Department for Transport, Local Government and the Regions ⁴⁸¹	Sir Stephen Young	Merchant Shipping Act 1995, s.269	October 2009–February 2011	£6m	Why the Trident fishing vessel sank with the loss of seven lives in 1974.
The Detainee Inquiry, ⁴⁸² Cabinet Office	Sir Peter Gibson, retired Court of Appeal judge	Non-statutory	March 2010–June 2012; report published December 2013	£2.3m to end Oct 2013 (exc VAT)	Whether Britain was implicated in the improper treatment of detainees, held by other countries, that may have occurred in the aftermath of 9/11.

⁴⁷⁹ Report available at: <http://webarchive.nationalarchives.gov.uk/20101214091701/http://www.theredferminquiry.co.uk/files/active/0/TheRedfermInquiryVoll.pdf>.

⁴⁸⁰ Website: <http://www.iraqinquiry.org.uk/>.

⁴⁸¹ Report available at: <http://webarchive.nationalarchives.gov.uk/20110302183821/http://www.fv-trident.org.uk/>.

⁴⁸² Report available at: <http://www.detaineeinquiry.org.uk/>.

Inquiry	Chair	Legislation	Duration	Cost	Purpose
Office of Inquiry into Child Sexual Exploitation in Gangs and Groups	Sue Berelowitz, Deputy Children's Commissioner for England	Children Act 2004, s.3	November 2011–November 2013		
Inquiry into Historical Institutional Abuse 1922 to 1995, ⁴⁸³ NI Executive	Sir Anthony Hart, retired NI High Court judge	Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013	May 2012 (Non-statutory part) January 2013 (statutory part)–present	Estimated £7.5m to £9m	To examine if there were systemic failings in Northern Ireland by institutions or the state in their duties towards those children in their care between the years of 1922–1995.
The Morcambe Bay Investigation, Department of Health	Dr Bill Kirkup CBE	Non-statutory	September 2013–present		To examine the management, delivery and outcomes of care provided by the Maternity and Neonatal services of UHMBT from January 2004 – June 2013
Independent review of self-inflicted deaths of young adults in custody aged between 18 and 24, Ministry of Justice	Lord Harris of Haringey	Non-statutory	February 2014–Report by Spring 2015		To learn lessons from self-inflicted deaths of young adults in custody aged between 18 and 24 and to identify actions to prevent further deaths.

⁴⁸³ Report available at: <http://www.hia.inquiry.org/>.

APPENDIX 6: ABBREVIATIONS, ACRONYMS AND WEBSITES

“The Act” means the Inquiries Act 2005 (c.12)

“The Rules” means the Inquiry Rules 2006 (SI 2006 No 1838)

“The Scottish Rules” means the Inquiries (Scotland) Rules 2007 (SSI 2007 No 560)

“The 1921 Act” means the Tribunals of Inquiry (Evidence) Act 1921 (c.7)

BCCI	Bank of Credit and Commerce International	
BSE	Bovine spongiform encephalopathy	
CAJ	(Northern Ireland), Committee on the Administration of Justice	http://www.caj.org.uk/
CEDR	Centre for Effective Dispute Resolution	http://www.cedr.com/
CJD	Creutzfeldt-Jakob disease	
CPR	Civil Procedure Rules	http://www.justice.gov.uk/courts/procedure-rules/civil
CQC	Care Quality Commission	http://www.cqc.org.uk/
DCMS	Department for Culture, Media and Sport	https://www.gov.uk/government/organisations/department-for-culture-media-sport
DECC	Department of Energy & Climate Change	https://www.gov.uk/government/organisations/department-of-energy-climate-change
DEFRA	Department for Environment, Food & Rural Affairs	https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs
DfID	Department for International Development	https://www.gov.uk/government/organisations/department-for-international-development
DPP	Director of Public Prosecutions	http://www.cps.gov.uk/about/dpp.html
DTI	Department of Trade and Industry	https://www.gov.uk/government/organisations/department-for-business-innovation-skills
ECHR	European Convention on Human Rights	
FCO	Foreign & Commonwealth Office	https://www.gov.uk/government/organisations/foreign-commonwealth-office
FSA	Financial Services Authority	

GAD	Government Actuary's Department	https://www.gov.uk/government/organisations/government-actuaries-department
GMC	General Medical Council	http://www.gmc-uk.org/
HIV	Human-Immunodeficiency-Virus	
HMCTS	Her Majesty's Courts and Tribunals Service	http://www.justice.gov.uk/contacts/hmcts
HMG	Her Majesty's Government	http://www.parliament.uk/mps-lords-and-offices/government-and-opposition/1/her-majestys-government/
HMT	Her Majesty's Treasury	https://www.gov.uk/government/organisations/hm-treasury
HSE	Health & Safety Executive	http://www.hse.gov.uk/
ICL	The ICL Group, the subject of Lord Gill's inquiry into an explosion at Grovepark Mills, Maryhill, Glasgow.	http://www.icltech.co.uk/
IPCC	Independent Police Complaints Commission	http://www.ipcc.gov.uk/
LPG	Liquid Propane Gas	
MoD	Ministry of Defence	https://www.gov.uk/government/organisations/ministry-of-defence
MoJ	Ministry of Justice	http://www.justice.gov.uk/
NDPB	Non Departmental Public Body	
OFMDFM	Office of the (Northern Ireland) First Minister and Deputy First Minister	http://www.ofmdfmni.gov.uk/
PASC	House of Commons Public Administration Select Committee	http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-administration-select-committee/
PUSS	Parliamentary Under-Secretary of State	
RQIA	Regulation and Quality Improvement Authority	http://www.rqia.org.uk/home/index.cfm
SPAD	Signals passed at danger	
WMD	Weapons of mass destruction	

